PART II

ORAL STATEMENTS

PUBLIC SITTINGS

held at the Peace Palace, The Hague,
from June 10th to 14th, and July 13th, 1954,
the President, Sir Arnold McNair, presiding

DEUXIÈME PARTIE

EXPOSÉS ORAUX

SÉANCES PUBLIQUES

tenues au Palais de la Paix, La Haye,
du 10 au 14 juin et le 13 juillet 1954,
sous la présidence de sir Arnold McNair, Président

MINUTES OF THE SITTINGS HELD FROM JUNE 10th TO 14th, AND JULY 13th, 1954

YEAR 1954

SIXTH PUBLIC SITTING (10 VI 54, 10.30 *a.m.*)

Present: President Sir ARNOLD MCNAIR; *Vice-President* GUERRERO; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON, KOJEVNIKOV; *Registrar* LÓPEZ OLIVÁN.

Also present:

For the Secretary-General of the United Nations:

Mr. Constantin STAVROPOULOS, Principal Director in charge of the Legal Department;

For the United States of America:

The Honorable Herman PHLEGER, Legal Adviser of the Department of State;

For the French Republic:

Professor Paul REUTER, Assistant Legal Adviser to the Ministry for Foreign Affairs;

For Greece:

Professor Jean SPIROPOULOS, Legal Adviser to the Royal Ministry for Foreign Affairs;

For the United Kingdom of Great Britain and Northern Ireland:

The Right Honourable Sir Reginald MANNINGHAM-BULLER, Q.C., M.P., Solicitor-General,

assisted by:

Mr. F. A. VALLAT, Deputy Legal Adviser to the Foreign Office;

For the Netherlands:

Professor A. J. P. TAMMES, of the University of Amsterdam;

assisted by:

Dr. W. RIPHAGEN, Legal Adviser to the Ministry for Foreign Affairs,

as Counsel;

Mr. J. J. FEKKES, of the Department of International Organizations of the Ministry for Foreign Affairs;

PROCÈS-VERBAUX DES SÉANCES TENUES DU 10 AU 14 JUIN ET LE 13 JUILLET 1954

ANNÉE 1954

SIXIÈME SÉANCE PUBLIQUE (10 VI 54, 10 *h.* 30)

Présents : Sir ARNOLD MCNAIR, *Président ;* M. GUERRERO, *Vice-Président ;* MM. ALVAREZ, HACKWORTH, WINIARSKI, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON, KOJEVNIKOV, *juges ;* LOPÉZ OLIVÁN, *Greffier.*

Présents également :

Pour le Secrétaire général des Nations Unies :

M. Constantin STAVROPOULOS, Directeur principal chargé du Département juridique ;

Pour les États-Unis d'Amérique :

L'honorable Herman PHLEGER, Conseiller juridique du Département d'État ;

Pour la République française :

M. le professeur Paul REUTER, jurisconsulte adjoint du ministère des Affaires étrangères ;

Pour la Grèce :

M. le professeur Jean SPIROPOULOS, conseiller juridique du ministère royal des Affaires étrangères de Grèce ;

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :

Le très honorable sir Reginald MANNINGHAM-BULLER, Q. C., M. P., *Solicitor-General,*

assisté de :

M. F. A. VALLAT, conseiller juridique ajoint du Foreign Office ;

Pour les Pays-Bas :

M. le professeur A. J. P. TAMMES, de l'Université d'Amsterdam ;

assisté de :

M. le Dr W. RIPHAGEN, jurisconsulte du ministère des Affaires étrangères,

comme conseil ;

M. J. J. FEKKES, de la direction des Organisations internationales au ministère des Affaires étrangères ;

and

Dr. C. W. VAN SANTEN, Assistant Legal Adviser to the Ministry for Foreign Affairs,

as Expert Advisers.

The PRESIDENT opened the hearing and said that the Court had met to hear the oral statements in the case concerning the Effect of Awards of Compensation made by the United Nations Administrative Tribunal.

Judge Basdevant, in pursuance of Article 24 of the Statute, considered that he should not take part in this Advisory Opinion, and the President had expressed to him his concurrence in that view. Accordingly, Judge Basdevant would not sit.

Judge Zoričić, on medical advice, had been obliged to leave The Hague and return to his country.

By a Resolution dated December 9th, 1953, the General Assembly of the United Nations decided to request the International Court of Justice to give an Advisory Opinion on the Effect of Awards of Compensation made by the United Nations Administrative Tribunal.

The President called upon the Registrar to read the Resolution in question.

The REGISTRAR read the relevant text.

The PRESIDENT stated that this request for an Advisory Opinion had been notified in the customary manner. In pursuance of Article 66, paragraph 2, of the Statute, the request had been communicated to the Members of the United Nations and to the International Labour Organisation.

By an Order dated January 14th, 1954, the time-limit for the deposit of written Statements was fixed at March 15th, 1954.

The Court had received a written Statement from the Secretary-General of the United Nations, as well as the documents transmitted by him as likely to throw light upon the question.

The Court had also received written Statements from the International Labour Organisation and from the following Governments in order of date: France, Sweden, Netherlands, Greece, United Kingdom of Great Britain and Northern Ireland, United States of America, Philippines, Mexico, Chile, Iraq, China, Guatemala, Turkey, Ecuador.

The following Governments had informed the Court that they maintained the views expressed by their representatives in the debates of the General Assembly: Canada, Union of Soviet Socialist Republics, Yugoslavia, Czechoslovakia, Egypt.

The Secretary-General of the United Nations, as well as the following Governments, had notified their intention of being represented at the hearings: United States of America, France, Netherlands, Greece, United Kingdom of Great Britain and Northern Ireland.

et :

M. le Dr C. W. VAN SANTEN, *jurisconsulte adjoint au ministère des* Affaires étrangères,

comme conseillers experts.

Le PRÉSIDENT a ouvert l'audience en rappelant que la Cour se réunit pour entendre les exposés oraux qui seront présentés dans l'affaire relative à l'effet de jugements du tribunal administratif des Nations Unies accordant indemnité.

M. le juge Basdevant, se conformant à l'article 24 du Statut, estime ne pas devoir participer à cet avis consultatif, et le Président lui fait connaître qu'il partageait son avis. Il ne siégera donc pas.

M. le juge *Zoričić a été obligé*, sur l'avis de son médecin, de quitter La Haye et de retourner dans son pays.

Par une résolution en date du 9 décembre 1953, l'Assemblée générale des Nations Unies a décidé de demander à la Cour internationale de Justice un avis consultatif sur l'effet de jugements du tribunal administratif des Nations Unies accordant indemnité.

Le Président prie le Greffier de donner lecture de cette résolution.

Le GREFFIER donne lecture de la résolution.

Le PRÉSIDENT déclare que la requête pour avis consultatif a fait l'objet des notifications d'usage. Conformément à l'article 66, paragraphe 2, du Statut, elle a *été communiquée* aux Membres des Nations Unies et à l'Organisation internationale du Travail.

Par *ordonnance* en date du 14 janvier 1954, le délai pour le dépôt des exposés écrits a été fixé au 15 mars 1954.

La Cour a reçu du Secrétaire général des Nations Unies un exposé écrit, ainsi que la documentation qu'il lui a transmise en vue de lui faciliter l'étude de la question.

La Cour a reçu, en outre, des observations écrites émanant de l'Organisation internationale du Travail et des Gouvernements des pays mentionnés ci-après, par ordre de date : la France, la Suède, les Pays-Bas, la Grèce, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, les États-Unis d'Amérique, les Philippines, le Mexique, le Chili, l'Irak, la Chine, le Guatemala, la Turquie, l'Équateur.

Les Gouvernements des pays désignés ci-après ont fait savoir à la Cour qu'ils s'en tenaient aux opinions exprimées par leurs représentants au cours des débats de l'Assemblée générale, ce sont : le Canada, l'Union des Républiques socialistes soviétiques, la Yougoslavie, la Tchécoslovaquie, l'Égypte.

Ont donné notification à la Cour de leur intention de se faire représenter aux audiences, le Secrétaire général des Nations Unies, ainsi que les Gouvernements des pays désignés ci-après : les *États-Unis d'Amérique*, la France, les Pays-Bas, la Grèce, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord.

The Secretary-General of the United Nations would be represented at the hearings by :

Mr. Constantin A. Stavropoulos, Principal Director in charge of the Legal Department.

The representatives of the Governments at these proceedings before the Court would be as follows :

For the United States of America :

The Honorable Herman Phleger, Legal Adviser of the Department of State ;

For France :

Professor Paul Reuter, Assistant Legal Adviser of the Ministry for Foreign Affairs ;

For the Netherlands :

Professor A. J. P. Tammes, of the University of Amsterdam ;

assisted by :

Dr. W. Riphagen, Legal Adviser to the Ministry for Foreign Affairs,

as Counsel ;

Mr. J. J. Fekkes, of the Department of International Organizations of the Ministry, and

Dr. C. W. van Santen, Assistant Legal Adviser to the Ministry,

as Expert Advisers ;

For Greece :

Professor Jean Spiropoulos, Legal Adviser of the Ministry for Foreign Affairs ;

For the United Kingdom of Great Britain and Northern Ireland :

The Right Honourable Sir Reginald Manningham-Buller, Q.C., M.P., Solicitor-General,

assisted by :

Mr. F. A. Vallat, Deputy Legal Adviser to the Foreign Office.

The President noted the presence in Court of the representatives of the Secretary-General and of the States mentioned.

He would first call on Mr. Stavropoulos, representative of the Secretary-General, after which he would call on the other representatives in the following order : The Honorable Herman Phleger, Professor Paul Reuter, Professor Spiropoulos, The Rt. Hon. Sir Reginald Manningham-Buller, Professor Tammes.

Before calling upon Mr. Stavropoulos, the President said that he would be obliged if Mr. Stavropoulos would convey to the Secretary-General the appreciation of the Court for the valuable and informative written Statement which he had transmitted to the Court for the purpose of this Opinion.

The President called upon the representative of the Secretary-General of the United Nations.

Le Secrétaire général des Nations Unies est représenté à la procédure orale par :

M. Constantin A. Stavropoulos, directeur principal chargé du Département juridique.

Les Gouvernements intéressés sont représentés devant la Cour à la procédure orale de la manière suivante :

Les États-Unis d'Amérique par :

L'honorable Herman Phleger, conseiller juridique du Département d'État ;

La France par :

Le professeur Paul Reuter, jurisconsulte adjoint au ministère des Affaires étrangères ;

Les Pays-Bas par :

Le professeur A. J. P. Tammes, de l'Université d'Amsterdam ;

assisté de :

M. le Dr W. Riphagen, jurisconsulte du ministère des Affaires étrangères,

comme conseil ;

M. J. J. Fekkes, de la direction des Organisations internationales au ministère, et

M. le Dr C. W. van Santen, jurisconsulte adjoint au ministère,

comme conseillers experts ;

La Grèce par :

Le professeur Jean Spiropoulos, conseiller juridique du ministère des Affaires étrangères ;

Le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord par :

Le très honorable sir Reginald Manningham-Buller, Q. C., M. P., *Solicitor-General,*

assisté de :

M. F. A. Vallat, conseiller juridique adjoint du Foreign Office.

Le Président constate la présence devant la Cour des représentants du Secrétaire général et des États ci-dessus mentionnés.

Il donne en premier lieu la parole à M. Stavropoulos, représentant du Secrétaire général des Nations Unies, après quoi il invitera les autres représentants à prendre la parole dans l'ordre suivant : M. Phleger, M. le professeur Reuter, M. le professeur Spiropoulos, sir Reginald Manningham-Buller, M. le professeur Tammes.

Avant de donner la parole à M. Stavropoulos, le Président lui demande d'exprimer au Secrétaire général combien la Cour apprécie l'exposé très documenté qu'il a bien voulu lui adresser sur cette question.

Le Président donne la parole au représentant du Secrétaire général de l'Organisation des Nations Unies.

Mr. STAVROPOULOS began the statement reproduced in the annex [1].

(The Court adjourned from 12.45 to 4 p.m.)

Mr. STAVROPOULOS concluded the statement reproduced in the annex [2].

The PRESIDENT called upon the representative of the United States of America.

The Honorable Herman PHLEGER began the statement reproduced in the annex [3].

(The Court rose at 6.30 p.m.)

(Signed) ARNOLD D. MCNAIR,
President.

(Signed) J. LÓPEZ OLIVÁN,
Registrar.

SEVENTH PUBLIC SITTING (11 VI 54, 10.30 *a.m.*)

Present: [See sitting of June 10th.]

The PRESIDENT called upon the representative of the United States of America.

The Honorable Herman PHLEGER continued the statement reproduced in the annex [4].

(The Court adjourned from 12.45 to 4 p.m.)

The Honorable Herman PHLEGER concluded the statement reproduced in the annex [5].

The PRESIDENT called upon the representative of the Government of the French Republic.

Professor Paul REUTER began and concluded the statement reproduced in the annex [6].

(The Court rose at 6.10 p.m.)

[Signatures.]

EIGHTH PUBLIC SITTING (12 VI 54, 10.30 *a.m.*)

Present: [See sitting of June 10th.]

The PRESIDENT called upon the representative of the Royal Hellenic Government.

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[1] See pp. 287-300.
[2] ,, ,, 300-307.
[3] ,, ,, 308-317.
[4] ,, ,, 317-332.
[5] ,, ,, 333-335.
[6] ,, ,, 336-344.

M. STAVROPOULOS commence la plaidoirie reproduite à l'annexe [1].

(L'audience est suspendue de 12 h. 45 à 16 h.)

M. STAVROPOULOS termine la plaidoirie reproduite à l'annexe [2].

Le PRÉSIDENT donne la parole au représentant des États-Unis d'Amérique.

L'honorable Herman PHLEGER commence la plaidoirie reproduite à l'annexe [3].

(L'audience est levée à 18 h. 30.)

Le Président,
(Signé) ARNOLD D. MCNAIR.

Le Greffier,
(Signé) J. LÓPEZ OLIVÁN.

SEPTIÈME SÉANCE PUBLIQUE (11 VI 54, 10 *h.* 30)

Présents : [Voir séance du 10 juin.]

Le PRÉSIDENT donne la parole au représentant des États-Unis d'Amérique.

L'honorable Herman PHLEGER continue l'exposé reproduit en annexe [4].

(L'audience est suspendue de 12 h. 45 à 16 h.)

L'honorable Herman PHLEGER termine l'exposé reproduit en annexe [5].

Le PRÉSIDENT donne la parole au représentant du Gouvernement de la République française.

M. Paul REUTER commence et termine l'exposé reproduit en annexe [6].

(L'audience est levée à 18 h. 10.)

[Signatures.]

HUITIÈME SÉANCE PUBLIQUE (12 VI 54, 10 *h.* 30)

Présents : [Voir séance du 10 juin.]

Le PRÉSIDENT donne la parole au représentant du Gouvernement hellénique.

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[1] Voir pp. 287-300.
[2] » » 300-307.
[3] » » 308-317.
[4] » » 317-332.
[5] » » 333-335.
[6] » » 336-344.

Professor Jean SPIROPOULOS made the statement reproduced in the annex [1].

The PRESIDENT called upon the representative of the Government of the United Kingdom of Great Britain and Northern Ireland.

Sir Reginald MANNINGHAM-BULLER began the statement reproduced in the annex [2].

The Court rose at 12.45 p.m.

[Signatures.]

NINTH PUBLIC SITTING (14 VI 54, 10.30 *a. m.*)

Present: [See sitting of June 10th, with the exception of Mr. Phleger, M. Reuter and M. Spiropoulos.]

The PRESIDENT called upon the representative of the Government of the United Kingdom of Great Britain and Northern Ireland.

Sir Reginald MANNINGHAM-BULLER concluded the statement reproduced in the annex [3].

The PRESIDENT called upon the representative of the Government of the Netherlands.

Professor A. J. P. TAMMES began the statement reproduced in the annex [4].

(The Court adjourned from 12.45 to 4 p.m.)

Professor TAMMES concluded the statement reproduced in the annex [5].

The PRESIDENT stated that the Secretary-General of the United Nations and the Governments represented at the oral proceedings in the case would be advised in due course of the date on which the Court would deliver its advisory opinion.

The Court rose at 5 p.m.

[Signatures.]

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[1] See pp. 345-357.
[2] " " 358-359.
[3] " " 359-371.
[4] " " 372-373.
[5] " " 373-384.

M. Jean SPIROPOULOS prononce l'exposé reproduit en annexe [1].

Le PRÉSIDENT donne la parole au représentant du Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord.

Sir Reginald MANNINGHAM-BULLER commence l'exposé reproduit en annexe [2].

L'audience est levée à 12 h. 45.

[Signatures.]

NEUVIÈME SÉANCE PUBLIQUE (14 VI 54, 10 *h.* 30)

Présents : [Voir séance du 10 juin, à l'exception de MM. Phleger, Reuter et Spiropoulos.]

Le PRÉSIDENT donne la parole au représentant du Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord.

Sir Reginald MANNINGHAM-BULLER termine l'exposé reproduit en annexe [3].

Le PRÉSIDENT donne la parole au représentant du Gouvernement des Pays-Bas.

Le Professeur A. J. P. TAMMES commence l'exposé reproduit en annexe [4].

(L'audience est suspendue de 12 heures 45 à 16 heures.)

Le Professeur A. J. P. TAMMES termine l'exposé reproduit en annexe [5].

Le PRÉSIDENT annonce que le Secrétaire général des Nations Unies et les Gouvernements représentés à la procédure orale dans l'affaire seront avertis, le moment venu, de la date à laquelle la Cour rendra son arrêt.

L'audience est levée à 17 heures.

[Signatures.]

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[1] Voir pp. 345-357.
[2] » » 358-359.
[3] » » 359-371.
[4] » » 372-373.
[5] » » 373-384.

ELEVENTH PUBLIC SITTING (13 VII 54, 4 *p. m.*)

Present: President Sir ARNOLD MCNAIR; *Vice-President* GUERRERO; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON, KOJEVNIKOV; *Deputy-Registrar* GARNIER-COIGNET.

Also present:

For the United States of America:

Mr. J. H. SHULLAW, First Secretary of the Embassy of the United States of America in the Netherlands;

For the French Republic:

Count Charles DE BARTILLAT, Counsellor of the Embassy of France in the Netherlands;

For Greece:

M. E. VERGHIS, Chargé d'affaires of Greece *a.i.* in the Netherlands;

For the United Kingdom of Great Britain and Northern Ireland:

Mr. A. C. STEWART, Chargé d'affaires of the United Kingdom *a.i.* in the Netherlands;

For the Netherlands:

Mr. A. J. P. TAMMES, Professor of International Law at the University of Amsterdam;

Mr. J. J. FEKKES, of the Department of International Organizations of the Ministry for Foreign Affairs;

Dr. C. W. VAN SANTEN, Assistant Legal Adviser to the Ministry for Foreign Affairs.

The PRESIDENT opened the sitting and said that the Court had met to deliver the Advisory Opinion requested by the General Assembly of the United Nations in the matter of the Effect of Awards of Compensation made by the United Nations Administrative Tribunal.

He called upon the Deputy-Registrar to read the Resolution of the General Assembly of December 9th, 1953, requesting the Opinion.

The DEPUTY-REGISTRAR read the relevant text.

The PRESIDENT said that in pursuance of Article 67 of the Statute, notice had been given to the Secretary-General of the United Nations and to the representatives of States and international organizations immediately concerned that the Advisory Opinion would be delivered to-day in open Court. In accordance with Article 39 of the Statute, the Court had decided that the English text of the Opinion should be considered as authoritative. The President read the relevant text.

The President called upon the Deputy-Registrar to read the French text of the operative clause.

The DEPUTY-REGISTRAR read the relevant text.

ONZIÈME SÉANCE PUBLIQUE (13 VII 54, 16 *h.*)

Présents : Sir ARNOLD MCNAIR, *Président ;* M. GUERRERO, *Vice-Président ;* MM. ALVAREZ, HACKWORTH, WINIARSKI, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON, KOJEVNIKOV, *juges ;* M. GARNIER-COIGNET, *Greffier adjoint.*

Présents également :

Pour les États-Unis d'Amérique :

M. G. H. SHULLAW, premier secrétaire de l'ambassade des États-Unis aux Pays-Bas ;

Pour la République française :

Le comte Ch. DE BARTILLAT, conseiller de l'ambassade de France aux Pays-Bas ;

Pour la Grèce :

M. E. VERGHIS, chargé d'affaires de Grèce *a. i.* aux Pays-Bas ;

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :

M. A. C. STEWART, chargé d'affaires britannique *a. i.* aux Pays-Bas ;

Pour les Pays-Bas :

M. A. J. P. TAMMES, professeur de droit international à l'Université d'Amsterdam ;

M. J. J. FEKKES, de la direction des Organisations internationales au ministère des Affaires étrangères ;

M. C. W. VAN SANTEN, jurisconsulte adjoint au ministère des Affaires étrangères.

Le PRÉSIDENT déclare l'audience ouverte et annonce que la Cour se réunit pour rendre l'avis consultatif qui lui a été demandé par l'Assemblée générale des Nations Unies sur la question de l'effet de jugements du tribunal administratif des Nations Unies accordant indemnité.

Il invite le Greffier adjoint de lire la résolution de l'Assemblée générale du 9 décembre 1953 demandant cet avis.

Le GREFFIER ADJOINT lit le texte de la résolution.

Le PRÉSIDENT expose que, conformément à l'article 67 du Statut, le Secrétaire général des Nations Unies et les représentants des États et des organisations internationales directement intéressées ont été prévenus que l'avis serait rendu aujourd'hui en audience publique. Conformément à l'article 39 du Statut, la Cour a décidé que le texte anglais de l'avis ferait foi. Le Président donne lecture de ce texte.

Le Président invite le Greffier adjoint de donner lecture du dispositif en français.

Le GREFFIER ADJOINT donne lecture du dispositif.

The PRESIDENT stated that Judge Winiarski, while voting in favour of the Opinion of the Court, had availed himself of the right conferred on him by Articles 57 and 68 of the Statute to append a statement of his separate opinion.

Judges Alvarez, Hackworth and Levi Carneiro had declared that they did not share the Court's Opinion and, availing themselves of the right conferred on them by Articles 57 and 68 of the Statute, had appended thereto statements of their dissenting opinions.

The authors of these opinions had informed the President that they did not wish to read them at the sitting.

The President declared the sitting closed.

The Court rose at 5 p.m.

(Signed) ARNOLD D. MCNAIR,
President.

(Signed) GARNIER-COIGNET,
Deputy-Registrar.

Le PRÉSIDENT déclare que M. Winiarski, juge, tout en ayant voté pour l'avis, se prévaut du droit que lui confèrent les articles 57 et 68 du Statut pour y joindre l'exposé de son opinion individuelle.

MM. Alvarez, Hackworth et Levi Carneiro, juges, ne partageant pas l'avis de la Cour, et se prévalant du droit que leur confèrent les articles 57 et 68 du Statut, y joignent l'exposé de leur opinion dissidente.

Les auteurs de ces opinions ont fait connaître qu'ils n'ont pas l'intention d'en donner lecture à l'audience.

Le Président déclare l'audience close.

L'audience est levée à 17 heures.

Le Président,
(Signé) ARNOLD D. MCNAIR.

Le Greffier adjoint,
(Signé) GARNIER-COIGNET.

ANNEX TO THE MINUTES
ANNEXE AUX PROCÈS-VERBAUX

1. ORAL STATEMENT BY MR. STAVROPOULOS
(REPRESENTING THE SECRETARY-GENERAL OF THE UNITED NATIONS)
AT THE PUBLIC SITTINGS OF JUNE 10th, 1954

[Public sitting of June 10th, 1954, morning]

Mr. President, Honorable Members of the Court :

I am indeed greatly honoured that the Secretary-General has assigned me to represent him before the Court. He has asked me to be present during these oral hearings in the hope that I may be of assistance to the Court in respect to matters within the special knowledge and competence of the Secretariat. The Secretary-General desired, in particular, that I should be prepared to supply information on United Nations practices relating to aspects of the questions which concern him as Chief Administrative Officer of the Organization. Should the Court desire, I am prepared to supply information relating to certain administrative considerations, which may throw light on the questions before the Court.

I should like to mention a few points with respect to which I might be able to supply information of possible interest to the Court.

The first point would relate to the procedure and practices of the United Nations in regard to the payment of awards made by the Administrative Tribunal, and particularly the rôle of the General Assembly in this respect.

A second point concerns the question of the reinstatement of a terminated staff member as it relates, under Article 9 of the Statute of the Administrative Tribunal, to the payment or non-payment of awards of compensation.

A third point concerns the practices of the United Nations with respect to the budgetary powers of the General Assembly in relation to the obligations of the Organization. This point relates to one of the major issues which has emerged from the discussions and statements in the present matter. On the one hand, it has been argued that Article 17 of the Charter not only gives the General Assembly a right to examine awards of compensation made by the Administrative Tribunal and to decide whether or not to give them effect by appropriating funds necessary for their payment ; but in fact imposes an obligation on the Assembly to do so in each case. On the other hand, it has been contended that while the General Assembly may have the power to refuse an appropriation, it does not have the right to do so where there is a legal obligation of the Organization as there is in the case of an award by the Tribunal. It may therefore be of interest to consider the practice of the United Nations in regard to the payment of contractual obligations and other commitments made.

A fourth point concerns the practice of the United Nations, and particularly of the General Assembly, in establishing subsidiary organs and the various characteristics of such organs. This practice might be of interest in view of the discussions of the Administrative Tribunal as a subsidiary organ, which have taken place in the General Assembly

and in the Written Statements to the Court. In the light of this discussion, it would seem pertinent to examine in particular the practice with respect to the relationship of a subsidiary organ to the General Assembly.

Finally, should Question 1 be answered in the affirmative, and should the Court examine the subject of the principal grounds on which the General Assembly might refuse to give effect to an award, a few observations might be of interest concerning possible procedures which might be observed in determining, in a particular case, whether such grounds exist.

Mr. President, I have now outlined all the points upon which I am prepared to give information to the Court and I should be grateful to you if you could indicate to me which are the points upon which the Court would desire to hear me.

The PRESIDENT: Mr. Stavropoulos, after having listened to the outline of your speech, I feel sure that the Court would be glad to have your assistance on all those points.

Mr. STAVROPOULOS: Thank you, Mr. President.

As I noted in my preliminary remarks, one of the major issues which has emerged from the discussions and statements in the present case relates to the right of the General Assembly under Article 17 of the Charter to consider and approve the Budget of the Organization. I believe it might be of assistance to the Court in its examination of this issue if I were to describe certain United Nations practices and procedures involved.

In the first instance, I should like to describe the practice followed by the United Nations in the payment of awards in the past. Since the Administrative Tribunal was established at the end of 1949, there have been 57 cases decided by it. In 32 of these there have been awards in favour of the applicants either of compensation for termination or of costs.

In 1950, 16 cases involving the same number of claimants were decided in joint proceedings. The Administrative Tribunal found in favour of the applicants and ordered their reinstatement, and this order was accepted by the Secretary-General. The Tribunal also awarded costs to the applicants amounting to approximately $2,000. This award was paid by the Secretary-General from an item in the 1950 Budget previously approved by the General Assembly, covering miscellaneous claims and adjustments.

In 1951, there were two cases decided in favour of applicants involving awards of compensation amounting to $13,750 and, in 1952, there were two cases decided in favour of applicants involving awards of compensation and costs amounting to $7,390. These were paid by the Secretary-General from the Section of the 1951 and the 1952 Budgets respectively, covering Common Staff Costs. This Section in each Budget included an account for termination indemnity to which these payments were charged.

In each of these instances the money had already been appropriated by the General Assembly in the regular budget prior to the consideration of the cases by the Administrative Tribunal, and the Assembly did not have any occasion to consider the awards.

In 1953, however, there were awards of compensation and costs in eleven cases and an award of costs in one other totalling more than $170,000. The Secretary-General submitted supplementary estimates to

the Eighth Session of the General Assembly, referring to the fact that no money was available in the 1953 Budget for the payment of the large amount involved.

Thus, I have described in brief the practice which has been followed in the payment of awards made by the Administrative Tribunal. It may also be of interest if I describe the procedures for dealing with the payment of an award which are available under the existing Financial Regulations of the United Nations and other resolutions of the General Assembly. There are, in fact, four separate procedures which might be followed.

As a first procedure, the Secretary-General could, if funds are available, make the payment from monies within the appropriate section of the Budget without affecting the total appropriated Budget. Under the Financial Regulations the annual Budget estimates are divided into parts, sections, chapters and articles. Normally, the Secretary-General can transfer funds from one article or chapter to another, so long as they remain within the same section without the need of reporting to or obtaining the concurrence of the Advisory Committee on Administrative and Budgetary Questions.

As noted a moment ago, the Secretary-General did, in 1950, 1951 and 1952, make the payment of awards from within the appropriate section of the Budget.

As a second procedure, if sufficient funds are not available in the appropriate section of the Budget, the Secretary-General might make the payment by increasing the amount in any one section and decreasing correspondingly the amount in another section or sections with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions, and without affecting the total appropriated Budget.

The Financial Regulations provide that no transfer between appropriation sections may be made without authorization by the General Assembly. However, the General Assembly resolution approving the Budget each year has authorized the transfer of funds between sections with the prior concurrence of the Advisory Committee (for example, Resolution 786 of the Eighth Session of 9 December 1953). This method, while available if there are sufficient surplus funds in other sections of the Budget, and while used on occasion for other purposes, has not been employed to date for the payment of awards made by the Administrative Tribunal.

As a third procedure, the Secretary-General might, with the concurrence of the Advisory Committee, make the payment by a withdrawal from the Working Capital Fund provided that the awards could be considered as unforeseen and extraordinary expenses. He would then submit a revised total Budget in his supplementary estimates. Each year the General Assembly has approved resolutions relating to unforeseen and extraordinary expenses (for example, Resolution 787 of the Eighth Session) and to the Working Capital Fund (for example, Resolution 788 of the Eighth Session) which could authorize the Secretary-General to enter into commitments to meet unforeseen and extraordinary expenses and to advance money from the Working Capital Fund for payment. In such a case the Secretary-General must submit supplementary estimates to the General Assembly with a report of all commitments and the circumstances relating thereto. The appropriation by the General Assembly in such a case, however, is for the purpose of replenishing the Working Capital Fund and not for the purpose of payment which would already have been made. While theoretically

available, if the expenses are unforeseen and extraordinary, this third method also has not been employed by the Secretary-General for the payment of awards made by the Administrative Tribunal.

As a fourth procedure, the Secretary-General might request the General Assembly for funds for the direct payment of the awards by submitting supplementary estimates for this purpose. Such estimates are first submitted to the Advisory Committee on Administrative and Budgetary Questions.

Only in the case of this last method, which in fact has been employed only with respect to the awards made in 1953, would the General Assembly have an opportunity to consider whether or not to appropriate the funds necessary to give effect to awards of compensations made by the Administrative Tribunal. Thus, under existing procedures and past practices, the opportunity of the General Assembly to consider an appropriation for the payment of specific awards is dependent on the fortuitous circumstance of whether or not funds are available in the current budget. On the other hand, the Assembly might, particularly with respect to the third procedure which I have described, discuss the matter after the payment had been made.

In concluding my remarks concerning Budgetary Procedures relating to the payment of awards, I should like to observe that the Statute of the Administrative Tribunal of the League of Nations provided that any compensation awarded by the Tribunal should be chargeable to the budget of the Administration concerned. In implementation of this provision of the Statute, it was recommended in the report of the Supervisory Commission when it proposed the Statute, that a nominal amount of one thousand francs should be inserted in the budgets of the League Secretariat and of the International Labour Office so as to provide an item to which such compensation could be charged if it became payable. The report added that any sum actually required in excess of this nominal vote would be provided by a transfer under the usual guarantees.

A second question concerns reinstatement in relation to the payment or non-payment of awards. It is true that the questions asked by the General Assembly concern only "an award of compensation made by the Tribunal in favour of a staff member of the United Nations whose contract of service has been terminated without his assent". Nevertheless, it is impossible, in the light of Article 9 of the Statute, to consider this question without bearing in mind the relation between reinstatement and payment of compensation.

Article 9 of the Statute which prescribes the right of the Tribunal to award compensation, gives the Tribunal the right in the first instance to order the rescinding of the decision contested or the specific performance of the obligation involved. Under the present wording of Article 9, it is within the absolute discretion of the Secretary-General to decide, in the interest of the United Nations, that the applicant should be compensated in lieu of such rescision or specific performance.

The drafting history of Article 9, as well as the original wording of the Article approved by the General Assembly in 1949, indicated that it was at that time believed that the Secretary-General would use his discretion only in exceptional circumstances. In fact, the original wording of Article 9 provided that the Secretary-General would exercise his dis-

cretion only if rescision or specific performance was in his opinion impossible or inadvisable.

Experience over a number of years, however, showed that in many cases it was necessary for the Secretary-General to ask that the Tribunal award compensation in lieu of rescision of the termination. The Secretary-General, in his report on Personnel Policy to the Eighth Session of the General Assembly, stated :

> "Experience has indicated that, particularly in cases involving termination of appointment, where the Tribunal finds that the application is well founded, the payment of compensation should be the rule rather than the exception. It is normally not in keeping with the interest of good administration to reinstate an employee whom the Secretary-General has considered it necessary to terminate. At the same time, from the point of view of the staff member, it is not desirable to require a new finding by the Secretary-General that reinstatement is 'impossible or inadvisable'. Administrative experience and considerations indicate that the normal reaction, in case a decision of the Secretary-General is not upheld by the Administrative Tribunal, should be the payment of compensation. In those circumstances, however, where the Secretary-General believes that it would not be disadvantageous to rescind his decision, he should have the option of offering such rescision to the applicant in lieu of the compensation ordered."

Article 9 was amended by the General Assembly at its Eighth Session in response to this suggestion of the Secretary-General. The present text of Article 9 provides, *inter alia,* that if the Tribunal finds that the application is well founded it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. It also provides that at the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained, should the Secretary-General decide, in the interest of the United Nations, that the applicant should be compensated without further action being taken.

Under this text, the same judgment of the Tribunal is to contain both an order of reinstatement and the fixing of compensation. It is then for the Secretary-General to decide whether, in the interest of the United Nations, the applicant is to be compensated rather than reinstated. Under the former text, compensation was fixed in a subsequent judgment in lieu of reinstatement when the Secretary-General decided that such reinstatement was impossible or inadvisable. Under both texts the close relationship between reinstatement and compensation is apparent.

Accordingly, the Secretary-General is concerned with the problem of the consequences which refusal by the General Assembly to give effect to an award of compensation might have on his right, under Article 9, to refuse reinstatement ordered by the Tribunal.

Before proceeding to a discussion of United Nations practices with respect to budgetary powers of the General Assembly on the one hand and obligations of the Organization on the other, I should like to review briefly the bases of these two concepts as they relate to the questions before the Court.

On the one hand, there are the budgetary powers of the General Assembly. Under Article 17 of the Charter, the General Assembly shall consider and approve the Budget of the Organization. Under Article 18, budgetary questions are among the important questions requiring a two-thirds majority vote in the General Assembly.

On the other hand, there are the legal obligations of the Organization. The Secretary-General has already pointed out in his Written Statement to the Court that the Staff Regulations and Staff Rules are incorporated by reference in the letters of appointment of staff members. For example, the permanent appointment form contains the following provisions:

> "You are hereby offered a permanent appointment in the Secretariat of the United Nations, in accordance with the terms and conditions as specified, as amended by or as otherwise provided in the Staff Regulations and Staff Rules, together with such amendments as may from time to time be made to such Staff Regulations and such Staff Rules. A copy of the Staff Regulations and Staff Rules is transmitted herewith."

The same letter of appointment also provides that a permanent appointment may be terminated by the Secretary-General in accordance with the relevant provisions of the Staff Regulations and Staff Rules. Similar provisions are also contained in the other letters of appointment.

In turn, the Staff Regulations provide *inter alia* that the United Nations Administrative Tribunal shall, under conditions provided in its Statute, hear and pass judgment on applications from staff members alleging non-observance of the terms of their appointment including all pertinent regulations and rules. Thus, as long as the present Staff Regulations remain in force, the provision of the Administrative Tribunal is a part of the legal relationship between the staff member and the Organization.

Furthermore, as I have just noted, the Administrative Tribunal is authorized, in accordance with the provisions of Article 9 of the Statute, to award compensation in certain circumstances. Article 9 provides that the compensation shall be fixed by the Tribunal and paid by the United Nations, or as appropriate, by the specialized agencies participating under Article 12. Article 10, paragraph 2, provides that the judgments shall be final and without appeal. These provisions are the basis for the conclusion drawn by many Member States that there is a legal obligation involved with respect to an award made by the Administrative Tribunal.

I should now like to examine the United Nations practice with respect to the exercise of the budgetary power under such circumstances. It would seem elementary that there should be difference in the exercise of the budgetary power with respect, on the one hand, to future plans and programmes where the discretion of the General Assembly is absolute, and, on the other hand, to obligations and commitments which have been already duly made. In fact, with regard to such commitments and obligations, the practice of the United Nations under its Financial Regulations does not ordinarily involve consideration by the General Assembly.

Likewise, it may be noted that the General Assembly does not ordinarily consider specific expenditures even with regard to future programmes, but deals rather with general categories. General Assembly

appropriations are normally made with respect to a class of expenses, and it is for the Secretary-General, as Chief Administrative Officer, to make the specific commitments and payments within this general authorization. Furthermore, as already noted, the Secretary-General, with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions, or in certain cases even without such concurrence, is permitted to meet unforeseen and extraordinary expenses from the Working Capital Fund.

The United Nations, under Article 105 of the Charter, enjoys in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. The detailed privileges and immunities provided by this Article of the Charter have been defined in the Convention on Privileges and Immunities of the United Nations. The Convention, *inter alia*, provides for immunity from any form of legal process.

If the Organization were not immune, persons with respect to whom it had obligations could go into the national courts and seek redress. Such a course of procedure, however, might be a serious handicap to the Organization in the fulfilment of its purposes. It has therefore been considered necessary and desirable that this immunity be maintained. At the same time, however, the Organization has not desired that its immunity should be a cause of denial of justice or a shield to avoid payment of legal obligations. It therefore desired to provide adequate procedures for the settlement of disputes in lieu of submission to national courts.

This principle has been embodied in the Convention on Privileges and Immunities adopted by the General Assembly. Section 29 of this Convention requires the United Nations to make provisions for appropriate modes of settlement with respect to two types of disputes. The first are disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party. The second are disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

With respect to the second class of disputes, no necessity has arisen to make provision for settlement, although the Secretary-General has on occasion waived the immunity of an official.

I should like now to describe certain procedures which have been established in business relations with firms and individuals outside the Organization with whom the United Nations has contracts.

When the United Nations enters into a contract with a private firm, for example, for the purchase of materials, a clause is inserted setting out the Organization's immunity from suit and from every form of legal process. Because of the existence of this immunity, an arbitration clause is also generally inserted in such contracts. This clause provides that any claim or controversy arising out of a contract shall be settled by arbitration. It also provides that both parties agree to be bound by any arbitral award which is made.

However, it is further stated in this clause that nothing therein shall constitute a waiver of the Organization's immunity. This means, in effect, that any arbitral award given against the United Nations cannot be enforced by the other side. Thus, the other party enters into the contract knowing that in the final analysis he is obliged to rely upon

the good faith of the United Nations in paying any award made against it. This postulation of good faith in the meeting of commitments and legal obligations is, I believe, a *sine qua non* for the successful conduct of the business of the Organization.

In the case of staff members, the Organization has provided the Administrative Tribunal for the settlement of claims arising out of contracts.

The Supervisory Commission, which prepared the draft Statute of the Administrative Tribunal of the League of Nations, pointed out in its report that the international status of the League prevented officials from bringing action in the ordinary courts to enforce the provisions of their contracts. It then observed that it could not be considered right that a class of employees, amounting to several hundreds of persons and engaged on terms which were necessarily complicated and which might give rise to disputes as to their legal effect, should have no means of referring questions as to their rights to a decision of a judicial body. This passage of the report is quoted in the Written Statement submitted by the Government of France together with observations of Mr. Siraud.

In a similar vein, the Advisory Committee on a Statute for a United Nations Administrative Tribunal, in presenting a draft Statute, said :

> "The United Nations is not suable in any national court without its consent ; nor can it be sued by an official in the International Court of Justice. By creating a tribunal to serve as a jurisdiction open to its many officials of various nationalities, the United Nations will be acting not only in the interest of efficient administration, but also in the cause of justice."

In addition to the discussion with respect to the budgetary powers of the General Assembly, there have been issues raised concerning the supervisory powers of the General Assembly in relation to the Administrative Tribunal. It has been argued that the Tribunal is a subsidiary organ of the General Assembly and that, therefore, its decisions are subject to review by the Assembly. On the basis of this argument it would be impossible for a subsidiary organ to take a decision binding upon the principal organ which created it.

On the other hand, it has been argued that, while the General Assembly established the Administrative Tribunal and can amend its Statute or abolish the Tribunal altogether, it does not follow that the Assembly can refuse to give effect to the Tribunal's decisions.

It may be of interest to the Court if I were to review the position of subsidiary organs in general in their relationship to the General Assembly, and describe certain aspects and practices which may be relevant to the consideration of this issue.

The principal organs of the United Nations are established and specifically enumerated in paragraph 1 of Article 7 of the Charter. They are : the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat. Paragraph 2 of Article 7 provides that such subsidiary organs as may be found necessary may be established in accordance with the Charter. With respect to the General Assembly, the Charter specifically states in Article 22 that "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions." A similar provision concerning the Security Council is contained in Article 29.

There are, in addition, a few organs which may not be characterized as either principal or subsidiary under Article 7 of the Charter. Certain organs which function within the orbit of the United Nations and are supported from the United Nations Budget, i.e. the Permanent Central Opium Board and the Drug Supervisory Body, were established by treaty and not by a principal organ in accordance with the Charter. Furthermore, the Military Staff Committee was provided directly in Article 47 of the Charter, but is not a principal organ under Article 7.

The General Assembly, pursuant to its powers under Article 22 of the Charter, has established nearly 100 subsidiary organs since it first met in London in the early part of 1946. There is considerable difficulty in classifying these organs into a systematic pattern, since there are almost as many variations in the duration, structure, functions and other characteristics as there have been subsidiary organs themselves.

Some subsidiary organs are established on a permanent basis, others for an indefinite period, and still others have been established for a single session, for a specifically limited time, or for the accomplishment of a particular purpose of limited duration.

From the point of view of membership, there are those subsidiary organs whose members are States and there are others composed of individual experts, or even represented by a single individual as in the case of the Mediator in Palestine. Members may, on the one hand, be appointed directly by the General Assembly either through a simple decision or through a system of nomination and election. On the other hand, the General Assembly may provide that their appointment should be by the President of the General Assembly, the Secretary-General or the President of the International Court of Justice.

It is particularly difficult to classify the subsidiary organs from the point of view of function. In order to obtain an over-all picture, I have listed the following principal categories: Study Committees, Political Commissions, Administrative Assistance Organs, Operational Agencies, and Judicial Bodies. There are of course cases where a subsidiary organ may have functions falling within more than one of the foregoing categories, and there may be some functions which do not fall within any of these groups.

The General Assembly has established at one time or another a great number of subsidiary organs for the purpose of conducting studies in order to prepare the groundwork for action by the General Assembly. The Standing Committees of the General Assembly which meet during the time that the Assembly is in session each year of course perform a major part of this work. But the Assembly often desires to have particular studies conducted between sessions and has established numerous committees to consider and report on specific subjects. For example, there were the Committees on International Criminal Jurisdiction, the Special Committee on Admission of New Members, and the Collective Measures Committee. Subsidiary organs of this type are very numerous and many more could be enumerated, but I believe these will serve as adequate illustration.

I should like to note one other organ, however. The Interim Committee of the General Assembly, first established in 1947 and placed on a permanent basis in 1949, was given functions of considering and reporting to the General Assembly with respect to a broad field of matters concerning the maintenance of international peace and security, the promotion

of international co-operation in the political field, and the peaceful adjustment of situations likely to impair the general welfare or friendly relations among nations. Because of the very broad sphere of activity of this Committee, there was particular care on the part of its sponsors to point out that the functions of this "Little Assembly" were largely confined to considering and reporting to the General Assembly. This function, however, covered both the consideration of general problems and the consideration of specific disputes. The Interim Committee was in fact authorized to conduct investigations and appoint commissions of enquiry.

It was also given certain other rights and functions which made it more than a study committee. Thus, Resolution 112 of the Second Session, which recommended the holding of elections in Korea for the establishment of an independent government, authorized the Temporary Commission on Korea to consult with the Interim Committee with respect to the application of the Resolution. In 1948, by authorization of the General Assembly (Resolution 196 (III) of 3 December 1948), the Interim Committee became the only subsidiary organ which might request advisory opinions of the International Court of Justice; and in 1950 it was authorized to utilize the Peace Observation Commission (Resolution 377 (V) of 3 November 1950).

The primary function of each committee falling within this category of subsidiary organs, including even the Interim Committee, is to study and report to the General Assembly.

A second group of subsidiary organs are those having active political functions. Political Commissions may likewise have the function of studying and reporting to the General Assembly, particularly with respect to observations or investigations in the field. This was the primary function in the case of the United Nations Special Committee on Palestine. But this function of reporting may well be only incidental to the performance of other functions, and may not be the primary purpose of the organ. Assistance in establishing governments, as in Libya, in bringing about a federation, as in Eritrea, and in supervising elections, as in Korea in 1948, may be the principal function of the subsidiary organ. Mediation and conciliation may in other cases be the primary function, as in Palestine. Observation as a means of maintaining peace may also be important, as in the Balkans, where there was first the United Nations Special Committee on the Balkans, and later the Balkan sub-commission of the Peace Observation Commission. These subsidiary organs which operate in the field must often, within their terms of reference, take final actions and decisions.

A third category of subsidiary organs includes those which I have called Administrative Assistance Organs. These organs have been established by the General Assembly to assist it in carrying out its functions relating to financial, budgetary and administrative matters. They include the Advisory Committee on Administrative and Budgetary Questions, the Committee on Contributions, the Board of Auditors, and the Negotiating Committee for Extra-Budgetary Funds.

A few representatives have suggested that the Administrative Tribunal should also be classified as an administrative assistance organ of the General Assembly. For reasons which I will point out in a few moments, I have chosen, however, to classify it as a judicial rather than as an administrative organ.

The Advisory Committee on Administrative and Budgetary Questions is perhaps the best example of an organ giving administrative assistance to the General Assembly. The Secretary-General submits all budgetary estimates to the Advisory Committee for its consideration and report to the General Assembly. Under the Financial Regulations he must do this at least twelve weeks prior to the opening of each regular session of the General Assembly. The Advisory Committee also considers and reports to the Assembly with regard to all other administrative and financial questions upon which the Assembly must decide. In this respect the Advisory Committee is similar to a permanent study committee.

Its functions do not stop with making recommendations, however. The General Assembly has delegated to the Advisory Committee the power of final decision in certain budgetary matters. I have mentioned some of these previously. A leading example is the case of inter-sectional budgetary transfers. As I have already noted, the financial regulations, while permitting the Secretary-General to make transfers within sections of the Budget, prohibit transfers between sections without the authorization of the General Assembly. Each year the General Assembly has authorized in advance the transfer by the Secretary-General of credits between sections of the Budget, *with the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions.*

The Advisory Committee also has the power to give or withhold concurrence to the Secretary-General to enter into commitments to meet unforeseen and extraordinary expenses. Such concurrence is not necessary, however, in all cases. For example, the resolution adopted each year with respect to unforeseen and extraordinary expenses provides that the concurrence of the Advisory Committee is not necessary for those commitments not exceeding a total of $2,000,000 if certified by the Secretary-General to relate to the maintenance of peace and security or to urgent economic rehabilitation. The resolution also provides that it is unnecessary for certain commitments duly certified by the President of the International Court of Justice. Other specific types of commitments for which concurrence is unnecessary and which vary from year to year are also included in the resolutions.

The prior concurrence of the Advisory Committee is necessary, under current resolutions of the Eighth Session of the Assembly, for withdrawals by the Secretary-General from the Working Capital Fund in the following instances : advances in excess of $125,000 to continue the revolving fund to finance miscellaneous self-liquidating purchases and activities ; loans to specialized agencies in amounts which would increase the aggregate balance outstanding to more than $3,000,000 for all agencies or to more than $1,000,000 for a single agency ; and sums exceeding $45,000 as may be required to finance payments of advance insurance premiums and deposits where the period of insurance extends beyond the end of the financial year in which payment is made.

In a fourth category of subsidiary organs are the operational agencies which administer relief, rehabilitation and assistance programmes involving the expenditure of large sums of money. These organs are of particular interest in connection with the present questions since they have been delegated certain functions with regard to financial matters by the General Assembly. Subsidiary organs in this category include the United Nations Children's Fund (UNICEF), the United Nations Relief and

Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Korean Reconstruction Agency (UNKRA), and the High Commissioner for Refugees. I may also note the Expanded Programme of Technical Assistance and the responsibilities with respect to this Programme of the Technical Assistance Board which is a subsidiary organ of the Economic and Social Council.

An examination of the terms of reference of the operational subsidiary organs of the United Nations reveals that these organs have been vested with varying degrees of financial power regarding the programmes they administer. The financial procedures followed with regard to these programmes differ from those applicable to the regular Budget of the Organization. These differences are manifested mainly in the manner in which the activities of these organs are financed, in the financial regulations under which they operate, in the vesting of greater authority to determine the disposition of the funds in the agency concerned, and in the less rigid controls exercised by the General Assembly over the disposition of the funds.

The first aspect which I will mention concerns the financing of these programmes. A feature common to all is the fact that they are financed from voluntary contributions of governments rather than by assessments under the regular budget of the Organization. For this reason, these programmes are sometimes called extra-budgetary programmes. An exception is the administrative expenses of the Office of the High Commissioner for Refugees, which are paid from the regular United Nations Budget.

A second aspect relates to the application of financial regulations. Arrangements made by the General Assembly with respect to the financial regulations which govern the operation of the programmes have not been uniform. The Statute of the Office of the High Commissioner for Refugees provides that the administration of the Office shall be subject to the regular Financial Regulations and Rules of the United Nations. On the other hand, the Agent of the United Nations Korean Reconstruction Agency and the Director-General of the United Nations Relief and Works Agency for Palestine Refugees are authorized to establish financial regulations for their respective agencies. Each was required to do so in consultation with the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions ; and in addition, the Agent-General of the United Nations Korean Reconstruction Agency had to secure the agreement of the Advisory Committee of his agency. With regard to the United Nations Children's Fund and the Expanded Programme of Technical Assistance, certain specified financial arrangements were laid down or approved by General Assembly resolutions, but no express provisions were included as to the financial regulations which should apply to these programmes. In point of fact, the regular Financial Regulations of the United Nations are applied.

A third aspect of particular interest concerns the authority delegated by the General Assembly for the disposition of funds. Here again, there are considerable variations in the arrangements which have been laid down by the General Assembly.

With respect to the United Nations Relief and Works Agency for Palestine, the General Assembly sets the over-all limits of the programme for specified periods. In addition, it specifies the amounts for sub-programmes of direct relief for Palestine refugees, of work projects, and

of reintegration. The limits set for these programmes, however, are not rigid since the Agency is authorized to transfer funds or make other necessary adjustments. Resolutions of the Fourth, Fifth, Sixth, Seventh and Eighth Sessions of the General Assembly have provided for such adjustment. Perhaps the most direct authorization was that made at the Sixth Session by the General Assembly. Paragraph 9 of Resolution 513 of the Sixth Session authorized "the United Nations Relief and Works Agency to transfer funds allocated for relief to reintegration". The Resolution adopted at the Eighth Session envisaged possible adjustments of the relief budget by the Agency as may be attributable to refugee employment on projects, or as may be necessary to maintain adequate standards.

With regard to the Expanded Programme of Technical Assistance, the General Assembly has determined how much should be made available to the agencies by outright allocation, as well as the percentage to be received by each of the agencies, how much should be retained for further allocation and how much should be retained as a reserve. However, considerable authority has been granted to the Technical Assistance Board in regard to the allocation of funds.

Very broad discretion with respect to disposition of funds has been granted by the General Assembly with respect to the United Nations Children's Fund, the United Nations Korean Reconstruction Agency and the High Commissioner for Refugees. As regards the first, the power to allocate the resources of the Fund is vested in the Executive Board of the Fund. General Assembly Resolution 417 of the Fifth Session provided that the Board, in accordance with such principles as may be laid down by the Economic and Social Council and the Social Commission, should formulate the policies, determine the programmes, and allocate the resources of the Fund for the purpose of meeting, through the provision of supplies, training and advice, emergency and long-range needs of children and their continuing needs particularly in underdeveloped countries, with a view to strengthening, wherever this may be appropriate, the permanent child health and child welfare programmes of the countries receiving assistance.

The Agent-General of the United Nations Korean Reconstruction Agency, under General Assembly Resolution 410 of the Fifth Session, is authorized to use contributions in kind or services at his discretion for the programme of relief and rehabilitation and administrative expenses connected therewith. An Advisory Committee, consisting of the representatives of five Member States, is established to advise the Agent-General with regard to major financial, procurement, distribution and other economic problems pertaining to his planning and operations.

A similar broad discretion is vested in the High Commissioner for Refugees who, under the Statute of his Office, is authorized to administer any funds, public or private, which he receives for assistance to refugees, and to distribute them among the private and, as appropriate, public agencies which he deems best qualified to administer such assistance. He does not have this broad discretion, however, with respect to administrative expenses which are paid from the regular United Nations budget and are subject to the same scrutiny as the rest of the budget.

The broad discretion vested in these agencies for the disposition of funds represents at the same time a less rigid set of controls by the General Assembly. The practice of the General Assembly with regard

to the delegation of financial powers to these subsidiary organs would appear to indicate that the General Assembly has not considered it necessary to pass upon the disposition of every dollar which comes into the custody of the Organization.

[Public sitting of June 10th, 1954, afternoon]

A final category of organs established by the General Assembly is that of judicial bodies. The Assembly has, in addition to the Administrative Tribunal, set up a United Nations Tribunal in Libya and in Eritrea.

In accordance with the provisions of the Treaty of Peace with Italy, the question of the disposal of the former Italian colonies was submitted to the General Assembly on 15 September 1948 by the Governments of France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. As part of the settlement, the General Assembly, by Resolution 388 (V) of 15 December 1950 approved articles on economic and financial provisions relating to Libya. The final article provided that a United Nations Tribunal should be set up, composed of three persons selected by the Secretary-General for their legal qualifications from the nationals of three different States not directly interested.

The Tribunal, whose decision was to be based on law, was given the following two functions :

> First, it should give to the Administering Powers, the Libyan Government after its establishment, and the Italian Government, on request by those authorities, such instructions as might be required for the purpose of giving effect to the resolution of the General Assembly.
>
> Second, it should decide all disputes arising between the aforementioned authorities concerning the interpretation and application of the resolution. The Tribunal would be seised of any such dispute on the unilateral request of one of those authorities.

The Tribunal was authorized to determine its own procedure. In the absence of unanimity, the Tribunal could take decisions by a majority vote. Its decisions were to be final and binding. No provision was made for reports to the General Assembly, or for any review of its decisions by the General Assembly.

At the following session of the General Assembly, a United Nations Tribunal was established by Resolution 530 (VI) of 1952, in connection with the economic and financial provisions relating to Eritrea. The terms of reference of this Tribunal were similar but not identical with the terms of reference of the Tribunal for Libya. An additional provision of interest was that the United Nations Tribunal in Eritrea should have exclusive competence on matters falling within its functions. In the event of any matter in dispute being referred to the Tribunal, it was provided that any action pending in civil courts should be suspended.

As in the case of the United Nations Tribunal in Libya, no provision was made for reports to the General Assembly, or for any review by the Assembly.

There has been considerable discussion by the General Assembly of the possibility and desirability of establishing an international criminal court. As early as 1948 the Assembly adopted a resolution in which it considered "that in the course of development of the international community, there will be an increasing need of an international judicial organ for the trial of certain crimes under international law". Since that time the subject has been examined by the International Law Commission and by Committees on International Criminal Jurisdiction established by the General Assembly which met in 1951 and 1953.

Two principal methods of establishing such a court were considered. One method was by resolution of the General Assembly, the other by a multilateral convention. The 1953 Committee on International Criminal Jurisdiction favoured the second method. In the discussion, however, there were several points raised which are relevant to our present consideration.

The Report of the Committee summarizes the views expressed in these discussions as follows :

Some members believed that the legal powers of the General Assembly under the Charter were not sufficient to enable it to establish a court by resolution. Under Article 22 of the Charter, the General Assembly might establish only such subsidiary organs as it deemed necessary for the performance of its functions, and to try individuals was not a function of the Assembly. The tribunals already established by the General Assembly, which were considered by some members as constituting useful precedents for an international court (that is, the Administrative Tribunal and the United Nations Tribunals in Eritrea and Libya), were considered by others as furnishing no adequate precedent since they were based on provisions not applicable to the proposed criminal court.

In favour of the power of the General Assembly to establish the court by resolution, it was said that, under Article 22 of the Charter, the Assembly could establish subsidiary organs to assist it in performing its functions. Under Article 11, the Assembly was given functions with regard to the maintenance of international peace and security. The existence of an international criminal jurisdiction, it was argued, would be a factor in the maintenance of peace, since it would strengthen the moral opinion of the world against international crimes. Therefore, nothing in the Charter prevented the General Assembly from creating an international criminal court as a subsidiary organ. Such a subsidiary organ, it was said, might well be entitled to do things which the General Assembly itself could never perform, provided that its activity was in the interest of the maintenance of peace.

Some members felt that there would be a serious loss of independence and stability if the court were set up by a resolution, which could always be repealed or modified later by the General Assembly. The same argument would apply, it was believed, if the court were a subsidiary organ, the budget of which had to be debated each year. Those who favoured the resolution method took the view that the stability, permanence and independence of the court would be adequately safeguarded, since the General Assembly would *not* reverse a decision taken on so important a subject.

The report does not make any reference to the question of review of decisions by the General Assembly.

In reviewing the character of the Administrative Tribunal it is apparent that the terminology in its Statute is that generally followed with respect to judicial bodies. Article 2 of its Statute refers to the competence of the Tribunal to pass judgment on application. The term judgment, clearly a judicial term, is also used in Articles 10 and 12. It is true that in the English text the word "competence" is used rather than "jurisdiction", which latter is perhaps a more common judicial phrase. In this connection, however, it can be noted that while the term "jurisdiction" is used in Article 36 of the Statute of the International Court of Justice, the title of Chapter II which includes Article 36 is "Competence of the Court".

Article 6 of the Statute of the Administrative Tribunal indicates certain rules of procedure of a judicial character. Furthermore, several provisions of the Statute appear to be borrowed from the Statute of the Permanent Court of International Justice, or even earlier judicial texts, via the Statute of the Administrative Tribunal of the League of Nations. One of the most important of these is paragraph 2 of Article 10, which provides that "The judgment shall be final and without appeal." An almost identical provision was contained in Article 60 of the Statute of the Permanent Court of International Justice, and in the same Article of the Statute of this Court. Paragraph 3 of Article 2 relating to the Tribunal's right to decide its own competence also appears to be based on similar provisions in the Statute of the predecessor of this Court, which will also be found in Article 36 of the present Statute.

As has been pointed out on several occasions, the General Assembly chose to use the word "Tribunal" rather than "Staff Claims Board". On the other hand, it decided to use the word "member" instead of "judge" and "executive secretary" instead of "registrar".

I should also like to examine certain other aspects of the relationship of the Administrative Tribunal to the General Assembly. It would seem that the Tribunal has been established pursuant to the authority of the General Assembly under Article 22 of the Charter and, therefore, in this sense is properly designated as a subsidiary organ.

The Statute by which the Administrative Tribunal was established was adopted by the General Assembly by Resolution 351 (IV) on 24 November 1949. The Statute, in accordance with its Article 11, may be amended by decisions of the General Assembly. It is also generally accepted that the Statute could be completely repealed and the Tribunal abolished by decison of the General Assembly. It is not believed that such action by the General Assembly would violate acquired rights of staff members. This view has been supported by almost all members of the General Assembly who have commented on the subject and would also seem to be supported by recent decisions of the Tribunal.

The Tribunal stated in recent judgments that while the contractual elements of the relations between the staff members of the United Nations cannot be changed without the agreement of the two parties, the statutory elements, on the other hand, can always be changed at any time through regulations established by the General Assembly, and these changes are binding on staff members. It further defined all matters as contractual which affect the personal status of each staff member, for example, the nature of his contract, salary and grade. It defined all matters as statutory elements which affect in general the organization of the international civil service, and the need for its

proper functioning, for example, general rules that have no personal reference. It would certainly seem that the provision of an Administrative Tribunal falls within the statutory elements.

Another factor in the relationship of the General Assembly to the Administrative Tribunal is provided by Article 3 of the Statute under which members are appointed by the General Assembly. A proposal that the members should be appointed by the International Court of Justice instead of by the General Assembly was not accepted. On the other hand, a member cannot be dismissed by the General Assembly unless the other members of the Tribunal are of the unanimous opinion that he is unsuited for further service. A close decision of the Fifth Committee to the effect that the dismissal of a member of the Administrative Tribunal could take place merely by a two-thirds majority vote of the General Assembly was reversed in the plenary meeting of the General Assembly.

It may further be noted that the Statute of the Tribunal does not provide for any report to the General Assembly or for any review of its decisions.

From the above survey, the fact most immediately apparent is the great variation which exists with respect to subsidiary organs established by the General Assembly. Variations in duration, membership and functions have been reviewed in general terms. It is not possible within the scope of the present statement to attempt to analyze the minute variations which exist in these respects from one organ to another. Nor am I able to describe the various other differences with respect to such subjects as rules of procedure, reporting requirements, place of meeting, staff services, and other matters.

It is much more difficult to discover the few characteristics which these organs have in common. Fundamentally, these appear to be that the organs are established by the General Assembly and that their membership, terms of reference and other particulars are defined by the Assembly. Presumably the terms of reference could be changed or the organ abolished by decision of the Assembly.

The requirement of a report is usual but not universal. Normally such report is to be made to the General Assembly. However, in some cases, as for example the Conciliation Commission for Palestine, the General Assembly has requested that reports be rendered to the Secretary-General for transmission to Member States. In other cases reports are to be submitted not only to the General Assembly, but to other organs such as the Security Council as in the case of the Collective Measures Committee and the Disarmament Commission, or the Economic and Social Council as in the case of the High Commissioner for Refugees.

It is my hope that this description of United Nations practices with respect to subsidiary organs established by the General Assembly may be useful to the Court in its consideration of the issues raised by the Questions now before it.

The last point refers to possible procedures for the application of "principal grounds" to individual cases.

Question 2 is only to be answered by the Court if the reply to Question 1 is in the affirmative. I wish to make it clear that by commenting on the second question I do not mean to imply any position with regard to the answer to Question 1. The comments which I shall make, in so

far as they relate to Question 2, will only become relevant should Question 1 be answered in the affirmative by the Court.

It may be noted that in the discussions in the General Assembly or in Written Statements to the Court some governments have expressed the view that issues in particular cases before the Tribunal could not properly be decided by a vote in the General Assembly. It was argued, for example, by the representative of India in the Fifth Committee that the General Assembly was not a proper forum to deal with questions of law or especially to examine individual cases from that viewpoint. (India, Document 5, Fifth Committee, 425th meeting, paragraph 49.) The representative of the Netherlands also expressed the view that the General Assembly could not perform judicial functions. (Netherlands, Document 2, Fifth Committee, 421st meeting, paragraph 16; see also Written Statements, Distr. 54/17, page 85.)

The possible grounds on which the General Assembly might have the right to refuse to give effect to an award which were suggested during discussions in the Fifth Committee have been collected in the Secretary-General's Written Statement. Other proposed grounds have been set forth in the Written Statements of Members of the United Nations submitted to the Court.

Since I am not presuming in any way what the answer of the Court to Question 1 may be, it would be most inappropriate for me to presume any "principal grounds" which the Court might define in answer to Question 2. However, with this reservation, I should like to note that among the possible grounds most frequently referred to by Member States are those which, in their application to particular cases, raise certain problems of procedure. I may take, for example, the grounds for revision or annulment of arbitral awards set forth by the International Law Commission in its draft Convention on Arbitral Procedure. These embody a convenient summary of international jurisprudence on the subject made by an organ of the United Nations, and have been referred to by several representatives in discussions of the present case.

The draft Convention on Arbitral Procedure proposed three grounds on which the validity of an award might be challenged. These are: first, that the Tribunal has exceeded its powers; second, that there was corruption on the part of a member of the Tribunal; and third, that there has been a serious departure from a fundamental rule of procedure, including failure to state the reasons for the award. The draft also recognized as a ground for revision of the award the discovery of some fact of such a nature as to have a decisive influence on the award, provided that when the award was rendered that fact was not known to the Tribunal and to the party requesting revision and that such ignorance was not due to the negligence of the party requesting revision.

It is to be noted that while the International Law Commission indicated these as grounds for annulment or revision, it also suggested the appropriate judicial procedures which it considered should be followed in applying these grounds. In the case of possible grounds of annulment, the International Law Commission recommended that the question be considered by the International Court of Justice, and if annulment was decided, then the case should be re-submitted to a new tribunal. In the case of possible grounds for revision, the arbitral tribunal itself, or, if impossible for the tribunal, then the International Court of Justice, should consider such revision.

In the report of the Commission covering the work of its fifth session, the following observations were made with particular reference to excess of power as a ground for annulment:

> "It is a fundamental—and inescapable—principle of jurisprudence that an arbitral tribunal must have the power to determine its competence on the basis of the instrument which is the source of its jurisdiction. It is a no less fundamental principle that an award rendered in excess of the powers conferred by that instrument is null and void. The satisfactory operation of these two equally essential principles can be assured only by an impartial judicial authority competent to decide whether there has taken place excess of jurisdiction."

The Government of the Netherlands in its Written Statement to the Court, after referring to the grounds enumerated in the Draft Convention of the International Law Commission, stated:

> "But there would be little point in recognizing these grounds if not at the same time machinery would be provided in order to decide whether or not in a certain case these grounds are invoked rightly; leaving this to either party would deprive the award of its binding and final character." (I.C.J. Distr. 54/17, page 85.)

I might also note that the present Statute of the Administrative Tribunal of the International Labour Organization, as amended in 1946, provides that the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund may challenge a decision of the Tribunal confirming its jurisdiction, or may question the validity of the decision on the grounds that it is vitiated by fundamental fault in the procedure followed. However, the Statute also provides that the Governing Body must submit the question of the validity of the decision to the International Court of Justice for an Advisory Opinion, and the opinion given by the Court is binding.

The article providing for this challenge and reference to the Court was adopted in October 1946, following the decision of the Assembly of the League of Nations not to pay certain awards which had been made by the Tribunal which had served both the League of Nations and the International Labour Organization.

The examples I gave suggest procedures which might be open to the General Assembly with regard to the application of principal grounds to particular cases. In the first place, it might be possible that the Assembly could order that the case be sent back to the Administrative Tribunal for reconsideration. The procedure of revision is well-established in international practice in the case of discovery of a new material fact. Such procedure for revision would not seem to be inconsistent with a provision that a judgment is final and without appeal. Article 60 of the Statute of the International Court of Justice provides that its judgments are final and without appeal. The following Article of the Statute permits an application for revision when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

What is the possibility of reconsideration of a case by the Administrative Tribunal? The Secretary-General in his Written Statement to

the Court described the action in the case of Miss Jane Reed. In that case, Counsel for the Secretary-General applied for the revision of an award based on the correction of an error of fact. The Tribunal, in fixing the compensation, had based its computation on the age of Miss Reed and the time remaining before she would have been eligible for retirement had she not been terminated. It was subsequently discovered that there was an error in the age and the fact was recognized by both parties.

The Tribunal, in correcting the award, stated that it was entitled to rectify figures computed on the basis of a date submitted by both parties and recognized by both after the judgment as erroneous. As noted in the Written Statement, other questions relating to the power of the Administrative Tribunal to reconsider a case or revise a judgment are as yet undetermined by the Tribunal. The Statute of the Tribunal is silent on the subject.

While the procedure of revision is normally limited to the discovery of mistake or of new material facts, it would appear possible that a similar procedure could be considered for the re-examination of a case on other possible grounds, should the Court find that there are any grounds which would justify the Assembly in refusing to give effect to an award.

On the other hand, as noted above in reference to the Statute of the Administrative Tribunal of the International Labour Organization, and to the draft Convention on Arbitral Procedure prepared by the International Law Commission, there is precedent for a procedure providing for a request for an advisory opinion from the International Court of Justice in order to obtain a determination of the legal questions involved. The General Assembly might, in fact, provide for both methods —re-examination by the Administrative Tribunal in the first instance, and, if the Assembly were still dissatisfied, reference to the Court.

Perhaps other procedures, such, for example, as reference to a special committee of the Assembly, might also be considered for the examination of issues of this kind in particular cases.

Presumably the procedures which I have mentioned could be provided by the General Assembly by amendment of the Statute of the Tribunal under Article 11. It is not my intention to discuss whether or not they could be applied without amending the present Statute. Such discussion would involve consideration of whether or not there are "any grounds" under the present Statute of the Administrative Tribunal and other relevant instruments on which the General Assembly could refuse to give effect to an award of compensation made by the Tribunal. As I have already emphasized, I did not intend, in discussing these procedural aspects, to imply any position with respect to the answer to Question 1.

In closing I should like to refer to another possible ground which has been frequently mentioned by representatives in their discussion of this matter. This possible ground is that of an unreasonably large award of compensation. The question of reasonableness of compensation was undoubtedly of concern to the General Assembly. At its Eighth Session it dealt with the problem by an amendment to Article 9 of the Statute of the Administrative Tribunal. This Article was amended for the purpose *inter alia* of placing a ceiling on the amount of compensation which might be awarded.

Under the amended Article 9, compensation is not to exceed the equivalent of two years' net base salary of the applicant. The Article further provides, however, that the Tribunal may, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision is to accompany each such order.

With respect to this possible ground, it will thus be seen that the General Assembly has acted in its legislative capacity in order to minimize the possibility of what it might consider an excessively large award.

2. ORAL STATEMENT BY Mr. PHLEGER

(REPRESENTING THE GOVERNMENT OF THE UNITED STATES OF AMERICA) AT THE PUBLIC SITTINGS OF JUNE 10th AND 11th, 1954

[Public sitting of June 10th, 1954, afternoon]

Mr. President and Honourable Members of the Court :

May it please the Court,

The events giving rise to the request for an advisory opinion of this Court may be briefly summarized as follows :

Between December 1952 and May 1953 the Secretary-General dismissed eleven staff members of the United Nations. This action was based on their refusal to answer questions put to them by an investigating committee of the United States Senate. These questions related to membership in the Communist Party or subversive activities against the United States. The refusals to answer were based upon a plea of the Fifth Amendment to the Constitution of the United States upon the ground that the answers might tend to incriminate the witnesses.

The discharged staff members filed applications with the United Nations Administrative Tribunal, alleging non-performance or non-observance of the terms of their contracts.

The Administrative Tribunal rendered judgments in their favour, and awarded compensation to the eleven in the total amount of one hundred and seventy thousand dollars ($170,000)—an average of more than $15,000 per employee. The highest single award was $40,000 ; the lowest, $4,700.

The Secretary-General included this amount of $170,000 in his budget report to the General Assembly on Supplementary Estimates for the Financial Year 1953, and proposed a supplementary appropriation of $179,000 for Section 17 of the United Nations Budget to pay the awards including compensation, adjusted salary to date of termination, and legal costs.

Some Members of the Assembly objected to the appropriation. Debate then ensued both in favour of and against payment. Some members took the position that the Assembly had no power to refuse to give effect to the awards : that they were irrevocable and binding on the Assembly, which had no choice but to pay them. Others took the position that the Assembly not only had the power but the duty to examine awards of the Tribunal, and that these particular awards should not be paid. Still others took intermediate positions.

In the course of the debate it was proposed that, before the Assembly acted on the request for appropriation, the opinion of this Court should be sought ; and on December 9, 1953, the General Assembly adopted by 41 votes to 6, with 13 abstentions, a Resolution submitting two questions to this Court for its advisory opinion. These questions are :

"(1) Having regard to the Statute of the United Nations Administrative Tribunal and to any other relevant instruments and to the relevent 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 ?

(2) If the answer given by the Court to question (1) is in the affirmative, what are the principal grounds upon which the General Assembly could lawfully exercise such a right ?"

In the view of the United States Government, the argument that the Assembly has no right to review the awards, and must automatically pay them, cannot be sustained. We think the Assembly has not only the right, but the duty as well, to examine requests for appropriations, and has the right to refuse appropriations to pay awards of the Administrative Tribunal in those cases where it believes that the relevant considerations so require. We think the grounds to support such action are found in the Charter provisions defining the budgetary and regulatory responsibilities of the Assembly, its relationship to subsidiary organs such as the Administrative Tribunal, the function of the Secretary-General as the chief administrative officer of the Organization, and in the Charter provisions regarding interpretation and judicial power.

Whether the General Assembly should decide, in a given case, to refuse an appropriation must depend on its judgment of many factors which are proper for the Assembly's consideration. The weighing of these factors adds up to a judgment of a legislative character, to be made by the highest United Nations body in which all Members are represented. The Charter basis and limitations of Assembly action can and should be stated as a matter of law. The reasons and motivations of Assembly decision to vote or refuse an appropriation in a particular situation are otherwise to be left to the judgment of the Assembly, as the United Nations organ with immediate responsibility in the matter.

I will state briefly the propositions for which we shall contend in the course of argument.

First, the questions put to this Court by the General Assembly are *legal* questions, concerning the Assembly's right and power to vote funds, or to refuse to vote them. The questions do not relate to policy considerations of what the Assembly should or should not do.

2. The Charter requires a two-thirds vote of the General Assembly before United Nations funds can be spent. Article 17 requires that an expenditure be *considered* by the Assembly. The Assembly cannot be compelled to make an automatic appropriation without consideration and deliberate approval.

3. The General Assembly has not voted any appropriation to pay the Tribunal's awards, either in advance or after they were made.

4. There is no basis in the Charter for any delegation by the General Assembly, to any other body, of the Assembly's duty to examine and pass upon all requests for funds. In fact, the Assembly has not sought —in the Staff Regulations or the Statute of the Administrative Tribunal—to make any such delegation of responsibility.

5. The Administrative Tribunal is a subsidiary organ of the General Assembly under the Charter. The Tribunal's judgments cannot bind the Assembly nor can their status be superior to that of authoritative expressions by this Court, which is the principal judicial organ of the

United Nations, on matters referred to the Court by the Assembly. Even in such cases the Court's opinions are *advisory* only.

6. The one precedent, bearing upon the relationship of the Assembly to the Tribunal and staff members in the matter of awards, is to the effect that the Assembly may refuse to give effect to Tribunal awards. Such was the decision of the League of Nations in 1946.

7. The contract between a staff member and the United Nations Secretariat may not infringe the Charter responsibility and powers of such principal organs as the Secretary-General and the General Assembly. The Secretary-General is the chief administrative officer, and appoints the staff under regulations established by the Assembly. The terms of a staff member's contract are subject to these responsibilities and powers.

8. Resort to the Administrative Tribunal is a privilege conferred on a staff member by the General Assembly. He has no vested or acquired right to this resort, and the Assembly may abolish the Tribunal. Similarly, he has no vested or acquired right to any award given by the Tribunal during a period when the Assembly permits such resort. Awards, of necessity, remain subject to the Charter powers of principal United Nations organs.

9. In discharge of its Charter responsibilities for the United Nations budget, and for the control of its subsidiary organs, the General Assembly may examine any award rendered by the Administrative Tribunal, and may refuse to give it effect on any Charter grounds. Thus, it might do so on grounds relating to the criteria set forth in Article 101, paragraph 3, for selection of staff, on financial grounds, on grounds relating to the proper functioning of the Tribunal, among others. The considerations and reasons leading the Assembly to pay an award or to refuse payment, on *any* grounds, are not questions of law but of policy; they are as broad and varied as are the bases for action by any legislative body.

Let us now turn to a detailed consideration of these propositions.

The questions which the General Assembly addressed to this Court are strictly legal in character and intentionally limited in scope. They relate to the combined legal effect of the Charter, the Staff Regulations, and the Statute of the United Nations Administrative Tribunal. Article 96 of the Charter excludes policy questions from reference for advisory opinion.

These considerations were recognized by the United Kingdom when, in introducing the draft resolution providing for reference to this Court, it pointed out that "the questions were of a general character, strictly legal in nature and limited in scope...." *Written Statements* 177 (quotation cited in paragraph 28 of the Secretary-General's statement). Amendments to the draft resolution, proposed by France and designed to submit to this Court the merits of the awards and commit the Assembly to the result, were rejected. *Written Statements* 178-79.

Thus, the General Assembly did not intend to shift its responsibilities to this Court. It sought advice, and only legal advice, on its own legal authority with respect to Tribunal awards. It did not ask what it should decide as to payment. Nor did it make any advance provision to pay the awards. It considered and rejected proposals to such ends. It simply asked if it had the right to refuse effect to awards on any grounds at all, and, if so, on what principal grounds.

"Right", in the context of a question addressed to this Court, must mean legal right. This is emphasized in the United Kingdom Written Statement, where it is said: "The questions before the Court are solely questions of law." *Written Statements* 103. When we speak of the *right* of the General Assembly, we can only mean the Assembly's lawful power, and its exercise in a fashion consistent with the authority and responsibility of the Assembly under the Charter.

We do not mean moral, or ethical, or political right. Such matters are, in their nature, not properly the subject of a request for an advisory opinion. They are to be weighed and decided by the responsible political body, here the General Assembly, which we must assume will give due weight to all such considerations in the discharge of its responsibility under the Charter.

Question two speaks of the "principal grounds" upon which the Assembly could *lawfully* refuse to give effect to an award of the Tribunal. The presence of the word "lawfully" is significant. It emphasizes again that the questions submitted are legal in character and that the "grounds" for refusal involve questions of power, and not of ethics or morals. What are the "principal grounds"? Does the question ask this Court to declare what in the applicable law, and basically in the Charter, bears upon the Assembly's right to discuss and decide? Does it ask, what are the relevant provisions and what is their legal meaning? We think the Court is asked these questions.

But is this Court asked to declare how the Assembly shall weigh its lawful concerns in the light of given or hypothetical facts? The last question, we submit, must be put aside, since it would not be this Court's rôle to anticipate Assembly policy or to substitute this Court's judgment for the political judgment of another principal organ of the United Nations in deciding amongst lawful alternatives.

The United Kingdom is correct in saying of the two questions asked the Court: "these two questions are closely related to one another". *Written Statements* 102. The truth is, that the "principal grounds" are the legal reasons why an affirmative answer must be given to question one. A reasoned determination that the General Assembly has the legal right and power to refuse to give effect to awards, will reveal the principal legal grounds for any such refusal. They are the principal legal bases of Assembly authority, and the principal legal provisions governing its exercise.

Mr. President, what is the authority and the responsibility of the General Assembly under the Charter?

The questions submitted raise issues concerning the nature and constitutional structure of the United Nations. This is not a simple case of a juridical entity—such as a private person, a corporation, or even a national government—which has a contract relationship with an individual. An individual's rights under a contract with a private person, corporation, or national government are determined according to municipal law made by the sovereign. In this case, however, rights and obligations must be determined in accordance with the disposition of a treaty entered into by sixty sovereigns—the Charter of the United Nations.

In the United Nations Organization, power is not centralized in one organ, as it is in the legislature of Great Britain or France, for example. The commitments which may be undertaken by, and enforced against,

the United Nations and its organs, are strictly regulated by the provisions of the Charter. The only kind of contract the Assembly can authorize is a contract consistent with the Charter. The only kind of contract the Secretary-General can enter into on behalf of the Organization must also be in conformity with the Charter. The only kind of administrative tribunal the Assembly can set up depends on the Charter. The expectations of a staff member cannot reasonably exceed what the Charter permits.

What does the Charter provide?

First let us consider the responsibility of the Assembly for the United Nations Budget. Articles 17 and 18 make clear that an appropriation to pay an award requires a two-thirds vote of the General Assembly. Article 17, paragraph 1, provides:

> "The General Assembly shall consider and approve the budget of the Organization.
>
> (2) The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

Article 18 provides:

> "(1) Each member of the General Assembly shall have one vote.
>
> (2) Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include .... budgetary questions."

There can be no payment of an award without Assembly appropriations. As the United Kingdom, French, Philippine and Swedish Statements evidently acknowledge, whether or not one believes that in a particular situation there is an obligation on the United Nations to pay, there can be no legal appropriation without consideration and approval under Articles 17 and 18. *Written Statements* 103, 17-20, 234 and 71.

What is meant by "consideration"? By "approval"? Where the existence of the obligation to pay is itself at issue, how can the Assembly consider and decide whether to authorize a payment without considering and deciding whether an obligation really exists?

Articles 17 and 18 do not permit Assembly authorization and consideration of a monetary payment to be degraded to the status of a compulsory act. The very fact that a two-thirds vote is required is evidence of the importance attached to the consideration which the General Assembly is required to give to an appropriation of money.

The Australian Delegation at the Eighth General Assembly presented this basic point with great clarity. I quote from Sir Percy Spender's remarks in the Fifth Committee on December 4th, 1953:

> "My Delegation would have thought that there could be no question as to the competence of the General Assembly in this matter, for it is commonplace that every executive authority must obtain the authorization in the form of an appropriation from the legislative body before it can disburse public funds. I do not think that any member of this Committee would attack the validity of this principle, which is an accepted thesis, I believe, in every country in the world, and it applies in a very special degree to an international organization such as the United Nations, which derives its funds from contributions by sovereign States. It is, indeed,

precisely for this reason that the matter comes before the Fifth Committee. For at the very outset there is posed the vital question —whether the award of a tribunal set up by its authority, or whether any other outside authority can or should override the power of appropriation and its free exercise, without which no sovereign body may continue effectively to exercise its functions.

However, it has been suggested by some delegations that the Assembly has no option but to make the necessary appropriations to meet without question the awards of the Administrative Tribunal. That is not a position with which my delegation can associate itself. It is our view that the Assembly has the authority to decline to accept findings of the Tribunal and has also the unquestionable authority to accept the findings of the Tribunal but to vary the awards the Tribunal has made.

The constitutional instrument of the United Nations is the Charter, which has established the General Assembly and the Secretariat as principal organs of the United Nations and which has marked out the powers of both. Neither has the power to extend or derogate from a power which the Charter has reposed in the other—or for that matter, in itself."

Further, Sir Percy said:

"When we come to an award of compensation, the exercise by the Assembly of its appropriation power becomes a real issue. An award of the Tribunal may call not for passive acquiescence on the part of the Assembly, but for the exercise in a positive way of its appropriation power. Is it to be asserted that the Assembly, in stipulating in the Statute of the Tribunal that the United Nations shall pay compensation awarded, has foregone *pro tanto* its appropriation power? If so, by what authority did the Assembly strip itself of a power which the Charter has placed upon it? In the opinion of my Delegation there is no warrant for any such suggestion. We feel that the Assembly would have every justification for declining to exercise its appropriation power in any case in which it appeared to it that the Tribunal had acted unreasonably or improperly."

Articles 17 and 18, then, establish a basic procedure, and a guaranty of minority rights which the General Assembly is powerless to curtail or deny. The Charter requires a two-thirds vote for an appropriation of money. The Assembly, and the Assembly itself, must consider, and it must approve. Every member of the Secretariat, when he enters the employ of the United Nations, is bound to know and to respect the Charter, which becomes a part of his contract of employment. He cannot, therefore, properly assert a right to any appropriation which the Assembly, in the discharge of its lawful responsibility, has considered and refused to make.

We have noted already the general acceptance of the proposition that an Assembly appropriation is essential to effect payment of any award. It seems important to stress here that no appropriation has been made for the payment of the awards which give rise to these questions, and that the General Assembly has deliberately refrained from an authorization for automatic payment of Tribunal awards.

When the General Assembly established the Administrative Tribunal in 1949, it seems clear that it did not conceive of itself as then considering and approving payment of the present awards, handed down four years later. The Assembly might have been asked to appropriate a fund in advance and to authorize automatic payments from it of Tribunal awards. Such action, about which doubts have been expressed in the Assembly, would have required a two-thirds plenary vote expressing unequivocally the Assembly's intent. There was no such action by the Assembly in 1949 or in any subsequent year.

In fact, in 1953 Argentina introduced in the Fifth Committee a proposal to request the Secretary-General to study and report on the possibility of establishing a special fund to be used for the payment of awards. The Committee did not act formally on this proposal, but decided that the Committee's report to the General Assembly should state that the Secretary-General should present such a report at the Ninth Session. Also in 1953, the General Assembly *rejected* a proposal to authorize payment of the very awards which gave rise to these questions, in the event that this Court should advise that the Assembly did not have the right on any grounds to refuse effect to an award.

This course of conduct on the part of the General Assembly indicates the Assembly's conservative approach to the matter of advance authorization.

The French Government, in its Written Statement, has argued the contrary, citing Section 17 of the United Nations Budget, which covers common staff costs. But this Section, while providing some latitude to meet specified types of contingent expenses, makes no mention of Tribunal awards. And the General Assembly has not continued the practice of the League of Nations of voting a nominal annual approriation to pay awards.

Thus, consistently since 1949, the General Assembly has left the procedural situation in such a status that possible questions concerning the validity and propriety of awards could be raised on a proposal to pay them. Whether or not the Assembly might have provided differently, and with what effects, the fact is, it did not do so. In our view, even an advance authorization of payment by the General Assembly would not have put the appropriated funds beyond the recall of a subsequent session of the Assembly, prior to actual payment: but such is not the situation here.

I turn now to the provisions governing the appointment and regulation of the staff.

Articles 97 and 101 of the Charter are important, for here are found the provisions dealing with the staff, authority over the staff, and the nature of the legal relations that may be established between the staff and the United Nations.

Article 97 establishes the Secretary-General as the chief administrative officer of the United Nations. It reads:

> "The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization."

Article 101 vests in the Secretary-General the power of appointment—the essential of administrative authority. It provides:

> "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly."

The express Charter power of the General Assembly with respect to the staff, rests directly on the qualifying phrase in this paragraph. It is part of a grant of power jointly to the Secretary-General and to the Assembly. The Secretary-General shall appoint the staff, but under regulations established by the General Assembly. This grant of authority demands of each, Assembly and Secretary-General, mutual respect and support of the rights and powers of the other.

So much for general right and power. What of standards? What considerations relevant here does the Charter lay down with respect to the employment of staff and the conditions of service? They are found principally in Article 101. The Charter there provides:

> "The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

Paragraphs 1 and 3 of Article 101 received careful consideration at the San Francisco Conference. They constitute the basis for any decision as to what is, and what is not, an implied power necessary to the performance of the functions of the General Assembly and the Secretary-General, respecting the employment of staff.

As the summary record of the Committee debate at San Francisco shows, these paragraphs were regarded as embodying four important principles: first, the selection of the staff by the Secretary-General as chief administrative officer; second, establishment by the Assembly of the regulations concerning employment; third, provision for the highest standards of efficiency, competence and integrity; and fourth, provision for recruiting staff on as wide a geographical basis as possible (7 UNCIO Doc. 176).

How have these provisions worked out in practice?

The Secretary-General appoints the staff, as provided in Article 101. He directs its work and in general performs all functions appropriate to "the chief administrative officer of the Organization", under Article 97. The general "conditions of service" are determined and laid down by the General Assembly in the Staff Regulations and are given effect by the Secretary-General and his subordinates through the Staff Rules, practices, and day-to-day decisions made within the Secretariat.

In any public administration, the need for a fair-hearing procedure is soon felt. Initially, and for four years, this need was met in the United Nations by the establishment of bodies to which the staff member could appeal and whose opinions were advisory to the Secretary-General. Beyond that, review by the Assembly remained open if Member States wished to undertake it.

We submit that the Charter implies no power in the Assembly to delegate, without possibility of review, any of its responsibility for regulation of the staff.

In 1949, after four years of experience, the Assembly established the Administrative Tribunal to assist in discharging any review functions of the Assembly in cases where a staff member alleged non-observance of his contract by the Secretary-General. Could it be said that the General Assembly possessed the implied power under the Charter to preclude itself from reviewing the validity and propriety of action by the Tribunal, to deprive itself of its legal authority to exercise powers exclusively vested in it by the Charter? Is this "necessary" or "essential" to any of the "four important principles" stated at San Francisco and embodied in the Charter?

The Netherlands and Mexico have contended that the General Assembly possesses an implied power to delegate to a subsidiary body a power of decision in a matter involving finances and administration that will bind the Assembly. *Written Statements* 77 (Netherlands), 240 (Mexico). In the case of the Netherlands position, it is interesting to note that the Netherlands Delegation in the Fifth Committee contended that the Assembly lacked judicial power; this contention is cited in the French Written Statement in support of the view that no delegation of power is possible here, for one cannot delegate what one lacks. *Written Statements* 14. In any event, to sustain the existence of such an implied power of delegation, two conditions must be met. First, the power to delegate must be consistent with the other provisions of the Charter and must not be precluded by them. Second, the power to delegate must be necessary or essential to the performance of the duties and functions of the General Assembly.

France and Guatemala have argued that the Charter implies a capacity in the Assembly to assign or renounce certain powers of the United Nations Organization in favour of the Administrative Tribunal without possibility of Assembly review. *Written Statements* 13-15 (France), 252 (Guatemala). The same tests must be applied to this theory. Is the power, sought to be implied, consistent with Charter provisions, and is it necessary in order to make them effective?

As we have already observed, the budgetary provisions in Articles 17 and 18 constitute a bar to the implication that such a power of delegation or renunciation exists under the circumstances presented here. In addition, there are other barriers in the Charter to the existence of such an implication. These are Articles 7, 22, 92 and 96 and associated provisions, which will be discussed later.

But even if these obstacles to the existence of an implied power of delegation did not exist, the second test would not be met. The authority and independence of the Secretary-General, the efficiency, competence and integrity of the staff, the regulatory power of the General Assembly, the principle of geographical distribution, all these fundamental principles must be considered together. They are in truth better served by the Assembly's authority to review Tribunal action than they could possibly be by an implied power to create a rigid legal bar in whole or in part to the exercise of such a power of review. Indeed, even looking but to one aspect, the fact is that the protection of the staff against arbitrary action by the Secretary-General does not require that the Assembly deprive itself of its right of action, especially when one considers some action to be necessary to discharge its own duties under the Charter.

If there is any conclusion to be based upon necessity, it must be the other way. A tribunal can act—tribunals have acted—in excess of their power. They can be biased, or badly mistaken, in giving effect to the real intent of the law they administer. If this happens, the integrity of the system established by the Assembly requires power in the Assembly to maintain it. And the General Assembly needs an unimpaired choice of the best means to this end. The case must be envisaged where it cannot—in good conscience or good sense—permit error to stand, and an innocent party to be injured or a party at fault to be rewarded.

If the Assembly concluded that the Tribunal had committed grave error in denying compensation to a staff member who had been discharged, would it be argued that the Assembly was without legal right to correct the error by authorizing a payment? And if the failure of the Tribunal to make the award had been caused by the Tribunal's misconstruction of the Charter or Regulations, would it be argued that the Assembly did not have the legal right to correct the mistake?

The Assembly has ample power to achieve its legitimate ends in building strong morale and avoiding proceedings vexatious to its Committees. It is a discretionary power. It is based on the exercise of political judgment. It includes the power to abide by the policy of not interfering with an award unless strong reasons make remedial steps essential.

It is upon the judicious use of such power, and upon the political wisdom of the Assembly, rather than upon inflexible, artificial—and, in this instance, unconstitutional—self-denying ordinances, that a sound and balanced international administration must be based. Justice to staff and administration requires maintenance and wise use, not auto-liquidation, of Assembly power. And, when another organ of the United Nations, such as this Court, considers the future exercise of power by the Assembly, it must presume that the Assembly will be guided in its action by the wisdom and by the principles of equity and honour by which the principal legislative body of the United Nations should be guided.

[Public sitting of June 11th, 1954, morning]

May it please the Court.

As we concluded yesterday, I was pointing out that the Charter implies no power in the Assembly to delegate, without possibility of review, any of its responsibilities for regulation of the staff. Before leaving Articles 97 and 101, another point should be noted. These Articles, thus far, have been viewed primarily as they relate to the powers of the Assembly. They also, of course, relate just as directly to the powers of the Secretary-General.

Indeed, as chief administrative officer and the person vested with the appointive power, it is the Secretary-General who, on a day-to-day basis, is most immediately concerned in discharging the responsibilities and achieving the standards set by the Charter for the Secretariat. His is a joint responsibility with the Assembly. Neither can disregard the rights and duties of the other. If they cannot do so directly, they cannot do so indirectly.

The Assembly cannot lawfully require the Secretary-General to act in a fashion inconsistent with the maintenance of the highest standards of efficiency, competence and integrity of the Secretariat. If an organ is created by the Assembly, the Assembly cannot authorize it to do something it could not do itself. For example, to empower the Tribunal to substitute its judgment for that of the Secretary-General in matters involving the exercise of his power to employ and manage the Secretariat, and thus his responsibility for the staff and its discipline, would be a serious infringement of the Secretary-General's constitutional powers under the Charter.

The Assembly necessarily retains the right—indeed, it is its duty—to vacate, revise or refuse effect to a Tribunal decision impairing the Charter powers and rights of the Secretary-General. Because of the presumption of legality in favour of Assembly action, the Assembly should not be held to have intended that the Administrative Tribunal should have unconstitutional powers.

The General Assembly can, of course, empower a subordinate body to render opinions as to the proper application of the Staff Regulations and make decisions for the correction of legal errors believed to have been made by the Secretary-General—through arbitrary action or action outside his authority. But no such body may revise acts of the Secretary-General done within the scope of his authority, for this would violate the Charter. A subordinate body may not be allowed to decide irrevocably whether action of the Secretary-General was authorized or not, in the discharge of his Charter responsibilities.

Examination of the record in the present cases, we believe, would demonstrate that the Tribunal has attempted to reverse the Secretary-General in respect of matters within his Charter authority and beyond the authority of the Tribunal. However that may be, the very possibility of such a development—whatever the cases in which it should be found to arise—indicates that the Charter does not merely allow, but *requires*, the existence of power to review and to set aside Tribunal action as void where it runs counter to the Charter.

From these considerations, the conclusion would appear to follow that an implied power of the General Assembly to establish an administrative tribunal may be both necessary and essential: but that an implied power in addition, to impose legal limitations upon the General Assembly's (or the Secretary-General's) own express Charter powers, is not necessary or essential, and not legally admissible.

We submit that the Administrative Tribunal is a subsidiary organ of the General Assembly, within the meaning of the Charter.

If one asks to be shown the express authority for the Administrative Tribunal, the only provisions of the Charter which can be pointed to in answer are Articles 7 and 22.

They read:

> "*Article 7.* (1) There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.
>
> (2) Such subsidiary organs as may be found necessary may be established in accordance with the present Charter."

"*Article 22.* The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions."

There is very substantial agreement that the Administrative Tribunal of the United Nations was established under Article 22. The French, Mexican and Philippine statements are clear on this point. *Written Statements* 14-15, 240, 232. The United Kingdom does not contest it. *Written Statements* 104-105.

It follows, it is submitted, that the Tribunal was established as a subsidiary organ by the General Assembly to meet a need for a subsidiary organ for the performance of certain functions of the General Assembly—in short, to help it in its work. It was not and could not have been established to be some other kind of organ, such as a non-subsidiary organ or an organ necessary for the performance of functions not appertaining to the Assembly.

There might possibly have been some doubt on this point if Article 22 read as was proposed in a draft referred to the Co-ordination Committee at San Francisco. This draft provided that the General Assembly "may create such bodies and agencies as it may deem necessary for the performance of its functions". But Article 22, as adopted, provides only for "subsidiary organs".

Subsidiary in what sense? "Subsidiary" in relation to "principal", as Article 7 shows. Subsidiary, then, to the principal organs or to one or more of the principal organs.

The Charter language is clear without reference to the legislative history. But when one does examine the legislative history, one finds that the Advisory Committee of Jurists at San Francisco dealt precisely with this problem. It took account of the meaning of principal and subsidiary in Article 7. It made the language of Articles 22 and 29 conform to the basic intention. The creation of organs not subsidiary to principal organs was not authorized. Elimination of the broad terms originally proposed—namely, "such bodies and agencies", and the use of the precise term "subsidiary organs", removed any possible linguistic ambiguity.

"Subsidiary" as used in 1945 clearly meant subordinate to, ancillary to, and not controlling on. And by the time the Administrative Tribunal was set up in 1949, four years later, the General Assembly had spoken with authority and virtual unanimity on this very point, when, in 1947, the Assembly debated the establishment of the Assembly's Interim Committee. The Soviet Union opposed the establishment of an Interim Committee, asserting that it must be truly subsidiary and that it would not be, but would encroach upon the powers of the Security Council.

Mr. John Foster Dulles, then a Delegate of the United States to the General Assembly, met the argument in this way. He said:

> "The test must be to define what is meant by 'subsidiary' and then to apply that definition to the actual proposal before you. There could, of course, be differences of opinion as to how to define the word 'subsidiary'. However, we have available here a definition by Mr. Vyshinsky which is good enough for present purposes. In the debate before the First Committee he stated with regard to the subsidiary organs that: 'They are such as will help the Assembly to carry out its functions.... Their functions'—that is, the functions

> of subsidiary organs—'can only be to render assistance to the General Assembly.' I submit that in accordance with the aforementioned definition this proposed interim committee is clearly a subsidiary body", concluded Mr. Dulles. (U.N. Off. Rec., Gen. Ass., 2d Sess., II PV 756-57.)

On the premise that the Interim Committee, to be subsidiary, must not be able to bind a principal organ, many Delegations pointed to the factors ensuring its subsidiary character. Uruguay said that it would not be able to approve the United Nations budget. U.N. Off. Rec., Gen. Ass., 2d Sess., 1st Comm., SR 140. The Netherlands said its functions would not "infringe upon the powers of the General Assembly itself". *Id.* at 152. The Philippines said that it "would not be able to take any decision and would have to limit itself to making recommendations to the General Assembly on the basis of its findings". *Id.* at 156.

The United Kingdom said that its resolutions would lack "legal executive force", and that it was "not intended to be a means by which the General Assembly can avoid discussion and decision on matters which may be inconvenient or complicated". *Id.* at 157; U.N. Off. Rec., Gen. Ass., 2d Sess., II PV 791.

France found the Interim Committee a subsidiary organ because it would (1) "be subordinate to the Assembly"; (2) not have Assembly powers given to the Assembly "in virtue of the guaranties provided by its constitution"; and (3) lack "powers of its own" and remain ancillary to the Assembly. U.N. Off. Rec., Gen. Ass., 2d Sess., 1st Comm., SR 325.

Canada held that the Interim Committee should "be given clearly defined responsibilities", and be allowed to discuss and report to the Assembly, but that it should have no other powers. *Id.* at 166. El Salvador emphasized that "the final decision would in all cases rest with the General Assembly". *Id.* at 332.

Australia and China were incisive. The former said: "The resolution is clear. There is no ambiguity about any portion of it. The body is subsidiary; it is ancillary to the General Assembly. It cannot decide; it must report." U.N. Off. Rec., Gen. Ass., 2d Sess., II PV 788. China said: "The Interim Committee's opinions or recommendations would in no way commit the Assembly." U.N. Off. Rec., Gen. Ass., 2d Sess., 1st Comm., SR 140-141.

To summarize: the plain language of Articles 7 and 22, the San Francisco records, and the debates of the General Assembly in 1947 all establish that there can be no organs other than principal organs and subsidiary organs. They further establish that a subsidiary organ cannot oust a principal organ of its powers and functions—in particular, the principal organ which created the subsidiary. The principal organ must always retain its rights and duties unimpaired by the recommendations, decisions, or other actions of its subsidiary.

The provisions which the Charter makes for the determination of legal questions by United Nations organs are significant in two respects; the first is that there is not a single co-ordinated system for determining legal questions so as to assure uniformity. The same legal questions may be decided in different ways by different organs. The other is that the Charter established the International Court of Justice as the principal judicial organ of the United Nations. Articles 92 and 96 of the Charter contain the following provisions:

Article 92 : "The International Court of Justice shall be the principal judicial organ of the United Nations."

Article 96 (1) : "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."

The independence of United Nations organs, one from another, in regard to legal questions was contemplated at the San Francisco Conference. Committee IV/2, on Legal Problems, reported as follows :

> "In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its functions and powers. It will be manifested in the functioning of such a body as the General Assembly, the Security Council, or the International Court of Justice. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle.
>
> Difficulties may conceivably arise in the event that there should be a difference of opinion among the organs of the Organization concerning the correct interpretation of a provision of the Charter. Thus, two organs may conceivably hold and may express or even act upon different views. Under unitary forms of national government the final determination of such a question may be vested in the highest court or in some other national authority. However, the nature of the Organization and of its operation would not seem to be such as to invite the inclusion in the Charter of any provision of this nature. If two Member States are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty. Similarly, it would always be open to the General Assembly or to the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter. Should the General Assembly or the Security Council prefer another course, an *ad hoc* committee of jurists might be set up to examine the question and report its views, or recourse might be had to a joint conference. In brief, the members or the organs of the Organization might have recourse to various expedients in order to obtain an appropriate interpretation. It would appear neither necessary nor desirable to list or to describe in the Charter the various possible expedients.
>
> It is to be understood, of course, that if an interpretation made by any organ of the Organization or by a committee of jurists is not generally acceptable it will be without binding force. In such circumstances, or in cases where it is desired to establish an authoritative interpretation as a precedent for the future, it may be necessary to embody the interpretation in an amendment to the Charter. This may always be accomplished by recourse to the procedure provided for amendment." 13 UNCIO Doc. 709-710.

This report was approved and adopted by Commission IV of the Conference. 13 UNCIO Doc. 68.

The practice of independence among the organs is too familiar to require elaboration.

Mutual independence among United Nations organs means in the present case, among other things, that the General Assembly lacks the right to bind the Secretary-General as head of the Secretariat by Assembly interpretations of the Charter. Could it achieve this result through the device of establishing a subsidiary organ with quasi-judicial functions?

Under the Charter, an opinion of this Court sought by the General Assembly is advisory only. The Assembly may accept and act upon it or not, as the Assembly sees fit. Since this is true of opinions rendered by the Court, is it reasonable to suppose that determinations by a subsidiary body of the General Assembly could have greater force, and operate to bind the Assembly? The result would be anomalous if the authority of the principal judicial organ of the United Nations vis-à-vis the Assembly were less than the authority of a secondary quasi-judicial organ which was subsidiary to the General Assembly.

The status of this Court as the *principal* judicial organ of the United Nations must remain a limitation on any Administrative Tribunal which the General Assembly may establish. The Assembly could follow a practice of accepting the Tribunal's legal interpretations. But the Assembly could not effectively renounce its right to seek an advisory opinion of this Court on the same questions which had been passed on by the Tribunal.

We submit that it follows from the Charter provisions on advisory opinions, from the principle of mutual independence of the principal organs in matters of Charter interpretation, and from the position of this Court as the principal judicial organ, that a subsidiary organ of the General Assembly must remain subsidiary to the General Assembly and secondary to this Court on questions of law.

We have not indicated what we believe the Charter permits, and what it requires, concerning the relationship between the General Assembly and the Administrative Tribunal. We have also pointed out that the Assembly's intention should be construed as being consistent with the Charter provisions, since the Assembly *must* be presumed to have intended to act in a constitutional manner. Apart from these considerations, we believe the Staff Regulations and the Statute of the Administrative Tribunal were designed in contemplation of a right of review by the Assembly.

The Tribunal was established in 1949 to discharge a function which otherwise the General Assembly would have to perform. The Tribunal was set up to protect staff members, as the Written Statement of Mexico so well expresses it, "against any arbitrary action by the chief officers of the international administrative service". *Written Statements* 239. The Tribunal was also set up to ensure proper application of the Staff Regulations. It was *not* established to fetter and disable the Assembly, but as a subsidiary organ to aid and assist the General Assembly in the performance of the Assembly's duty of seeing that its regulations governing employment were properly applied by the Secretary-General.

The experience of the League of Nations with its Tribunal is relevant to an understanding of the General Assembly's intention in establishing the United Nations Administrative Tribunal.

When the Administrative Tribunal of the League of Nations was established in 1927, its Statute provided that its judgments should be "final and without appeal" (Art. VI) and that compensation awarded by the Tribunal should "be chargeable to the budget of the administration concerned" (Art. X (3)). The Statute contained no provision for review or revision of judgments of the Tribunal. Advance budgetary provision for payment of awards was recommended by the Supervisory Commission, and contingent appropriations of nominal amounts were in fact contained in the budgets of both the League and the International Labour Office. *Written Statements* 35, 38.

Until 1931 the question of the right and power of the League Assembly to refuse to pay a Tribunal award was not an issue. It became so when world depression caused reconsideration of League salary scales. Could the rate of pay in outstanding employment contracts be scaled down without the consent of the officers concerned ? If so scaled down, could an official secure redress from the Administrative Tribunal ? If he won a judgment, could the Assembly refuse to give it effect ?

Following lengthy and inconclusive debate, the Assembly's Fourth Committee sought the advice of a Committee of Jurists. The Jurists examined the contracts and found no basis for a reduction in the rate of pay without an official's consent. They examined the Tribunal's Statute, and the budgetary practice of the League, and advised that the rights of the staff were not intended to be subject to the "budgetary" authority of the Assembly.

The result was that the Assembly, in all contracts made thereafter, specifically reserved its power of revision and did not act unilaterally to modify existing contracts. Thus the issue of the right of the Assembly to review a Tribunal award did not arise.

The League Assembly was not faced with that issue until 1946. Nor is this surprising, since the Administrative Tribunal of the League, prior to the fourteen decisions contested in 1946, had considered only 24 cases, and had awarded compensation in only two cases.

The 1946 precedent has been discussed in our own Written Statement. *Written Statements* 151-161. Further details are presented in the International Labour Organization's Statement. *Written Statements* 39-53, 60-70. It is discussed in a number of other Statements.

In brief, the League in 1939, by a resolution meeting a budgetary and organizational crisis, dismissed a large number of officials, with a shorter period of notice than that originally prescribed in the Staff Regulations. Although such action could not be challenged by employees whose contracts had been made expressly subject to subsequent revision, it was challenged by some with older contracts. The Administrative Tribunal in 1946 rendered decisions in their favour, holding that the Assembly lacked the right to alter the contracts without the consent of the staff member, and, further, that since the Assembly did not by express words in the 1939 Resolution state that old contracts were to be affected, the Assembly must have intended the contrary.

The question of the conclusiveness of the Tribunal awards on the Assembly, or its right to refuse to give them effect, was referred to a sub-committee of the Second (Finance) Committee of the League Assembly. The sub-committee concluded that it was within the powers of the Assembly to withhold payment of the awards and recommended against payment.

After debate, the Second (Finance) Committee of the Assembly, by a vote of 16 to 8, with 5 abstentions, adopted the sub-committee report and voted to refuse to give effect to the awards. This position was adopted by the Assembly.

Many of the arguments made in the present case against the position taken by the United States are similar to arguments advanced by the minority in the League in 1946. See *Written Statements* 48-49 (ILO Statement's quotation from League Finance Committee Report.)

Thus, by the spring of 1946, the issue as to which no provision had been inserted in the Statute of the League Tribunal had been squarely met and definite action taken. Apparently, among those submitting Written Statements here, only the Government of the Netherlands would ask this Court to treat the decision of the League Assembly in 1946 as invalid. *Written Statements* 89.

Attempts have been made in some of the Statements filed with this Court to distinguish and eliminate as a precedent here the League's refusal to give effect to awards of the League of Nations Tribunal in 1946. It is sought to distinguish the League case upon the ground that *there* the League Tribunal, in making the awards, disregarded a resolution of the League Assembly. It is suggested that the League Assembly's refusal to give effect to such awards is a very different matter from refusal of the General Assembly here to give effect to an award where the United Nations Tribunal—so the argument runs—has disregarded *no* Assembly resolution.

We submit that this last suggestion begs the question. The question is precisely whether the United Nations Tribunal has followed the Statute that created it, whether it has properly applied the General Assembly's Staff Regulations, and whether it has acted in accordance with the Charter.

If the Tribunal here has acted *ultra vires*, or has failed to follow and give effect to the Statute that created it or the Staff Regulations, how would that differ from the failure of the League Tribunal to follow the resolution of the League Assembly ? In both cases the Tribunal would be guilty of acting *ultra vires*, of acting beyond its authority, of failing to follow the governing Statute ; in both cases the governing body, the Assembly, would have not only the right, but also the duty, to call the Tribunal to account by refusing to give effect to its invalid awards.

In the General Assembly, questions have been raised as to whether certain United Nations Tribunal awards conform with Assembly resolutions and the Charter. Together with various other governments, the United States has contended there that the Administrative Tribunal has disregarded or misapplied both Assembly resolutions and Charter provisions. These questions are not, however, before this Court, and have not yet been decided in the Assembly. Ultimately, the relevance of the League precedent must depend on how Member Governments answer these questions and act on their answers in the General Assembly.

The subsequent experience of the International Labour Office with the League Tribunal is also of interest. The League of Nations Administrative Tribunal remained in existence after the dissolution of the League, to continue servicing the ILO. The relationship of the ILO to this Tribunal is enlightening. First, the ILO followed the Assembly's 1946 decision, and did not pay the two awards which the Tribunal had rendered in favour of ILO staff members. Then, on October 9th, 1946,

the ILO made definite provision for review of awards of the Tribunal. This it did by amending the Statute so as to permit the ILO's Governing Body or the Administrative Board of the Pensions Fund to place before this Court, for its advisory opinion, a question of jurisdiction or fundamental procedural fault. It was further provided that the Court's opinion would be binding. *Written Statements* 52-54.

By 1949, when the General Assembly adopted the Statute of the United Nations Administrative Tribunal, that Statute had been considered with care by governments, delegates, experts and United Nations officials who were familiar with the League and the ILO actions that have just been related. In 1946, the United States, at the outset of General Assembly consideration of the proposal to establish the Tribunal, pointed to the then recent League and ILO experience, as evidence that the Tribunal might at some time invade the Charter powers of a principal organ. In 1949 the ILO precedent existed for authorizing an appeal from the Tribunal to the International Court of Justice, but it was not followed. The conclusion seems inescapable that the General Assembly, not having provided in advance a procedure for dealing with challenged awards, left the matter to be dealt with under the Assembly's ordinary procedure when and if the question should arise.

So much for the relevant history of the Administrative Tribunals. It remains to consider the Statute in the light of this history. I shall first outline briefly the position of my Government.

May it please the Court.

The Administrative Tribunal is a subsidiary organ deriving its authority from a General Assembly Resolution, subject to rescission or amendment by the General Assembly. Its Statute regulates the composition, servicing and operations of the Tribunal and leaves its financing to annual action by the General Assembly. As with most subsidiary organs, the Members are chosen by the General Assembly itself for limited terms.

The Tribunal's jurisdiction is set forth in the Statute of the Tribunal, which grants it authority to decide disputes as to its competence arising in cases before the Tribunal. This conforms with practice, for almost all tribunals have jurisdiction initially to determine their own jurisdiction when challenged. But of course this cannot mean that a subsidiary body like the Tribunal has the final decision on the scope of a jurisdiction which has been conferred by a parent body—in this case, the General Assembly.

The parties before the Administrative Tribunal are the Administration, headed by the Secretary-General as the chief administrative officer, and the members of the staff. This point was adverted to by the Counsel for the League of Nations before its Administrative Tribunal in the *Mayras* case, in a reply dated April 29th, 1940, in the following terms (in translation) :

> "This Tribunal, as its name indicates, is an Administrative Tribunal, that is to say, a Tribunal intended to pass on claims asserted by staff members against acts of the Administration. It has been established in imitation of administrative tribunals existing in certain countries, and especially in imitation of the French Council of State. The latter deals with appeals against the acts of the administrative authority, but not with appeals that it

is sought to make against the acts of some other authority (legislative or judicial).

It is against administrative abuses that it has been intended to give the staff member a guaranty establishing an appeal to this Tribunal."

No right of appeal is given to the parties from the decisions of the Tribunal. These are final in the sense that no further remedies are accorded to either party by the Statute or by the Regulations.

In writing the Tribunal's Statute, the General Assembly recognized that it must not infringe upon the Charter powers of the Secretary-General. This is made clear, for example, by the provision in Article 9 giving the Secretary-General option of the refusing specific performance of a judgment of reinstatement or rescission of his action. This provision is a clear recognition that the Secretary-General, and only the Secretary-General, has authority under the Charter to appoint the staff.

In the same way, we submit, the General Assembly did not attempt, nor did it intend, by the Statute, to limit the Assembly's own Charter power and responsibility with respect to its subsidiary organ, the Tribunal. As the ILO has done, the Assembly could, if it so desired, provide for some form of judicial review of tribunal awards. It could do this in respect of future awards or awards already made. It could also undertake review in some other manner decided on by it.

Now, I would like to relate these general observations to the legal texts, and to note some of the agreements and disagreements with our position which are expressed in the other written statements that have been submitted in this matter.

Article 11, paragraph 2, of the Staff Regulations provides :

"The United Nations Administrative Tribunal shall, under conditions prescribed in its Statute, hear and pass judgment upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules."

There is no doubt that this provision gives the staff member a right of access to the Tribunal. But even such strong adherents to the doctrine of acquired rights as France and the Netherlands have not asserted that such access to the Tribunal was an "acquired right" which could not be taken away by amendment of the Staff Regulations or the Statute of the Tribunal. *Written Statements* 22 (France), 86 (Netherlands).

Indeed, the record of debate in the Fifth Committee in 1953 indicates that a number of Member States recognized the power of the Assembly to repeal the Statute, and hence to terminate the right of access to the Tribunal by the staff member under Regulation 11.2. This position was taken by the Netherlands, Uruguay, New Zealand, Syria, the Soviet Union, Lebanon and Mexico, as is shown in the Statement of the Secretary-General. *Written Statements* 188. The United Kingdom's Statement is explicit to this effect. *Written Statements* 108-09. If the Tribunal can be abolished by the Assembly after a wrongful discharge has occurred, but before an application for redress has been made to the Tribunal, it is difficult to see why the Assembly cannot take the same action, if it believes it is right and in the interest of the United Nations so to do, while the Tribunal has the application under consideration.

But it is asserted that the *making of an award* by the Tribunal creates an acquired right ; that this event—occurring after access—*vests* something in a staff member, of the fruits of which he cannot be deprived. Such an argument does not seem valid, when the very point at issue may be the jurisdiction of the Tribunal to make the award or some other point going to its validity.

It is worth noting here that nowhere in the Tribunal's Statute is there any mention of acquired rights, even in the Article on amendment. This is unlike the Staff Regulations, which provide that any amendment shall be without prejudice to acquired rights (Regulation 12.1). The latter provision follows immediately on Regulation 11.2, which confers the right of access to the Tribunal. But we have already seen that access is not asserted to be an acquired right.

The theory of acquired rights is abstract and difficult. To the extent that it has validity, it appears to apply to substantive rights of contract, rather than to any particular procedures. It is worth noting that the United Kingdom takes the position that an award must be paid *unless the Regulations or Statute are amended. Written Statements* 108-09.

We are left, then, with the proposition that under the Regulations the Statute is part of the staff member's contract, which would be true even in the absence of a Regulation 11.2 from the Staff Regulations. The question remains, what is the effect of the Statute ?

Article 2 of the Statute of the Tribunal concerns its competence, and, so far as pertinent, reads :

> "*Article 2.* (1) The Tribunal shall be competent to hear and pass judgment upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.
>
> . . . . . .
>
> (3) In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal."

It seems generally to be admitted that the Tribunal has a competence —a jurisdiction—which is limited by Article 2 and other relevant provisions of the Statute and governing law. This is borne out by the specific provision that, in the event of a dispute as to competence, the Tribunal shall decide the dispute. In the view of my Government, this means that, as is the general practice among United Nations organs, the initial decision on competence, and hence a decision permitting the case to go to hearing, is to be made by the organ itself. Both principal and subsidiary organs usually make initial determinations of their own competence, but it is submitted that principal organs must reserve the power to reject such decisions of their own subsidiary organs.

As is shown in the statement of the Secretary-General, Article 2, paragraph 3, was adopted by the Assembly almost unanimously, after Canada and the Soviet Union had been assured that all it implied was that "a long-established principle" was being followed. *Written Statements* 213-214. That long-established principle could scarcely have been the

renunciation by the General Assembly of its ultimate right to reject Tribunal decisions on competence grounds where the Tribunal had no competence.

The statement that it is "inconceivable", as the representative of Belgium contended (cited by Secretary-General, *Written Statements* 214), that a political organ should decide the competence of a judicial organ, is merely to beg the question, for the Tribunal is not a court—a judicial organ independent of and co-ordinate with the Assembly—but is an administrative tribunal and a subsidiary organ of the Assembly.

The Soviet Union and Canada had favoured some change in Article 2 which would have resulted in the reference of competence questions to the Assembly. The representative of Sweden pointed out that this would necessitate setting up complicated machinery which had not yet been needed. *Written Statements* 214. An extreme view in the other direction was put forward by the representative of Belgium, who suggested that the Assembly should be completely incapable of considering or rejecting decisions of the Tribunal on its own competence. Messrs. Aghnides and Feller took an intermediate position and emphasized the impracticability of continuous reference to the Assembly. They pointed out the "established rule that all the organs of the United Nations should decide on their own competence *in the first instance*". *Written Statements* 214.

The Netherlands maintains that if *any* organ is to have the right to challenge or refuse effect to a Tribunal decision on grounds of competence, specific provision to that effect must be found in the Statute, "or other relevant instruments". To support this conclusion, the Netherlands cites the example of the International Labour Office Tribunal Statute. *Written Statements* 76. But it seems clear that the ILO example supports the contrary conclusion.

The meaning of the ILO Statute had been established by the 1946 action of the League Assembly, when it refused to give effect to the thirteen awards of the Tribunal. *Written Statements* 39-50; 151-161. When this action was taken, the representative of Belgium characterized the Assembly's action as "a precedent", and expressed formal reservations. *Written Statements* 49, 160. He stated that he spoke on behalf of the Netherlands Government and others, as well as his own. *Written Statements* 49.

The ILO followed the Assembly decision and did not pay the two awards which the Tribunal had made in favour of ILO staff members. Instead, the ILO then wrote two new provisions into the Statute. The first provided that questions of the Tribunal's jurisdiction or fundamental procedural fault could be submitted to the International Court of Justice by the Governing Body for an advisory opinion. The second provided that the opinion of the Court would be "binding". Express words were used to grant a power of review to organs *other* than the Governing Body or Conference. Express words were also used to make the Court's opinion "binding". So far, then, express words are needed, not to preserve the exclusive and final right of the Governing Board or Conference to review or refuse effect, but to establish some *other* method of review. *Written Statements* 50-54.

Indeed, the Netherlands in its Written Statement itself confirms the conclusion that express words are required to limit the power of review

of the Governing Board, Conference, or General Assembly. It says of the ILO Tribunal:

> "Other intergovernmental organizations, according to the Annex to the Statute of the Administrative Tribunal of the International Labour Organization, may recognize the jurisdiction of the Tribunal subject to some adjustments including one with regard to Article XII which, in cases affecting any one of these organizations, is then *mutatis mutandis* applicable *without* the addition of paragraph 2. Thus, in these cases, and apart from any specific provisions to the contrary, it is not the International Court of Justice which has the last word in matters of jurisdiction and fundamental faults in the procedure, but apparently the Executive Board of the international organization concerned." *Written Statements* 76-77.

In short, it would follow that, absent express provision to the contrary, "the last word in matters of jurisdiction and fundamental faults in the procedure" lies with the Executive Board of the international organization concerned.

This is essentially the position which the United States takes here on the construction of the Statute of the Administrative Tribunal of the United Nations. The analogy of the ILO Tribunal confirms that in the absence of express provision to the contrary, the principal organ concerned with budget and administration—here the General Assembly—retains the last word.

What has just been said is applicable to the interpretation of the Statute and of the intention of the Assembly in adopting it. But, even if the Assembly were clearly to indicate its intention of providing some other method of review than by the Assembly itself, and even if it were to provide that this method was exclusive and final, we submit that this could not deprive the Assembly of its constitutional power to review and perhaps reject the decision of its subordinate organ. However, that issue is not presented here, for the Assembly has made no provision for such a disposition.

May it please the Court.

The view of other governments on *ultra vires* awards is of interest. The United States is not alone in recognizing that Article 2, paragraph 3, does not in its present form purport or operate to deprive the General Assembly of the right to refuse to give effect to an award if the Assembly finds the Tribunal exceeded its granted powers. The Statement of the Secretary-General shows that in various ways, in the course of debate in the Fifth Committee, no less than sixteen members, including some who favoured payment of the awards in the present cases, admitted or intimated that the Assembly's right to refuse to give effect to the awards would exist in some cases. Among the sixteen were Mexico, the United Kingdom, New Zealand, India and Uruguay. *Written Statements* 191-198.

An examination of the written statements presented to this Court shows that, with the single exception of the Netherlands, no government has specifically discussed and rejected the proposition that the Organization or its General Assembly is *not* required to give effect to Administrative Tribunal awards where the Tribunal has acted *ultra vires*. While it is true that a number of governments urge a negative answer to question one, it is submitted that they must do so on the assumption that

this Court can be induced to examine the merits of the awards and approve them, or by ignoring the words "on any grounds" which appear in the first question.

Indeed, in statements which do refer to the problem of *ultra vires* awards, there is language in some instances plainly stating, in others strongly implying, that such awards are not binding on the General Assembly. The United Kingdom is clear on that point, saying :

> ".... although the Assembly has the power to refuse to give effect to an award by the Tribunal, the only cases in which it has the right to do so are those in which it is evident that the Tribunal has acted in excess of the powers conferred on it by the Statute, i.e. has acted *ultra vires*, or has been guilty of misconduct, e.g. in allowing itself to be influenced by considerations of a venal character, or of conduct which amounts to a denial of justice." *Written Statements* 105.

France assures this Court that the problem of excess of power is not before it. *Written Statements* 16.

The Philippines limit the duty of the General Assembly to sustain decisions of the Administrative Tribunal to cases where "the Tribunal has legitimately acted within the authority delegated to it by the General Assembly". *Written Statements* 234.

The Statement of Guatemala, in attempting to distinguish the 1946 League precedent, appears to imply some such qualifications. In the present situation, Guatemala argues, "there is no resolution of the General Assembly amending the Statute, nor any patent *defect* in the Tribunal's judgment awarding compensation". *Written Statements* 253.

The Assembly's right to refuse to give effect to Tribunal awards is expressly supported by China, Chile, Ecuador, Greece, Iraq, Turkey, and the United States. *Written Statements* 242, 249, 97, 247, 111.

The Statement of Sweden relies on a claimed analogy between a staff member's contract and the United Nations Headquarters Agreement, in order to reach its conclusion that the United Nations can irrevocably grant to a staff member the right to an award and irrevocably divest itself of the right to refuse payment of such an award. But in international law an arbitral award that is in excess of the power of the tribunal may be treated as null and void.

The Swedish Statement says that the United Nations must pay awards of the Tribunal "so long as the Tribunal remains within the bounds of its competence". *Written Statements* 72. Thus it appears to admit that the Assembly would have a right to refuse payment when the Tribunal exceeded its competence. Sweden contends, however, that the Tribunal was within its competence in the eleven cases giving rise to the present proceeding, because the Tribunal decided the issue of whether the Secretary-General had violated the terms of staff members' contracts.

In its Statement, the Government of Mexico does not answer specifically the question of the effect of *ultra vires* awards. It does insist that the General Assembly must respect "vested rights". *Written Statements* 238-40. It is difficult to assume that the Government of Mexico would contend that there is a vested or acquired right to the benefit of an *ultra vires* award.

We have covered thirteen written statements, including the Netherlands. The other communications contained in the printed record indicate no change in previously-expressed views: Canada thinks competence is for the Tribunal to decide; the Soviet Union, Czechoslovakia and Yugoslavia apparently do not believe the right exists in the Assembly to refuse to give effect to the awards, although it is not entirely clear whether they reason from an assumption that the awards are in fact *intra vires*.

Upon analysis, then, the weight of reasoned opinion appears to support our conclusion that Article 2, sub-paragraph 3, of the Tribunal Statute cannot be construed to prevent the General Assembly from refusing to give effect to awards.

We submit that the provision of the Statute on finality does not conclude the Assembly. Article 10, paragraph 2, of the Tribunal's Statute covers finality and appeal. It reads: "The judgments shall be final and without appeal." It is our position that Article 10 (2) means that neither of the parties, the Secretary-General or the claimant staff member, is given any *right* of *appeal* from decisions of the Tribunal. It shows the intent of the Assembly that neither of the parties shall have the right to a review of an award. But it does not say, and, indeed, we submit it could not validly provide, that the Assembly may not inquire into the actions of the Tribunal and, in appropriate cases, refuse to give them effect. Appeal by a party is a very different thing from review by a principal organ of the actions of its subordinate, performing a delegated function.

Light on the meaning of "final and without appeal" is cast by the provisions of Article 9. This Article provides that the Secretary-General may review a decision and cause it to be modified in one respect. He can refuse to rescind his action or reinstate a staff member. Thus, the Tribunal's decision is not "final" in the sense of being unalterable. It is simply final in the sense that neither party has the right to further contentious proceedings.

There appears to be substantial agreement with the substance of this view. France agrees that the General Assembly is not a "party" to the proceedings before the Administrative Tribunal. *Written Statements* 7.

The Representative of Australia said in the Fifth Committee:

> "I should like to point out to the Committee that the final operative words of Article 10 (2) are a composite phrase and must be read accordingly. It is quite clear in my mind that on the ordinary principles of legal construction, the intention of the words 'final and without appeal' was that the judgment should be final in the sense that there should be no appeal therefrom. Review by the Assembly cannot in any sense be regarded as an appeal. We are not hearing any appellant—and indeed the Secretary-General himself has not sought any reduction in the awards, while none of the dismissed personnel are or could be before us. I therefore consider, Mr. Chairman, that Article 10 (2) does nothing to preclude a review of the awards."

The Representative of Argentina agreed that Article 10 (2) could not be construed as foreclosing Assembly consideration of the substance, as well as the form, of a proposal to pay the awards; China, Cuba, Liberia

and the Dominican Republic reached similar conclusions. *Written Statements* 182.

In its Written Statement, the Government of Iraq points to the power of review and control granted by Article 17 of the Charter, and states :

> ".... since even the other principal organs of the United Nations are subject to this power of review and control, it could scarcely be said that the Administrative Tribunal, which is admittedly a subsidiary organ of the General Assembly and a creature of it, must be immune from the exercise of that power, Article 10 of its Statute, expressing the finality of its judgments, notwithstanding". *Written Statements* 247.

In its Written Statement, the Government of China says :

> "Although Article 10 (2) of the Statute of the Administrative Tribunal provides that 'the judgments shall be final and without appeal', this provision in only binding on the Secretary-General and the staff member or staff members of the United Nations affected but does not preclude a review by the General Assembly on its own initiative of the judgments rendered by the Administrative Tribunal." *Written Statements* 249.

The Government of Ecuador states :

> "The Administrative Tribunal is representing the General Assembly which reserves the right to accept the decision of the Tribunal or refuse to give effect to it."

The Philippines apparently recognizes that Article 10 (2) is not absolute, since the Assembly is said to be bound to sustain the Tribunal "so long as the Tribunal has legitimately acted within the authority delegated to it by the General Assembly". *Written Statements* 234. Similarly, the Government of Chile concludes that the General Assembly is entitled to examine into the question of competence. *Written Statements* 245.

In the final analysis, although the conclusion is reached by different paths of reasoning, all those governments which admit that the General Assembly, in some cases, has the right to refuse effect to an award, of necessity recognize that the "finality" of Article 10 (2) is relative and is not absolute.

Consideration of the provisions of the Statute of the Tribunal may be concluded by reference to Article 9. Seizing on the final sentence of the Article reading, in part, "the amount awarded shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the Specialized Agency participating under Article 12", some governments have placed more stress on Article 9 than on Article 10 (2).

In our view, the sentence regarding payment is to be read as a whole and is intended to make it clear, as did the predecessor provision in the Statute of the League Tribunal, that responsibility for payment must be left to the organization concerned, which might not be the United Nations but, instead, one of the specialized agencies.

[Public sitting of June 11th, 1954, afternoon]

May it please the Court.

Perhaps the best synthesis of the opposing view will be found in the Written Statement of the French Government. *Written Statements* 17-22. As we have noted already, the French Statement, read in its entirety, implies that the asserted obligation to pay Tribunal awards is conditional on the awards being *intra vires*. Thus, the French argument based on Article 9 is subject to that overriding condition.

The French argument asserts that one item under Section 17 of the United Nations budget covers payment of Tribunal awards, and that it happens only "accidentally" that insufficient funds are available under that Section to pay particular awards. *Written Statements* 19. We do not consider that Section 17 authorizes or appropriates any funds to pay awards. Section 17 appropriates $51,000 for certain "compensatory payments", namely, social security liabilities (estimated at $50,000) and "claims" involving "compensatory payments" for "damage or loss of personal property" (estimated at $1,000). Failure to consider or oppose some prior use of these funds by the Secretary-General to pay Tribunal awards would not appear to prevent present consideration and opposition to proposed payment—even out of these funds.

But, beyond this, it would indeed be a novel idea in budgetary matters that exhaustion of available funds—if, indeed, any are "available" —results only "accidentally" in recourse to the appropriating body for more funds. Certainly, from the point of view of the average budget committee, a limit on authorized expenditures has for its precise purpose the requirement that further expenditures be considered before they are made.

There can be no disagreement with the other theme of the French argument—that a valid debt owed by the United Nations to anyone, staff member or otherwise, is inconsistent with a right in the Organization or Assembly *vis-à-vis the creditor to refuse payment without* the creditor's consent. The principle that there is no right unilaterally to avoid a contract obligation is common ground to all statements. However, no amount of repetition or variation on this theme can obscure the fact that it begs the question which is at issue here. The point at issue is precisely whether there *is* any obligation at all.

In conclusion the United States submits that question one should be answered "yes", and that question two should be answered by reference to the relevant governing dispositions of the Charter.

For the most part, statements before this Court, or in the record, in support of a negative answer to question one, are found to be expressly or impliedly qualified in some such words as these: The Assembly does not have a right to refuse to give effect to Tribunal awards *if* the awards were reached in the proper exercise of the Tribunal's competence; or: The Assembly does not have the right in such cases as the present cases, where—it is contended or assumed—the awards are valid and proper.

An affirmative answer to question one is not and need not be premised on a contention that the General Assembly is infallible. In reviewing a Tribunal judgment, the Assembly could reach a result which another body—such as this Court—might consider to be in derogation, or in

excess, of a staff member's rights. The point to be emphasized here is that, under the Charter and the Statute and the existing contracts, the Administrative Tribunal is a protection against errors by the Administration, the Assembly is a guaranty against Tribunal error, and the good faith and judgment of the Members of the United Nations—assisted by the availability, for example, of advisory opinions from this Court on legal questions—is the ultimate guarantee against Assembly error.

There are aspects of question two on which I have touched previously and which warrant re-emphasis. This Court has been asked to advise the General Assembly what are the *principal grounds* upon which the Assembly could lawfully exercise its right to refuse to give effect to an award.

Question two might be read as implying that the General Assembly is like an appellate court before which an appellant must allege and prove certain types of error prescribed in the Statute establishing the court or as defined in previous decisions. When so read, it is wrongly read, as every government which has taken exception to the capacities of the Assembly in judicial matters would surely agree. We have seen that there is no appeal. There is no appellant. The Assembly has not established a limited appellate jurisdiction, for itself or any other body. It has reserved, or more accurately, has not and could not foreclose, its ultimate responsibility for review of actions of its subsidiary.

This Court has not been asked to substitute itself for the General Assembly and map out an optium and even a minimum appellate system. The methods by which the General Assembly shall deal with such a problem have been left open by and for the Assembly. With more experience and growing maturity of the United Nations administrative system, the General Assembly may wish to provide some sort of judicial review of the legal aspects of Administrative Tribunal awards. Perhaps the Assembly will wish to adopt other procedures to review other aspects: and it may come to formulate specific standards relevant to the different aspects of awards, where their validity or propriety are subject to challenge. Under the Charter and on the present facts, we submit, these matters remain for the principal political organ to determine.

When asked about the "principal grounds", this Court is asked about principal *legal* grounds; it is not asked in what circumstances or for what particular reasons the Assembly would, under the relevant Charter provisions, be justified in refusing to give effect to a Tribunal award. To decide about such circumstances or reasons is to exercise political discretion. Basically, one must weigh the advantages of leaving awards alone—convenience to the Assembly, respectful bestowal of the benefit of doubt upon the Tribunal, and other possible advantages—against the possible disadvantages—injustices to a party, damage to the Organization, impairment of the powers of the Secretary-General, and other possible disadvantages. Obviously this is the type of policy decision the Assembly itself—not the Court—must make. The Assembly could be called upon to make such a decision when confronted with any one of many possible situations, such, for example, as:

Mistaken reliance by the Tribunal upon false representations of a party in a case;

Interpretation and application of Regulations established by the General Assembly with effect contrary to the express or reiterated intent

and object of the General Assembly, such as : awards made in flagrant disregard of the Statute or Rules, to the prejudice of either party ; *ultra vires* awards ;

Decisions premised on serious misconstruction of the Charter, particularly in regard to the powers and responsibilities of the principal organs, such as : a decision invading Charter powers or discretion of the Secretary-General, or a decision violative of Article 101 (3) of the Charter ;

A decision contrary to an advisory opinion of the International Court of Justice ;

Awards arbitrary or unreasonable on their face ;

Important and inconsistent decisions giving rise to serious uncertainties in the administration of the Secretariat ;

Awards entailing impossible financial consequences for the Organization ;

Duress exercised upon the Tribunal ;

Corruption of the Tribunal ;

Action evidencing prejudice and improper motives of any of the members of the Tribunal.

In response to question two, then, we believe the Court should reaffirm, for the Assembly and the Member Nations, the necessity that the Assembly abide by its constitutional instrument—the Charter—in considering awards given by the Administrative Tribunal. In our view this means that it should base its consideration on the grounds provided in the Charter. These include the consideration and approval, from every point of view, of the United Nations budget ; the very real need for supervision of a subsidiary organ to ensure its proper functioning ; respect for the authority of the Secretary-General as the chief administrative officer of the Organization ; and finally, and of basic importance, the criteria set forth in the third paragraph of Article 101 of the Charter. The opening sentence of that paragraph states the guiding principle :

> "The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity."

Mr. President and Honourable Members of the Court, I wish to thank the Court for its close attention.

3. EXPOSÉ ORAL DE M. LE PROFESSEUR REUTER

(REPRÉSENTANT DU GOUVERNEMENT FRANÇAIS)

A LA SÉANCE PUBLIQUE DU 11 JUIN 1954, APRÈS-MIDI

Monsieur le Président, Messieurs de la Cour.

La procédure écrite et orale a permis de soumettre à la Cour une information étendue et une argumentation abondante et variée. Le Gouvernement de la République n'abusera pas de la bienveillance de la Cour ; sa communication se bornera à évoquer quelques questions de principe fondamentales.

Le Gouvernement de la République fera abstraction de toutes les considérations d'opportunité ou de convenance qui pourraient être présentées à propos du statut des fonctionnaires des Nations Unies ; il se réserve, bien entendu, de les faire valoir si la question est discutée par les organismes compétents.

La question posée à la Cour porte sur les compétences de l'Assemblée.

Il n'est pas demandé à la Cour d'y répondre à la seule lumière des articles de la Charte, mais suivant le « statut du Tribunal administratif et de tous autres instruments et textes pertinents ». Cette formule vise la Charte des Nations Unies, le statut du Tribunal administratif et éventuellement d'autres résolutions de l'Assemblée.

La Cour se trouve ainsi amenée à interpréter la signification d'un régime juridique qui est fonction des propres décisions de l'Assemblée ; elle doit préciser ce que l'Assemblée *a décidé ;* il ne lui est pas demandé de dire ce que l'Assemblée *aurait pu ou pourrait décider* et qui ne dépend que du texte de la Charte. Il est toutefois évident que les dispositions de la Charte ont une importance particulière et doivent être considérées en elles-mêmes ; elles servent en effet de guide pour l'interprétation des résolutions de l'Assemblée, et de toute manière elles permettent d'établir les limites des actions que celle-ci pourrait entreprendre.

Deux thèses sont en présence dans cette affaire : suivant la première, en instituant le Tribunal administratif, l'Assemblée a institué un véritable tribunal et elle est liée par ses décisions, qui bénéficient de l'autorité de la chose jugée comme les décisions de tous les tribunaux ; suivant la deuxième thèse, l'Assemblée n'est pas liée par les décisions de l'organe dénommé : Tribunal administratif des Nations Unies.

Le Gouvernement français est favorable à la première thèse. Il estime inutile de revenir sur l'argumentation qu'il a développée pour justifier cette préférence ; tous les termes du statut établissent *prima facie* qu'il s'agit d'un véritable tribunal dont les décisions sont obligatoires au sein des Nations Unies.

La seconde thèse ne peut se fonder que sur des arguments qui, dans leur diversité même, ont tous un caractère commun : ils cherchent à détruire les conclusions qui découlent des formules très claires du Statut. De nombreux arguments ont été exposés à cet effet avec beaucoup de talent ; quatre parmi eux vont être discutés en raison de leur intérêt juridique.

Un premier argument peut se présenter de la manière suivante : quelle que soit la nature du Tribunal administratif, quelles que soient

les formules employées par le statut, les jugements du Tribunal ne sauraient lier l'Assemblée : le Tribunal tire son existence d'une résolution de l'Assemblée et celle-ci ne saurait se lier sans renoncer à sa compétence d'Assemblée souveraine. Ce raisonnement présente sous sa forme extrême la thèse hostile au caractère définitif des jugements du Tribunal ; il appelle les plus vives critiques.

La Charte ne contient pas d'articles déclarant l'Assemblée souveraine. On ne saisit pas l'intérêt qu'il y a au point de vue juridique à qualifier l'Assemblée de souveraine. Les compétences des organes de toutes les organisations internationales sont définies par les textes qui les ont fondées. Sans doute, les compétences de l'Assemblée doivent-elles être interprétées d'une manière assez libérale, si l'on veut tenir compte des buts généraux des Nations Unies et du caractère universel de cette organisation ; mais s'il s'agit d'établir que l'Assemblée peut ne pas exécuter les décisions du Tribunal administratif, il est nécessaire d'indiquer quels textes lui donnent ce droit.

A lire les formules employées dans certains documents soumis à la Cour, on pourrait peut-être craindre que ne fût impliqué le principe qu'aucune souveraineté n'est liée par le droit, principe repoussé depuis longtemps pour les États, mais qu'il serait paradoxal de voir revendiqué pour une organisation internationale.

Il n'en sera donné qu'un exemple ; il est emprunté au rapport du sous-comité chargé d'étudier en 1946 pour le compte de l'Assemblée de la Société des Nations la valeur des jugements du Tribunal administratif de la Société des Nations. Sans doute ce rapport n'est-il pas fondé sur le droit, mais sur une équité unilatéralement définie et imposée dans une ambiance de liquidation générale. Il n'en déclare pas moins, par exemple, que là où les voies de droit pour défendre le droit font défaut, le droit disparaît. De pareilles affirmations, même parées du prestige d'une formule latine consomment la ruine de tout ordre international et doivent être énergiquement condamnées.

Le Gouvernement français ne saurait admettre qu'une autorité — si élevé soit son rang — soit en toute circonstance et par principe maîtresse de ne tenir aucun compte de ses propres décisions. En écartant des hypothèses sans lien avec la question qui est posée à la Cour, il est nécessaire d'en examiner une sur un plan général. Elle nous permet d'introduire une distinction entre les règles générales et les décisions individuelles qui, à notre sens, domine tout le débat. Supposons un organisme qui soit compétent pour prendre dans une matière déterminée à la fois des décisions individuelles et des décisions générales fixant les conditions dans lesquelles il prendra lui-même des décisions individuelles. Cette hypothèse est particulièrement fréquente en droit administratif. Ce sera par exemple la situation d'un maire qui délivre des autorisations quelconques et en même temps prend un arrêté, définissant à quelles conditions générales elles seront délivrées. L'organisme qui se trouve dans cette situation doit respecter la règle générale qu'il a établie quand il prend des décisions individuelles. Tant qu'il n'a pas abrogé sa décision générale, il est lié par elle. Cette solution dont on pourrait montrer la consécration dans tous les systèmes juridiques se justifie pleinement. En prenant une décision générale, cet organisme a arrêté et proclamé son intention de procéder d'une manière déterminée dans les affaires individuelles ; il ne saurait, sans entrer en contradiction avec lui-même, maintenir sa décision générale et ne pas la respecter ; d'autre part, toute

décision générale est d'une nature juridique supérieure aux décisions individuelles qui en font application. C'est là un véritable principe général du droit qui est dans un système juridique la transposition du principe de non-contradiction ; si on rejette ce principe, il ne peut plus y avoir d'ordre juridique.

Aussi, en supposant (hypothèse qui, on le verra dans un instant, est inexacte) que l'Assemblée soit à la fois compétente pour déterminer elle-même les règles selon lesquelles sont résolus les litiges entre les Nations Unies et leurs agents, d'une part, et pour juger elle-même ces litiges, d'autre part, elle serait tenue par les règles générales qu'elle aurait posées tant qu'elle ne les aurait pas modifiées.

Aussi, après l'examen de cette première argumentation, la position de principe qui est défendue par le Gouvernement français semble intacte : tant que le statut instituant le Tribunal administratif existe, l'Assemblée est tenue de le respecter.

Suivant un deuxième argument, malgré les termes formels du statut, il faudrait écarter l'interprétation qui ferait du Tribunal administratif un véritable tribunal ; cette interprétation, dit-on, conduirait à conclure que la résolution qui a institué ce Tribunal est contraire à la Charte des Nations, et notamment aux articles 7 et 22 relatifs aux organes subsidiaires. Le Tribunal administratif serait un organe subsidiaire au sens de l'article 22 de la Charte, et les rapports qui doivent exister entre un organe subsidiaire et l'organe principal qui l'a institué interdiraient de faire de cet organe subsidiaire un tribunal ; en effet, dit-on, l'organe subsidiaire ne peut exercer que les compétences de l'organe principal, mais il ne peut pas lier à ce titre l'organe principal. Que vaut, de l'avis du Gouvernement français, cette argumentation ? La théorie des organes subsidiaires dans la Charte est assez confuse, et la description objective faite par notre très honorable collègue, le représentant du Secrétariat général des Nations Unies, nous a confirmés dans la pensée que la pratique des Nations Unies permettait difficilement d'élaborer un concept défini et incontestable de l'organe subsidiaire. L'idée d'une délégation de pouvoirs que l'on discute également à ce propos n'est pas non plus, en droit international public, une notion qui soit parfaitement claire.

Aussi, nous pensons qu'il n'est pas nécessaire d'examiner ici sous tous ses aspects la théorie des organes subsidiaires, et ceci en vertu de trois considérations.

Première considération : Pour que l'argumentation fondée sur une théorie des organes subsidiaires soit valable, il est nécessaire que le régime des organes subsidiaires, au sens des articles 7 et 22 de la Charte, soit aussi strict que l'on l'affirme. Cette preuve, semble-t-il, n'a pas été faite. L'article 92 de la Charte déclare que la Cour internationale de Justice est l'organe judiciaire *principal* des Nations Unies. Ceci implique clairement qu'il y a place pour d'autres organes judiciaires. Or, d'après la théorie que nous critiquons, la création de tout tribunal serait contraire à la Charte.

Deuxième considération : A supposer même qu'il soit interdit par la Charte à un organe principal de déléguer ses propres fonctions de manière à être lié par les décisions de l'organe subsidiaire, l'Assemblée n'a nullement délégué ses propres fonctions au Tribunal administratif, mais elle lui a confié des fonctions qui n'étaient exercées par aucun organe de la Charte.

Troisième considération : Il n'est pas nécessaire de recourir aux articles 7 et 22 de la Charte pour justifier la création du Tribunal administratif, l'article 101 y suffit pleinement.

Ces deux dernières considérations appellent une démonstration. Elle peut être effectuée sur la base de l'article 101.

Aux termes de l'article 101 de la Charte, « le personnel est nommé par le Secrétaire général, conformément aux règles fixées par l'Assemblée générale ». Ce texte n'envisage ici que la nomination ; mais l'alinéa 3 du même article mentionne « les conditions d'emploi » ; la nomination étant l'acte le plus important de la carrière d'un fonctionnaire, les principes établis à son sujet doivent être étendus à l'ensemble des mesures qui peuvent intéresser le personnel. Ainsi l'a, dès l'origine, interprété la pratique.

En 1946, l'Assemblée, par une résolution du 13 février, fixait les principes généraux relatifs à l'organisation du Secrétariat. Cette résolution contenait une annexe II fixant le statut provisoire du personnel *(Provisional Staff Regulations)*. Ce texte, conformément à l'article 101 de la Charte, fixait des principes et réservait au Secrétaire général le soin de prendre toutes les mesures individuelles d'application. On notera que par la règle 29 le Secrétaire général était habilité à prendre des règlements d'exécution dans le cadre de ce statut, mais à charge d'en rendre compte annuellement à l'Assemblée, ce qui confirme en l'assouplissant le principe posé par l'article 101. En exécution de cette disposition, le Secrétaire général a élaboré un Règlement provisoire du personnel *(Staff Rules)* dont les modifications ont été régulièrement publiées sous forme de circulaires. Le premier rapport du Secrétaire général à l'Assemblée se trouve dans le document A/435 du 30 octobre 1947.

Les compétences respectives du Secrétaire général et de l'Assemblée ont toujours été scrupuleusement respectées. Le statut actuel résulte d'une résolution de l'Assemblée du 2 février 1952 [1] qui applique rigoureusement et sans ambiguïté l'article 101 de la Charte. Jamais l'Assemblée n'a pris aucune décision individuelle concernant un agent placé sous l'autorité du Secrétaire général.

Il ressort donc de l'article 101 deux conséquences capitales qui sont, de l'avis du Gouvernement français, la clef des problèmes soulevés par la question soumise à la Cour.

Premièrement, d'une manière positive, l'Assemblée est, en ce qui concerne la fonction publique internationale, compétente pour fixer des règles.

Deuxièmement, d'une manière négative, l'Assemblée n'est pas compétente pour prendre des mesures individuelles, ni déterminer d'une manière individuelle la situation des fonctionnaires qui dépendent du Secrétaire général. Cette conséquence résulte du texte même de l'article 101. Ce texte réserve les nominations au Secrétaire général. Le même raisonnement qui a permis d'étendre la compétence réglementaire de l'Assemblée de la nomination à tous les actes qui constituent le statut de la fonction publique internationale, doit réserver au Secrétaire général la compétence pour toutes les décisions individuelles qui portent sur le même objet. Ce qui renforce cette conclusion, c'est le fait que la Charte prévoit expressément les hypothèses exceptionnelles dans lesquelles l'Assemblée peut prendre à l'égard d'un membre du Secrétariat une

[1] [Ass. Gén. Doc. off. 6e session, suppl. n° 20 (A/X/2119, p. 81).]

décision individuelle ; ainsi en vertu de l'article 97 en ce qui concerne la nomination du Secrétaire général.

Faut-il qualifier la compétence de l'Assemblée de compétence *législative*, bien que ce terme ne soit pas employé par la Charte ? Si l'on entend par cette expression une compétence tenue de procéder par catégories générales sans prendre de décisions individuelles, on peut accepter cette terminologie. Elle présente cependant des inconvénients. Dans beaucoup de pays l'expression « compétence législative » évoque un pouvoir beaucoup plus vaste, parfois illimité, parce qu'il tend à n'être assujetti qu'à des conditions de forme. L'exposé écrit du Gouvernement du Royaume-Uni contient à cet égard, dans son paragraphe 6, des observations tout à fait pertinentes, et il semble, d'après les communications qui ont été adressées à la Cour, que tous les gouvernements reconnaissent que les compétences des organes des Nations Unies doivent être interprétées d'une manière stricte, notamment dans leurs rapports mutuels. C'est pourquoi il est préférable de parler d'une compétence *réglementaire ;* dans le cadre des limites que l'on vient de définir et de celles posées par l'article 101, dans son alinéa 3, cette compétence réglementaire s'étend à toutes les règles nécessaires pour établir un statut satisfaisant de la fonction publique.

Si l'Assemblée est incompétente en matière de mesures individuelles, il en résulte une importante conséquence en ce qui concerne le Tribunal administratif. Le Tribunal administratif n'est nullement compétent pour fixer des règles et des principes, il l'est seulement pour appliquer à des espèces individuelles les règles posées par l'Assemblée. En instituant le Tribunal administratif, l'Assemblée n'a donc pas délégué une compétence qui lui appartiendrait. Si les organes subsidiaires sont des organes exerçant des compétences déléguées par un organe principal, le Tribunal administratif n'est nullement un organe subsidiaire au sens de l'article 22, si on l'interprète ainsi. Le Tribunal administratif exerce une fonction qui n'est exercée par aucun organe des Nations Unies : trancher en droit avec toutes les garanties requises des litiges portant sur la carrière des fonctionnaires. Si certaines compétences sont modifiées par l'institution du Tribunal administratif, ce sont celles du Secrétaire général et non celles de l'Assemblée. C'est pourquoi la création du Tribunal administratif tire sa justification juridique non de l'article 22, mais des termes fort clairs de l'article 101 qui autorisent l'Assemblée à limiter les compétences du Secrétaire général en lui imposant des règles. L'Assemblée, en créant le Tribunal administratif, a posé des règles qui conditionnent l'exercice des compétences du Secrétaire général ; on ne saurait être plus fidèle à la Charte. Tels sont les motifs pour lesquels ce deuxième argument n'a pas paru convaincant au Gouvernement français.

Le troisième argument de la thèse qui met en doute le caractère définitif des jugements du Tribunal administratif abandonne le terrain des fonctions administratives pour se placer sur celui des pouvoirs budgétaires de l'Assemblée. On soutient qu'au titre de l'article 17 de la Charte l'Assemblée peut, par l'exercice de sa compétence budgétaire, refuser l'exécution des décisions du Tribunal administratif.

Comme on l'a déjà fait remarquer, il faut distinguer à titre préliminaire pouvoir de fait et pouvoir de droit.

La question posée à la Cour n'est pas de savoir si en fait l'Assemblée peut matériellement faire échec aux décisions du Tribunal administratif. Néanmoins, il n'est pas sans intérêt de montrer combien ses pouvoirs de

fait seraient limités et quel pauvre instrument se trouverait aux mains de l'Assemblée, à moins — ce qu'elle pourrait faire — que celle-ci renonce au fonctionnement normal des institutions financières pour faire jouer à ses compétences budgétaires un rôle pour lesquelles elles ne sont pas faites. Considérons comment le problème se pose pratiquement. C'est le Secrétaire général, sous sa responsabilité propre, qui est chargé d'exécuter à la fois les jugements du Tribunal administratif et le budget arrêté par l'Assemblée. Pour que le Secrétaire général soit empêché d'exécuter les décisions du Tribunal administratif, il faut qu'il ne trouve dans le budget aucun crédit disponible à cet effet. Dans un budget normal, il existe des crédits qui sont affectés d'une manière suffisamment générale à des paiements de cette nature, de sorte que le Secrétaire général pourrait effectuer les paiements ordonnés par un jugement. Dans un budget normal, les autorisations budgétaires devraient être accordées à l'avance; donc elles devraient être accordées à un moment où les décisions du Tribunal administratif ne sont même pas connues. Telle était bien jusqu'à ces derniers temps la situation. Et l'Assemblée a dû être saisie dans les affaires qui sont à l'origine de la demande d'avis, en raison des montants assez élevés des indemnités à payer et de la demande de crédits supplémentaires qui est devenue ainsi nécessaire. Si, à l'avenir, l'Assemblée voulait organiser systématiquement, par la voie budgétaire, un contrôle des jugements du Tribunal administratif, elle pourrait le faire, mais elle serait obligée de bouleverser les règles existantes qui ont été soigneusement établies pour assurer des paiements rapides par une procédure souple ; par exemple, elle serait obligée 1) de créer, dans le budget, une division spéciale affectée au paiement des indemnités dues à la suite des jugements du Tribunal ; 2) de n'affecter, à cette division, aucun crédit pour que l'on soit obligé de venir lui demander des crédits et qu'à cette occasion elle ait la possibilité, après examen des sentences du Tribunal, de les refuser.

D'autre part, la solution envisagée d'un contrôle par la voie budgétaire ne répondrait qu'imparfaitement au but très raisonnable que l'on se propose, qui est de remédier à des jugements défectueux du Tribunal administratif et non pas de réaliser quelques économies. Pour le comprendre, il faut rappeler quels sont en général, aux termes de l'article 9 du statut actuel du Tribunal administratif, les dispositifs de ces jugements. Pour respecter les intérêts des Nations Unies, les jugements ouvrent une option au Secrétaire général dans le cas où la requête des fonctionnaires est reconnue justifiée ; ou bien, le Secrétaire général accepte l'annulation de la décision prononcée par le Tribunal ou l'exécution de l'obligation invoquée ; ou bien, les Nations Unies verseront au fonctionnaire lésé une indemnité dont le Tribunal fixe, dans son jugement, le montant.

L'Assemblée serait absolument désarmée dans le cas où le Secrétaire général, seul juge de l'intérêt du service, accepterait d'exécuter la décision du Tribunal en annulant les mesures incriminées ou en exécutant l'obligation invoquée. Or, le Secrétaire général, encore que l'hypothèse soit rare, peut estimer qu'il est de l'intérêt des Nations Unies de choisir cette solution et de ne pas verser une indemnité compensatrice. Si l'on voulait que l'Assemblée puisse exercer dans tous les cas son contrôle, il faudrait que le Secrétaire général renonce à cette option et choisisse toujours de verser une somme d'argent pour donner à l'Assemblée l'occasion de refuser les crédits nécessaires. Ces considérations montrent

à quelles piteuses conséquences on se trouverait amené si l'Assemblée voulait instituer, par les voies budgétaires, un contrôle des jugements du Tribunal. Cette constatation est d'ailleurs secondaire, car elle est de pur fait. Elle ne nous permet que de conclure à une présomption : il y a peu de chances que ces pouvoirs de pur fait recouvrent des pouvoirs de droit, et c'est ce qu'il faut maintenant examiner.

La plupart des fonctions assumées par les Nations Unies supposent le plus souvent pour leur mise en œuvre l'exercice d'une double compétence. Premièrement, il faut que l'organisme désigné par la Charte ait décidé, dans le cadre de sa compétence, d'agir. Deuxièmement, il faut que l'Assemblée lui ait accordé les crédits nécessaires pour qu'il dispose des moyens financiers indispensables à l'exercice de sa compétence.

Ceci pose inévitablement la question de savoir si l'Assemblée a le droit de limiter l'exercice de la compétence d'un organe des Nations Unies en le soumettant à des restrictions financières.

Le problème est ample et n'a pas à être discuté ici dans sa totalité. Une distinction générale permet de dégager les éléments d'une solution en ce qui concerne l'avis demandé à la Cour.

Les compétences des organes des Nations Unies sont soit des compétences discrétionnaires, soit des compétences liées ; cette distinction, qu'il faut poser d'abord, a d'importantes conséquences sur les pouvoirs budgétaires de l'Assemblée.

Sont des compétences discrétionnaires celles que les organes des Nations Unies sont libres d'exercer ou non, sans être tenus par une obligation juridique précise. Par exemple, il existe dans le budget des Nations Unies des crédits pour permettre des publications. En règle générale, il n'y a pas d'obligation juridique pour les organes responsables de procéder à ces publications, ils les décident d'après des considérations d'opportunité.

Sont des compétences liées les compétences que les organes des Nations Unies sont tenus d'exercer en vertu d'une obligation juridique. Par exemple, aux termes de l'article 102 de la Charte, le Secrétaire général doit publier les traités. Il n'est pas libre d'y renoncer, et l'inscription d'un crédit à cet effet au budget est la stricte exécution d'une obligation juridique.

Il est facile, dès lors, de préciser au moins sur un point le rôle de l'Assemblée en fonction de cette distinction : l'Assemblée ne saurait, en aucun cas, disposer à l'égard de la dépense de plus de liberté que l'organe dépensier n'en dispose lui-même.

Pour les dépenses qui correspondent à la mise en œuvre d'une compétence discrétionnaire, l'Assemblée peut examiner les demandes de crédit, en proposer la diminution ou même la suppression. En principe, les modifications qu'elle apporte au budget ne doivent être fondées que sur des considérations de gestion financière, et l'Assemblée ne pourrait pas, sous couleur de gestion financière, se substituer à un autre organe des Nations Unies ou empêcher complètement son fonctionnement ; mais il est certain que l'usage lui a donné dans ce cadre un pouvoir général très large et souvent redoutable.

Mais pour les dépenses qui sont la mise en œuvre d'une compétence liée des services dépensiers, l'Assemblée ne peut que respecter les obligations du service dépensier et accorder le crédit. Sinon les compétences budgétaires serviraient à nullifier des règles juridiques et même

des dispositions de la Charte, et mettraient obstacle à l'exécution d'obligations indiscutables.

Dans l'hypothèse relative au présent avis, il s'agit d'une dette des Nations Unies dont la source se trouve dans des actes devenus définitifs : le Tribunal administratif a une compétence liée, il apprécie en droit ; le Secrétaire général est lié par le jugement du Tribunal ; l'Assemblée n'a aucune compétence juridique pour annuler les dettes des Nations Unies.

Reste un dernier et quatrième argument. En admettant que les décisions du Tribunal administratif s'imposent à l'Assemblée, encore faut-il qu'il s'agisse de jugements réguliers. Des jugements frappés d'une cause de nullité ne pourraient s'imposer à aucun organe des Nations Unies.

Telle est la thèse. C'est de tous les arguments celui qui mérite l'examen le plus attentif. Il n'est d'ailleurs soumis à la Cour que dans le cadre d'une question abstraite, car aucune allégation précise n'a été clairement exprimée à l'encontre des jugements qui sont à l'origine de la présente procédure.

Il est évident qu'en posant ce problème de la nullité des jugements et de l'excès de pouvoir du Tribunal administratif, les esprits subissent l'attraction de la théorie de l'excès de pouvoir de l'arbitre et de la nullité de la sentence arbitrale en droit international. Mais, dira-t-on, les rapports entre les agents des Nations Unies et l'Organisation, ne sont-ils pas précisément régis par le droit international ?

Il ne s'agit pas ici d'une querelle d'école, mais d'une question qui a, pour l'objet du présent avis, une importance considérable.

Les règles qui définissent les rapports entre les agents des Nations Unies et les Nations Unies sont issues de la Charte et constituent le droit intérieur d'une organisation internationale ; en ce sens elles relèvent d'une certaine manière du droit international, mais d'une certaine manière seulement, car à vrai dire il s'agit du droit interne d'une organisation internationale. Mais quelle que soit la terminologie que l'on adopte, toutes les règles propres aux rapports entre États ne sont pas applicables aux rapports entre les Nations Unies et leurs agents, et ceci est le cas notamment de la théorie de la nullité des sentences arbitrales. Celle-ci, dans les rapports entre les États, résulte d'une série de précédents qui sont le support d'une coutume limitée et imparfaite. La coutume a bien pu déterminer les cas dans lesquels une sentence est nulle, mais elle n'a pas pu déterminer les procédés satisfaisants pour remédier à cette nullité.

Cette situation est le résultat du caractère inorganisé de la société internationale.

Les caractères tout différents des rapports des Nations Unies et de leurs agents interdisent d'y transposer les solutions imparfaites consacrées dans les rapports entre États. La société des États n'a pas de législateur organiquement constitué, les Nations Unies, en ce qui concerne les rapports des fonctionnaires et des Nations Unies, en ont un qui est l'Assemblée. La société des États ne peut résoudre qu'imparfaitement les conflits même juridiques qui naissent en son sein, car les procédures de règlement ne peuvent être que consenties par ceux auxquels elles s'appliquent ; les conflits qui naissent en matière de fonction publique au sein des Nations Unies peuvent être résolus sans difficulté, car il y existe une autorité réglementaire compétente pour organiser toutes les procédures. En un mot, la société des États est une société où il n'existe

pas d'autorité commune ; les rapports entre les Nations Unies et leurs agents constituent au contraire un système juridique organisé, qui a beaucoup d'analogie, à certains égards, avec un système étatique.

Or les systèmes étatiques connaissent le problème de la nullité des décisions de justice ; mais aucune place n'est faite à une cause de nullité sans qu'en même temps ne soit prévue la procédure qui doit permettre d'y porter remède ; toute autre solution serait la négation de l'ordre juridique et serait injustifiable puisqu'il existe un législateur capable de résoudre le problème posé.

Il en est de même dans les relations internes des Nations Unies et de leurs agents. L'Assemblée peut parfaitement, par l'exercice de son pouvoir réglementaire, définir les cas de nullité et prévoir les procédures pour la constatation de ces cas de nullité.

Seule l'autorité chargée de régler l'ensemble des rapports juridiques entre les fonctionnaires et les Nations Unies peut déterminer les causes de nullité et les procédures destinées à y remédier. Seule l'Assemblée est habilitée à le faire ; elle ne peut le faire toutefois qu'en fixant des règles. L'état de la réglementation applicable, y compris le statut du Tribunal administratif, donne la réponse à la question de savoir s'il y a des cas de nullité reconnus et s'il y a une procédure pour y remédier. Dans une société organisée, dans laquelle il n'y a pas de rapports juridiques qui soient placés hors la loi, seule l'autorité chargée de fixer les règles peut résoudre cette question.

Le fait que dans le système actuel il subsiste un risque de voir appliquer des décisions juridiquement irrégulières n'est pas un argument, car quoi que fasse l'Assemblée, ce risque subsistera toujours ; il n'est point nécessaire pour s'en convaincre d'écouter les doléances des plaideurs ; il ne dépend en tout cas que de l'Assemblée que ce risque diminue.

C'est donc à l'Assemblée qu'il appartient de porter remède aux jugements qui seraient frappés de quelque défaut. Elle seule peut le faire, et elle ne peut le faire qu'en fixant des règles.

Sans doute tous les problèmes qui se posent ne sont-ils pas résolus par cette conclusion, mais elle répond aux questions posées à la Cour ; en discutant devant la Cour les options concrètes qui s'ouvrent à l'Assemblée, on dépasserait le cadre de la demande d'avis adressée à la Cour.

En modifiant le statut à la date du 9 décembre 1953, l'Assemblée a suivi la voie que l'on vient d'indiquer ; aux yeux du Gouvernement français il n'en est pas d'autre, car, si le Tribunal administratif n'est pas rendu obligatoire par la Charte des Nations Unies, celle-ci a placé les fonctionnaires des Nations Unies sous la garantie suprême des règles générales et impersonnelles que l'Assemblée a le devoir d'établir.

La réponse aux questions posées à la Cour semble donc très simple.

En l'état actuel des résolutions de l'Assemblée, les jugements du Tribunal administratif s'imposent à l'Assemblée comme au Secrétaire général.

Il appartient à l'Assemblée par voie de mesures générales et impersonnelles de décider dans quelles hypothèses et dans quelles conditions les défectuosités éventuelles des jugements du Tribunal administratif pourraient être constatées et amendées.

Nous remercions la Cour de l'attention qu'elle a bien voulu prêter à notre exposé.

4. EXPOSÉ ORAL DE M. LE PROFESSEUR SPIROPOULOS

(REPRÉSENTANT DU GOUVERNEMENT HELLÉNIQUE)

A LA SÉANCE PUBLIQUE DU 12 JUIN 1954, MATIN

Monsieur le Président, Messieurs les Juges,

Qu'il me soit permis, avant d'aborder mon sujet, de transmettre à la Cour les salutations de mon Gouvernement et de vous assurer des sentiments de confiance dont le Gouvernement hellénique s'inspire envers ce haut organe judiciaire international.

La question qui se trouve devant vous a soulevé — vous le savez d'ailleurs — de graves controverses à l'Assemblée générale des Nations Unies de l'année dernière, et c'est avec raison que l'Assemblée n'a pas voulu prendre de décision définitive en cette matière sans avoir au préalable pris connaissance de l'avis de l'organe le plus compétent en matière de droit international du monde.

Mon Gouvernement est persuadé que la sagesse qui a toujours illuminé vos délibérations ne manquera pas de vous permettre d'émettre un avis qui sera accepté par l'opinion juridique mondiale.

Monsieur le Président, Messieurs de la Cour, le point de vue de mon Gouvernement sur la question portée devant vous a été exposé dans nos observations écrites. Aussi, dans l'exposé que j'aurai l'honneur de faire, je voudrais laisser de côté toutes les questions de détail, ces questions techniques, ces questions secondaires, et me borner à examiner les principes fondamentaux qui sont à la base du problème que nous examinons.

Les arguments secondaires ont certainement leur importance, et nous devons être reconnaissants aux Gouvernements qui les ont soumis à la Cour ; je pense à tous les Gouvernements, commençant par le Gouvernement des États-Unis d'Amérique, le Gouvernement français, le Gouvernement du Royaume-Uni et le Gouvernement des Pays-Bas, mais, lorsqu'on veut prendre une décision, il faut tâcher de se dégager, il faut tâcher d'écarter toutes ces questions de détail pour n'examiner que les problèmes principaux, afin de pouvoir trouver le nœud du problème : c'est uniquement en remontant au principe fondamental qui régit un problème qu'on arrive à trouver sa solution. C'est dans cet ordre d'idées que je me permettrai de faire mon exposé.

Les questions posées par l'Assemblée générale à la Cour sont connues, vous les avez lues dans toute observation écrite, vous les avez entendues encore hier et avant-hier. Je crois donc qu'il est de mon devoir de ne pas vous fatiguer en lisant de nouveau ces questions.

Abordant maintenant mon sujet, je désire examiner tout d'abord une première question, la question de la condition juridique du Tribunal administratif. Ce Tribunal — tout le monde le sait, et la Cour et les représentants des Gouvernements — a été créé par une résolution de l'Assemblée générale : il s'agit de la résolution 351 (IV) du 24 novembre 1949. Cette résolution contient le statut du Tribunal et elle nous dit quelle est la compétence de cet organe judiciaire.

Voici un premier problème qui se pose pour moi. Étant donné que ce Tribunal a été créé par une résolution de l'Assemblée générale, sa création doit nécessairement être fondée sur une disposition de la Charte.

Si vous voulez bien, je vous donnerai lecture du texte que j'avais rédigé avant de quitter mon pays et que j'avais l'intention de communiquer à la Cour.

J'y dis : « Lorsqu'on fait abstraction de l'article 7 de la Charte, il n'existe dans la Charte qu'un seul article prévoyant pour l'Assemblée générale le droit de créer des organes, c'est l'article 22. Celui-ci permet à l'Assemblée générale de créer les organes subsidiaires qu'elle juge nécessaires à l'exercice de ses fonctions. Le Tribunal administratif des Nations Unies est donc, pour ce qui est de sa condition juridique, un organe subsidiaire des Nations Unies. »

Mais, Messieurs les Juges, j'ai eu hier une surprise : mon éminent collègue, le représentant de la France, dans un exposé détaillé, et qu'il a développé devant la Cour avec l'éloquence traditionnelle française, nous a dit : ce n'est pas l'article 22, mais c'est l'article 101 qu'il faut appliquer en l'occurrence. Après avoir entendu cette assertion, je ne l'avais pas entendue auparavant — il se peut bien que je n'aie pas lu assez attentivement les observations écrites des gouvernements ou que je n'aie pas fait assez attention à certains passages de ces observations — j'ai commencé ce matin à lire de nouveau l'exposé français et j'ai constaté que le Gouvernement français a un peu — je dis : un peu — changé d'avis, car dans les observations françaises, tout en faisant allusion à l'article 101, on admet que c'est l'article 22 qui s'applique en l'occurrence. Permettez-moi de vous donner lecture de ce texte, bien que je craigne de vous fatiguer. Mais c'est un passage important, et il me paraît nécessaire de vous en donner lecture. Voilà ce qui y est dit à la page 14 (j'ai devant moi le texte français du document contenant les observations du Gouvernement) :

> « Le Gouvernement de la République française estime injustifié de donner un sens trop étroit au concept d'« organe subsidiaire » tel qu'il est prévu aux articles 7, paragraphe 2, et 22 de la Charte. Il n'est nulle part dit dans la Charte qu'un organe subsidiaire ne peut exercer qu'une compétence déjà possédée par l'organe principal qui l'a créé. Car c'est de la Charte que l'organe subsidiaire tient sa légitimité. Le mode de création est une chose, la nature de l'organe en est une autre. L'Assemblée, le Conseil de Sécurité et le Conseil économique et social peuvent créer des organes subsidiaires. La seule condition apportée par la Charte à leur création est qu'ils soient jugés « nécessaires à l'exercice des fonctions » de l'organe principal fondateur.... L'Assemblée générale peut valablement créer un organe subsidiaire [j'attire votre attention sur cette phrase] qui exerce une fonction judiciaire, cette création ne provenant pas d'une délégation de compétence, mais de l'exercice du pouvoir reconnu à l'Assemblée générale par la Charte de créer tout organe nécessaire à son bon fonctionnement. »

Et je voudrais ajouter un autre passage, qui se trouve à la page suivante (p. 15), où il est dit :

> « Aucune disposition de la Charte n'a interdit à l'Assemblée générale de créer un tribunal pour trancher des difficultés conten-

tieuses pouvant résulter de l'activité du Secrétariat. L'essentiel est de constater que cette création s'est révélée « nécessaire », pour reprendre l'expression de l'article 7 [on se réfère donc de nouveau à l'article 7], en particulier pour l'application de l'article 101.... »

Donc, il s'agit de l'application de l'article 7 comme base de création du Tribunal administratif.

Eh bien, Messieurs, à mon avis, et c'est aussi l'avis du Gouvernement français, tel qu'il est exprimé dans ses observations écrites, ce sont les articles 7 et 22 sur lesquels est basée la création du Tribunal administratif des Nations Unies et non pas l'article 101, qui traite d'autres questions. Lisons l'article 101. Il dit ceci :

« Le personnel [ce sont les paragraphes qui nous intéressent] est nommé par le Secrétaire général conformément aux règles fixées par l'Assemblée générale. »

Donc, il y est dit tout simplement que le personnel est nommé par le Secrétaire général, c'est tout. Ensuite, le paragraphe 3, dont on a fait état, dit ceci :

« La considération dominante dans le recrutement et la fixation des conditions d'emploi du personnel doit être la nécessité d'assurer à l'Organisation.... »

Donc, dans l'expression « .... la fixation des conditions d'emploi.... » on a voulu faire entrer la faculté de l'Assemblée de créer le Tribunal administratif. Cette phrase dit simplement « la fixation des conditions d'emploi ». On nous dit : c'est aussi une « condition », parce qu'elle est prévue dans les contrats par lesquels on a engagé les fonctionnaires. Mais, laissant de côté toute autre considération, cet article ne dit nulle part que l'Assemblée peut ou doit créer un Tribunal administratif. Il faut lire le paragraphe 3 en même temps que le paragraphe premier. Le paragraphe premier nous parle des fonctions et des attributions du Secrétaire général. C'est donc le Secrétaire général qui doit prendre en considération ces conditions, etc., et non pas l'Assemblée générale.

Donc, je crois qu'on ne peut pas avoir de doute que l'article 101 se prête très mal pour justifier le pouvoir de l'Assemblée générale de créer le Tribunal administratif.

J'ai insisté sur cette question plus que je ne devais le faire, mais, hier, quand j'ai entendu notre collègue de France se référer à cet article, je me suis adressé à mon collègue hollandais et il m'a répondu que lui aussi — si je me trompe, je le prie de me corriger — se référera à l'article 101, et dans un entretien que j'ai eu avec mon collègue du Royaume-Uni, lui aussi va se référer — si je ne me trompe — à cet article. Mais, si je me trompe, je présente d'avance mes excuses.

The PRESIDENT : Professor Spiropoulos, before we come to your next point, I think we shall have the translation.

M. SPIROPOULOS *[translation]* : Mr. President, may I ask you a personal favour. When I came here, my manuscript was only composed of twelve pages and I had divided this document in three parts, so I would have developed the first four pages and then the second four,

and so on. But in the meantime, after the discussion that has taken place in this Court, I have added a considerable number of other items. So my document is now much longer ; it is longer, anyhow, than twelve pages. So I would submit to you whether you would be so kind as to interrupt me any time you think that my statement is too long, because I cannot judge it myself, and when I heard the translation now, I was astonished at the length of what I had said.

The PRESIDENT : Professor Spiropoulos, I will do my best to discharge the heavy responsibility that you place upon me, but I venture to suggest to you another way in which you might be able to achieve the object that you have in mind, and that is that from time to time it may be possible for you to say that you can adopt the argument on this point of one of the speakers who have preceded you.

M. SPIROPOULOS : Thank you very much, Mr. President.

Monsieur le Président, j'ai eu l'honneur d'expliquer à la Cour que, de l'avis de mon Gouvernement, c'est l'article 22 qui est à la base de la création du Tribunal administratif. Mais je suis très accommodant et je voudrais même accepter de façon hypothétique que ce soit l'article 101. Pour nous, ceci n'a aucune importance. Qu'on base la création du Tribunal administratif sur l'article 22 ou 7 ou sur l'article 101, ceci n'a aucune signification.

Acceptons que ce soit l'article 101. Je répète : je ne vois pas comment on pourrait créer un tribunal sur la base de l'article 101, mais acceptons pour un instant que ce soit l'article 101. Quelle serait la condition du tribunal en question ? Certes, ce ne serait pas un tribunal subsidiaire des Nations Unies, tel qu'il est défini par l'article 22 ou par l'article 7 de la Charte, puisque l'article 101 n'en parle pas, mais tout de même ce sera un organe secondaire des Nations Unies. La Charte énumère les organes principaux des Nations Unies : L'Assemblée générale, le Conseil de Sécurité, la Cour, etc. Donc, tous les autres organes, qu'ils soient créés soit sur la base de l'article 22, soit sur la base de n'importe quel article de la Charte, sont forcément des organes secondaires des Nations Unies. Or, j'accepte de considérer le Tribunal administratif des Nations Unies comme un organe secondaire, qu'il soit créé sur la base de l'article 22 ou sur la base de l'article 101, ou de n'importe quel autre article de la Charte. Pour la solution de notre problème il existera toujours un rapport entre l'organe principal et l'organe secondaire, que ce dernier soit qualifié de subsidiaire ou de secondaire — car l'organe subsidiaire est aussi un organe secondaire des Nations Unies. Donc, qu'on le considère comme organe secondaire ou organe subsidiaire, cela revient exactement à la même chose : les organes subsidiaires eux aussi ne sont que des organes secondaires. Donc, acceptons, pour le moment, que le Tribunal administratif soit un organe secondaire des Nations Unies. Je trouve que la tâche d'un représentant qui plaide devant cette Cour n'est pas de créer des difficultés, mais bien de simplifier les problèmes et de faire tout son possible pour pouvoir s'entendre avec ses collègues. Je me permets d'exprimer l'espoir que l'effort que je viens de faire sera considéré comme un essai de nous mettre d'accord sur le caractère du Tribunal administratif des Nations Unies. Donc, considérons le Tribunal administratif comme un organe secondaire. Ceux qui voudront le considérer comme un organe subsidiaire, qu'ils le fassent, mais même

dans ce cas-là ce sera un organe secondaire par rapport à l'Assemblée générale, le Conseil de Securité, etc.

La constatation que l'organe en question — le Tribunal administratif — est un organe secondaire des Nations Unies a certainement une certaine importance. Je dis une certaine importance, car il ne faut pas exagérer cette importance. La Cour verra plus tard que je peux même renoncer à faire état de ce rapport entre l'organe secondaire et l'organe principal, car on peut très bien se baser sur d'autres principes pour arriver à la solution de notre problème, et peut-être faut-il le faire en dernière analyse.

Cette constatation faite, passons maintenant à une question qui ne présente pas beaucoup d'intérêt pour notre problème, mais qu'il est utile d'avoir touchée, c'est celle de savoir si les jugements du Tribunal administratif peuvent être revisés par l'Assemblée générale.

Je ne veux pas trop insister sur cette question : elle ne présente pas d'intérêt en l'occurrence, et je me conforme au conseil du Président. Évidemment, l'Assemblée générale peut introduire la revision des jugements du statut du Tribunal administratif. Le Tribunal administratif a été créé par une résolution. L'Assemblée générale peut toujours adopter une nouvelle résolution, et celle-ci abolira la résolution déjà existante, ce qui peut avoir comme conséquence que les jugements du Tribunal peuvent être revisés et même disparaître complètement. Donc, aucun doute que l'Assemblée générale, par une nouvelle résolution, peut reviser les jugements du Tribunal administratif. Reste à savoir si cette revision peut se faire uniquement à l'égard des jugements qui n'ont pas encore été rendus, mais aussi à l'égard de jugements déjà rendus. C'est là une question très importante, une question qui se rattache à notre problème, car s'il y a un jugement déjà rendu, il y aura des droits acquis, etc. Mais je ne veux pas examiner cette question, me conformant au désir du Président d'abréger autant que possible mon exposé.

Monsieur le Président, suivant votre conseil, je veux laisser de côté quelques développements qui se trouvent dans mon manuscrit et je veux passer maintenant à l'examen d'une question qui est d'une importance capitale pour notre sujet : L'article 9 du statut du Tribunal administratif prévoit que lorsqu'il y a lieu à indemnité celle-ci est fixée par le Tribunal et versée par l'Organisation des Nations Unies. Eh bien, on ne saurait imaginer un texte plus clair ; le Tribunal nous dit quelle est l'indemnité et l'Organisation des Nations Unies verse la somme. Le texte est parfaitement clair ; or, en pratique ou, au moins, dans le cas qui s'est présenté à l'Assemblée générale, pour que les Nations Unies puissent exécuter cette obligation — obligation prévue par l'article 9 — il faudra que l'Assemblée générale approuve les montants inscrits dans le budget de l'Organisation et destinés aux indemnités fixées par le Tribunal.

Or, du moment que l'Assemblée générale a institué par une résolution le Tribunal, du moment qu'elle a dit dans l'article 9 de son statut que l'Organisation va verser les sommes que le Tribunal a accordées aux fonctionnaires, il existe pour les Nations Unies l'obligation de verser ces sommes. Je ne vois pas par quel argument on pourrait éviter pareille conclusion. Mais j'ai eu ici une surprise, que je n'aurais pas éprouvée si j'avais lu plus attentivement le rapport du Secrétaire général. Le distingué directeur principal du Service juridique des Nations Unies nous a dit avant-hier : « oui, dans ce cas particulier, ces sommes étaient inscri-

tes dans le budget ; mais il arrive qu'on inscrive dans le budget — et ceci se trouve aussi dans les observations écrites du Gouvernement français —, il arrive qu'on inscrive d'avance dans le budget des sommes pour les indemnités que le Tribunal reconnaîtrait le cas échéant aux fonctionnaires dans l'avenir, et dans ce cas l'Assemblée générale n'aura pas d'occasion de voter sur ces sommes parce qu'elles ne seraient pas déterminées d'avance par le budget ».

Je ne vous cache pas, Messieurs les Juges, qu'au commencement j'ai été un peu bouleversé, parce que je me suis dit qu'on se trouve en présence d'un problème délicat, mais, en réfléchissant bien, j'ai réussi à voir quelle était en réalité la situation. Je veux répondre à la question posée par un exemple: Prenons le code de procédure criminelle; il prévoit qu'en cas d'assassinat, l'assassin sera traduit devant un tribunal et jugé. Mais lorsqu'on ne découvre pas l'assassin, lorsqu'on ne sait pas qui est l'assassin, est-ce que le tribunal va juger, est-ce qu'il peut juger ? Il ne le pourra pas.

Et dans notre cas, quelle est la question qui a été posée par l'Assemblée générale, quelle est cette question ? L'Assemblée générale demande à la Cour de dire si elle a le droit, pour une raison quelconque, de refuser d'exécuter un jugement du Tribunal administratif. Eh bien, si le Secrétaire général a déjà donné l'argent aux fonctionnaires, il n'y a pas de problème ; ils auront eu leur argent. Comment l'Assemblée générale peut-elle ne pas exécuter ce jugement puisqu'il aura été déjà exécuté ? Pour l'Assemblée générale, aucun problème ne se posera parce qu'elle ne peut pas ne pas exécuter un jugement déjà exécuté. Mais le problème qui se trouve devant nous est celui qui s'est présenté aux Nations Unies. C'est un problème concret.

Il y a eu un jugement et ce jugement n'a pas été exécuté. Le Secrétaire général s'est vu dans l'obligation d'inscrire une certaine somme dans le budget et alors l'Assemblée générale s'est trouvée devant cette alternative : « doit-elle approuver ces sommes ou ne doit-elle pas les approuver » ? Voilà le problème tel qu'il se pose à nous ; c'est uniquement dans ces circonstances, dans cette hypothèse-là que le problème s'est posé, car si le jugement avait été déjà exécuté par le paiement de l'argent aux fonctionnaires, il n'existerait pas de problème. L'Assemblée générale pourra peut-être tâcher, je ne sais pas par quels moyens, de récupérer l'argent payé, mais c'est là une autre question ; si le jugement avait été exécuté, la question qu'on pose à la Cour n'aurait aucun objet. Notre question n'a de sens que si le jugement n'a pas été exécuté. La question devant nous est donc celle de savoir si l'Assemblée générale a les pouvoirs de ne pas exécuter un jugement et non pas celle de savoir ce qu'elle aurait pu faire si le jugement avait été déjà exécuté.

La question qui se trouve devant la Cour est celle de savoir si, malgré l'obligation constatée plus haut des Nations Unies de respecter les décisions du Tribunal administratif, il n'existe pas pour l'Assemblée générale de possibilité juridique de ne pas exécuter un jugement. Et ceci pour un motif quelconque. En pure théorie, l'Assemblée générale possède la faculté de ne pas exécuter des jugements de ses organes subsidiaires ou secondaires et, par conséquent, aussi du Tribunal administratif. Elle possède cette faculté, car elle est libre de faire ce qu'elle veut. Seulement, cela est une question de fait, et ceci a été relevé hier avec beaucoup de pertinence par mon collègue, le représentant de la

France, et auparavant par le représentant des Nations Unies. Mais, dans notre cas, où l'Assemblée générale s'est liée par une résolution par laquelle elle dit expressément qu'elle va verser aux fonctionnaires l'indemnité accordée par le Tribunal, ne pas se conformer à cette résolution — et cela sans raison sérieuse —, serait un acte arbitraire, un acte qui ne serait pas conforme à la bonne foi.

Vous savez tous que la Charte mentionne le principe de la bonne foi. Elle le mentionne en ce qui concerne les obligations des membres, mais ce qui est vrai pour les membres est aussi vrai pour l'Organisation comme telle et pour tous ses organes. Donc, si l'Assemblée générale a accepté de verser l'argent accordé par le Tribunal, du moment qu'elle a créé elle-même ce Tribunal, qu'elle a dit elle-même qu'elle va verser l'argent, elle agirait de façon arbitraire et violerait le principe de la bonne foi, si elle ne se conformait pas à ses engagements.

Monsieur le Président, Messieurs les Juges, le fait qu'il existe pour l'Assemblée générale, je l'ai répété plusieurs fois, l'obligation d'exécuter les jugements du Tribunal administratif, est-ce que ce fait signifie qu'il n'existe aucune possibilité pour l'Assemblée générale de ne pas exécuter un jugement du Tribunal administratif ? Nous n'hésitons pas à donner une réponse affirmative. Oui, l'Assemblée générale peut, dans certaines conditions, s'écarter des obligations qu'elle s'est imposées à elle-même. Si, malgré l'existence de l'obligation de l'Assemblée générale — c'est une espèce d'*auto-obligation*, si vous voulez d'*auto-limitation*, de l'Assemblée générale, car c'est elle-même qui s'est imposé cette obligation par l'adoption de la résolution qui a institué le Tribunal —, si, malgré cette obligation il y a des raisons sérieuses permettant de considérer le refus de l'Assemblée générale d'exécuter un jugement du Tribunal comme justifié, son refus d'exécuter un jugement du Tribunal — dans notre cas particulier le refus d'approuver les sommes prévues pour l'exécution du jugement du Tribunal — paraît légitime.

Voilà, en deux mots, la thèse du Gouvernement hellénique.

Ceux qui ne partagent pas cet avis se basent, entre autre, sur le caractère du Tribunal administratif qu'ils caractérisent de véritable « tribunal » sur « l'autorité de la chose jugée » des jugements de ce Tribunal, ainsi que sur le caractère des droits des particuliers, qu'ils caractérisent de « droits acquis », au sens propre du mot, tel que ce terme est compris dans le droit administratif. Certes, ce sont des arguments très sérieux qu'il faut prendre sérieusement en considération. Mais, lorsqu'on les examine de plus près, on constate qu'il n'y a aucun rapport entre ces qualifications : « tribunal », « droits acquis », « autorité de la chose jugée » et le droit de l'Assemblée générale de ne pas exécuter les jugements du Tribunal administratif.

Ceci a été relevé de façon excellente l'autre jour par l'honorable représentant des États-Unis d'Amérique. Les pouvoirs de l'Assemblée générale en matière de budget, pour préciser, l'étendue de ses pouvoirs, ne sauraient dépendre que de la Charte des Nations Unies qui est la constitution de notre Organisation. Or, la Charte ne pose aucune restriction aux pouvoirs de l'Assemblée en cette matière. Elle se borne à dire, en ce qui concerne l'approbation du budget, que l'Assemblée générale « examine et approuve » le budget de l'Organisation. Certes, l'Assemblée générale, en adoptant la fameuse résolution par laquelle elle a créé le Tribunal, a posé des restrictions à son pouvoir discrétionnaire en cette matière. L'Assemblée générale, qui est un organe politique, s'est posé des restrictions, je dirai

même, pour être plus exact, elle a abandonné son pouvoir discrétionnaire en ce qui concerne les jugements du Tribunal administratif, car c'est elle-même qui a créé le Tribunal, c'est elle-même qui s'est posé ces restrictions, c'est elle-même qui a abandonné tout pouvoir d'appréciation discrétionnaire en cette matière. Mais, est-ce que l'Assemblée générale, en se liant elle-même les mains, en se posant les restrictions que je viens de mentionner, s'est imposé l'obligation de suivre le Tribunal partout, quoi qu'il fasse, même lorsqu'on se trouve en présence d'un jugement, je dirai, scandaleux ? Il peut y avoir, par exemple, une corruption. Tout est possible. Certes, ce cas ne se présentera pas en réalité. Le Tribunal administratif est sous la présidence d'une personne pour laquelle j'ai le plus profond estime, et pour ses capacités de juriste et pour ses qualités personnelles. La haute morale de la présidente du Tribunal est une garantie contre un jugement scandaleux. Pas de doute sur ce point, mais des cas d'excès de pouvoir ne sauraient être exclus. Le Tribunal pourrait aussi commettre une erreur grave. Il peut par exemple s'arroger une juridiction qu'il ne possède pas. C'est humain, tout le monde peut commettre cette erreur. Dans un cas pareil, lorsqu'on se trouve devant un jugement qui ne tient pas debout, que l'opinion mondiale ne reconnaît pas comme juste, est-ce qu'on doit dire que l'Assemblée générale, en adoptant la résolution 351, etc., en disant que le Tribunal fixerait les indemnités, qu'elle va verser l'argent, est-ce qu'elle s'est liée pour toujours et dans toutes les conditions ?

Messieurs les Juges, une conception pareille serait contraire à la réalité.

D'abord, le Tribunal administratif, par rapport à l'Assemblée générale, est un organe secondaire — je ne dis plus « subsidiaire ». Ce serait une conception, à mon avis, étrange que de penser que l'organe principal, à savoir l'Assemblée générale, ne possède aucun pouvoir, même dans des cas extrêmes, de se soustraire aux obligations que cet organe s'est imposées de son propre gré. J'ai dit « dans des cas extrêmes », mais, Messieurs les Juges, nous nous trouvons en effet devant un cas extrême. Pendant la vie de la Société des Nations — pendant vingt ans —, une seule fois un cas s'est présenté où l'on a examiné la validité d'un jugement du Tribunal administratif, et quant aux Nations Unies, c'est le premier cas qui donne lieu à des controverses sérieuses. Lorsqu'on lit les observations des gouvernements, lorsqu'on entend les plaidoiries, on pourrait croire que ces cas se présentent continuellement et que l'Assemblée générale doit continuellement décider si elle peut ne pas exécuter ces jugements. C'est une erreur ! Vous savez que nous nous trouvons devant un cas exceptionnel, un cas qui s'est présenté l'année dernière et qui peut-être ne se présentera plus jamais. Et pour vous dire tout franchement, mon Gouvernement, s'il m'a demandé de venir ici pour exposer son point de vue, ce n'est pas parce qu'il pense qu'il s'agit d'une question qui pourrait avoir une importance pratique dans l'avenir, mais uniquement parce qu'il s'agit d'interpréter la Charte, car l'avis que vous allez émettre forcément comprendra l'interprétation de la Charte en ce qui concerne les pouvoirs de l'Assemblée générale, et ce problème est en effet important. C'est donc le problème à la fois théorique et politique qui a de l'importance, pas le cas présent. Dans le cas présent, si considérables que soient les sommes allouées aux fonctionnaires des Nations Unies, elles ne sont pas importantes par rapport aux sommes prévues par le budget des Nations Unies. Mais le

principe comme tel est important. Est-ce que l'Assemblée générale a le dernier mot dans ces questions-là ou est-ce qu'elle n'a pas le dernier mot. Est-ce que des organes secondaires ont le dernier mot ? Voilà la raison pour laquelle mon Gouvernement m'a demandé de venir plaider devant cette Cour.

Mais, comme j'ai dit auparavant, je ne veux pas trop insister sur le caractère du Tribunal administratif et les rapports existant entre l'Assemblée générale et ce Tribunal. Laissons cela de côté. Les pouvoirs de l'Assemblée générale peuvent être déduits de la Charte même, de la nature de ces pouvoirs. Nous n'avons pas besoin d'examiner si le Tribunal est un organe, subsidiaire ou un organe secondaire, ou n'importe quel autre organe des Nations Unies. Ce qui nous intéresse, ce sont les pouvoirs de l'Assemblée générale, et l'analyse de ces pouvoirs nous permettra de donner la réponse à notre problème. L'Assemblée générale est un corps souverain, un corps politique. C'est, à l'instar du Conseil de Sécurité, le corps suprême des Nations Unies. L'Organisation des Nations Unies connaît aussi d'autres organes, elle connaît la Cour. Un organe devant lequel on doit s'incliner. Il y a aussi d'autres organes: le Conseil économique et social, le Secrétariat, etc., mais l'Assemblée générale est l'organe politique des Nations Unies, organe politique par excellence à l'instar naturellement du Conseil de Sécurité.

Si l'on n'admettait pas le pouvoir de l'Assemblée générale de dire le dernier mot dans des questions du genre de celles qui sont devant nous, eh bien, on méconnaîtrait le caractère de l'Assemblée générale comme organe suprême des Nations Unies. On a critiqué la qualification de l'Assemblée générale comme organe souverain. On a dit: « organe souverain » mais où est-ce que cela est dit? La Charte ne dit pas que l'Assemblée générale est un organe souverain. Eh bien, est-ce que les constitutions de tous ces États représentés aujourd'hui ici, est-ce qu'elles disent que la France est un État souverain ou que le Royaume-Uni est un État souverain, que les États-Unis, la Hollande, etc., sont des États souverains? Mais cela ne se dit pas! La souveraineté, c'est une qualité qui ressort des compétences exercées par rapport au droit international, des pouvoirs, exercés par un État, par rapport au droit international. Donc, si l'on dit que l'Assemblée générale est un organe souverain, on déduit ceci des pouvoirs qu'elle exerce. D'ailleurs, je me suis posé la question suivante: l'Assemblée générale est composée d'États souverains, et je me suis dit: est-ce possible que l'organe, dans lequel sont représentés des États souverains, qui est composé d'États souverains, qui est un organe politique et non pas un organe administratif, ne soit pas lui-même souverain? Mais, comme j'ai dit au commencement de mon exposé, je suis très conciliant. Je n'attache pas beaucoup d'importance à cette qualification. Je voudrais être d'accord avec mes collègues qui ne partagent pas le même point de vue que moi. Laissons de côté cette question de souveraineté, laissons-la de côté, et examinons plutôt les pouvoirs de l'Assemblée. Nous constaterons que c'est l'organe suprême des Nations Unies, que c'est l'organe qui est comparable à un corps législatif. Je répète, c'est l'organe suprême des Nations Unies, qui est composé d'États souverains, c'est l'organe qui décide des questions concernant la paix et la guerre, c'est l'organe qui a une compétence générale. Jetez un coup d'œil sur l'article 10 de la Charte, qui dit:

« L'Assemblée générale peut discuter toutes questions ou affaires rentrant dans le cadre de la présente Charte.... »

C'est aussi la guerre et la paix. Cet organe politique, cet organe qui peut décider — plus ou moins — de tout ce qui est le plus important pour l'humanité, eh bien, je me demande si cet organe ne possède pas le pouvoir de ne pas exécuter un jugement du Tribunal administratif lorsqu'il trouve que la justice l'exige, que l'intérêt général l'exige. Voilà la question devant laquelle nous nous trouvons et à laquelle je réponds de façon affirmative.

Monsieur le Président, l'heure avance, il est maintenant midi. J'avais l'intention de parler pendant 45 minutes, peut-être 50 minutes, et je vais abréger mon exposé pour ne pas fatiguer les membres de la Cour. D'ailleurs, j'ai déjà dit l'essentiel sur la question.

La question qui se pose maintenant est celle de savoir comment trouver les motifs permettant à l'Assemblée générale de se libérer de ses obligations. Car c'est bien de cela qu'il s'agit, de se libérer des obligations qu'elle s'est imposées en adoptant la résolution créant le Tribunal administratif. Eh bien, ceci n'est pas facile. Il n'est pas facile de définir ces « motifs », ces « raisons ». La première question posée à la Cour parle de « raisons », la seconde parle de « motifs ». Je ne sais pas si cela a été fait intentionnellement, mais cela n'a aucune importance. Donc — je le répète — il est difficile de définir, peut-être même de façon abstraite, ces motifs. De façon générale, on pourrait dire que l'Assemblée générale peut se soustraire à ses obligations en matière de jugements du Tribunal administratif chaque fois — c'est une définition très générale — que l'intérêt général l'exige. Je vais mentionner quelques cas. Lorsqu'il y a des motifs sérieux, l'Assemblée générale peut s'écarter des obligations qu'elle a prises sur la base de la résolution que j'ai mentionnée plusieurs fois. Ce qu'on peut demander à l'Assemblée générale, c'est qu'elle exécute ses obligations de bonne foi, qu'elle n'agisse pas de façon arbitraire — n'oublions pas que nous avons affaire à un organe politique. Si des motifs sérieux font paraître à l'Assemblée générale l'inexécution de jugements comme s'imposant, dans ce cas-là il n'y a pas violation du principe de la bonne foi et l'agissement de l'Assemblée générale ne saurait jamais être qualifié d'arbitraire, il sera légitime.

Messieurs les Juges, je ne voudrais pas vous fatiguer trop, mais il me vient à l'instant une idée. Je ne sais pas si elle est bonne ou non. Vous allez en juger vous-mêmes. Elle m'est venue en lisant les deux textes que l'Assemblée générale vous a soumis: je parle des deux questions devant vous. J'ai lu beaucoup de fois — je ne sais pas combien de fois — ces deux textes, et j'ai constaté quelque chose qui m'a frappé et qui pourrait peut-être avoir une certaine influence sur la décision que vous allez prendre. Que dit la question n° 2 ? « En cas de réponse affirmative à la question susmentionnée, quels sont les principaux motifs sur lesquels l'Assemblée générale peut se fonder pour exercer légitimement ce droit ? » Je me demande : « légitimement » ce droit ? Est-ce que l'exercice d'un droit n'est pas toujours légitime ? L'exercice d'un droit, c'est un droit, et son exercice est certainement « légitime ». On pourrait donc avoir l'impression qu'il s'agit là d'un pléonasme, d'une erreur de rédaction. D'ailleurs, il ne faut pas s'étonner, ceux qui savent comment on a rédigé ces deux textes, ceux qui savent ce qui s'est passé pour arriver à ce compromis de textes, ne seront pas étonnés. Hélas,

on n'a pas envoyé ce texte à la Commission juridique, ce qu'on aurait pu faire, d'après une résolution adoptée par l'Assemblée générale il y a deux ou trois ans. Ce texte a été rédigé par la Commission budgétaire. Eh bien, on pourrait penser qu'une erreur s'est glissée dans le texte. Mais on pourrait penser aussi que le mot « légitime » est à sa place, car on peut posséder un droit, mais les conditions de son exercice n'existent pas. En effet, l'exercice d'un droit, lorsque les conditions de son exercice n'existent pas, n'est pas « légitime ».

Mais lorsqu'on lit notre texte, en même temps que la première question on se rend compte qu'il ne s'agit pas de cela, car dans le premier texte il est dit: « l'Assemblée générale a-t-elle le droit pour une raison quelconque de refuser », etc. On devrait donc dire, dans le deuxième texte : « en cas de réponse affirmative à la question susmentionnée, quels sont les principaux motifs permettant à l'Assemblée générale de ne pas exécuter le jugement ». Je me demande — c'est une question que je me pose et, si vous me le permettez, Messieurs les Juges, je voudrais bien vous la soumettre —, je me demande, quant à ce mot « légitime », si dans le subconscient de celui qui a rédigé ce texte et peut-être aussi dans le subconscient de ceux qui ont adopté ce texte, il n'y avait pas une autre idée. Ce texte parle de « droit », le droit de l'Assemblée d'exécuter ou de ne pas exécuter. Mais la notion de « droit » a été développée par le droit interne, le droit civil. On sait ce que c'est, le droit à une alimentation, on sait ce que c'est, le droit à une prestation, etc. Mais lorsqu'on parle de l'Assemblée générale, d'un organe politique, on pense à des « pouvoirs ». Il y a dans ces pouvoirs certainement l'aspect juridique, l'aspect de légalité, et je me demande si, en rédigeant ce texte, on n'a pas eu dans le subconscient la « légalité » de l'exercice des « pouvoirs » de l'Assemblée générale. On pourra donc, si l'on accepte l'idée qui m'est venue — je ne suis pas moi-même certain s'il faut y insister trop — se demander si l'Assemblée générale exerce des droits au sens propre du mot, comme on l'entend en droit interne, ou s'il ne s'agit pas plutôt de l'exercice de « pouvoirs » qui peuvent être ou « légitimes » ou « arbitraires ». Exercice légitime de pouvoirs ou exercice arbitraire de pouvoirs. C'est un aspect du problème que je me suis permis de soumettre à la Cour sans cependant y insister trop.

Monsieur le Président, je voudrais abréger mon exposé autant que possible. Je voudrais dire seulement deux mots sur les motifs qui pourraient servir de justification pour l'Assemblée générale pour ne pas exécuter un jugement du Tribunal administratif. J'ai déjà dit qu'il est difficile, pour ne pas dire impossible, de les définir de façon même abstraite, tout au plus pourrait-on mentionner quelques cas typiques permettant à l'Assemblée générale de s'écarter de ses obligations.

Je ne parle pas de « principaux » motifs, car en lisant de nouveau le texte de la seconde question, je crois avoir découvert quelque chose qui, peut-être, aurait pu être évité. La seconde question est ainsi conçue : « En cas de réponse affirmative à la question susmentionnée, quels sont les principaux motifs sur lesquels l'Assemblée générale peut se fonder pour exercer légitimement ce droit ? »

Les « principaux motifs ». Comment interpréter cette expression « principaux motifs » ? A mon avis, le sens de cette expression est qu'il s'agit de motifs plutôt « typiques », de motifs « classiques », et non pas de motifs « principaux ». Tous les motifs sont « principaux », il ne peut pas y avoir des motifs qui sont *moins* principaux et des motifs *plus*

principaux. Ou bien un motif est sérieux, ou il n'est pas sérieux. S'il est sérieux, si peu sérieux qu'il soit, l'Assemblée générale pourra s'écarter de ses obligations. Il ne faut pas interpréter notre texte d'après sa lettre, et je ne reproche rien au comité qui l'a rédigé. « Principaux motifs » ne veut pas dire des motifs qui sont plus importants que d'autres. Tous les motifs, lorsqu'ils sont sérieux, sont importants, ils ont tous la même importance, on en déduit les mêmes conséquences: c'est-à-dire que l'Assemblée pourra refuser d'exécuter un jugement. Donc, c'est dans ce sens qu'il faut interpréter, à mon humble avis, l'expression « principaux motifs ». Ce sont donc quelques cas typiques qui peuvent se présenter dans la pratique internationale.

Quels sont maintenant ces cas ? Eh bien, Monsieur le Président, je ne veux pas y insister trop. On les a énumérés dans les observations écrites des gouvernements. C'est surtout le cas d'un jugement défectueux. Par ce terme on entend en général un jugement où le juge a outrepassé les limites de sa compétence, etc. On peut penser aussi à un jugement où le tribunal a appliqué le droit de façon, je dirai presque, impossible. Voilà quelques cas ; on pourrait en citer d'autres. Je dirai de façon générale : tout motif qui est sérieux, quelle que soit son origine, quelle que soit sa nature, justifie l'Assemblée générale à se soustraire à ses obligations.

Monsieur le Président, Messieurs les Juges, je suis arrivé à la fin de mon exposé. Résumant nos conclusions quant au pouvoir de l'Assemblée générale de ne pas donner suite à un jugement se référant à des indemnités — je répète le texte qui se trouve dans la première question : « à des indemnités accordées par le Tribunal administratif à un fonctionnaire des Nations Unies à l'engagement duquel il a été mis fin sans l'assentiment de l'intéressé », nous pouvons dire que le refus éventuel de l'Assemblée générale d'exécuter des jugements doit être considéré comme légitime, chaque fois que la décision en question de l'Assemblée générale se fonde sur des motifs sérieux, et ne paraît pas comme une méconnaissance arbitraire du principe de la bonne foi, et, si vous voulez, je pourrais ajouter et du respect des droits acquis par les fonctionnaires.

Nous avons dit que l'Assemblée générale, dans des cas pareils, lorsqu'il y a des motifs sérieux, n'a pas besoin d'exécuter les jugements du Tribunal administratif. Dans ce qui précède, j'ai dit qu'elle n'approuverait pas les parties en question du budget. Mais ceci n'est qu'un cas particulier, car si vous lisez la question n° 1, il y est dit simplement que

> « quelles sont les raisons pour lesquelles elle peut refuser d'exécuter le jugement » ?

Ce texte ne fait pas de distinction. Il ne dit pas qu'il faut approuver ou ne pas approuver le budget. L'Assemblée générale veut une réponse générale à la première question. Quels sont les motifs permettant à l'Assemblée générale de ne pas « exécuter le jugement » ? Comment va-t-elle ne pas exécuter le jugement, c'est une question qui la regarde. Elle peut par exemple ne pas approuver le budget, c'est le cas qui s'est présenté en l'occurrence. Mais la question n° 1 n'a pas été présentée d'une façon spécifique, elle a un sens très large. L'Assemblée générale peut, par exemple, établir une nouvelle procédure de revision. Elle peut même renvoyer la question à la Cour, et demander à la Cour si le Tribunal a agi dans les limites de sa compétence et poser aussi à la Cour d'autres questions connexes à la question de fond. Donc,

la réponse que demande l'Assemblée générale doit forcément être donnée de façon générale. Elle ne doit pas parler seulement de la possibilité qu'on n'approuve pas les parties du budget. C'est un cas particulier. C'est le cas qui se trouve devant l'Assemblée générale en ce moment-ci, car c'est de cette façon-là que le problème s'est posé. Mais il y a tant de possibilités pour l'Assemblée générale de ne pas exécuter le jugement.

Monsieur le Président, Messieurs les Juges, nous avons terminé notre exposé. Je m'excuse si j'ai été long. En arrivant ici, mon texte était plus restreint, mais après avoir entendu les éloquents exposés de mes collègues, j'ai dû y ajouter quelques observations pour faire, pour ainsi dire, la critique de certains arguments avec lesquels mon Gouvernement n'était pas d'accord.

Nous avons, ainsi que nous l'avons annoncé au commencement, évité d'entrer dans les questions de détail. Ces questions de détail, qui ont certainement leur importance et qu'il faut avoir étudiées, si l'on pousse trop loin leur examen, on s'expose au risque de perdre de vue les principes généraux qui sont à la base du problème qui nous occupe. Notre avis est que c'est uniquement en remontant aux principes qui sont à la base des pouvoirs de l'Assemblée générale qu'on trouve la solution du problème.

Certes, la réponse que vous allez donner à l'Assemblée générale aux questions qu'elle vous a posées ne saurait avoir qu'un caractère général. C'est à une question préjudicielle que vous allez répondre. Votre avis ne tranchera pas la question de fond qui se trouve devant les Nations Unies. Aussi, la thèse que mon Gouvernement défend ici, par l'intermédiaire de ma personne, ne saurait, en aucun cas, préjuger sa position quant à la question de fond qui sera résolue par l'Assemblée générale elle-même.

Il ne me reste, Monsieur le Président, Messieurs les Juges, qu'à remercier les éminents Membres de cette Cour de l'honneur qu'ils m'ont fait en suivant avec patience mon exposé, que j'avais pensé être assez restreint au commencement, mais qui a pris une ampleur à laquelle je ne m'attendais pas. Je m'en excuse.

5. ORAL STATEMENT BY SIR REGINALD MANNINGHAM-BULLER

(REPRESENTING THE UNITED KINGDOM GOVERNMENT)
AT THE PUBLIC SITTINGS OF JUNE 12th AND 14th, 1954

[Public sitting of June 12th, 1954, morning]

May it please the Court.

I. The Court has now listened to four speeches on the two questions on which it has been asked to express an advisory opinion, and it is consequently with some degree of diffidence that I approach the task of making a further speech on the comparatively narrow legal issues raised by the questions, though it is true to say that these narrow legal issues have led to discussion here of greater issues affecting, or which may affect, the whole future of the United Nations and its constitution.

The Court has also had the advantage of having placed before it a mass of interesting and informative material. I do not feel that at this stage it would be helpful to the Court if I were to embark on any analysis of the written material in any detail, or if I were to repeat and to seek to embellish the arguments that have already been advanced. In particular, I do not propose to discuss whether the Tribunal is founded on Article 22 or Article 101 of the Charter: I propose to confine my observations to what appear to me to be the major issues bearing upon the questions on which the Court has been requested to express an advisory opinion. And I submit that really the major issues can be separated into two compartments and that really the first major issue is as to the position and functions of the General Assembly under Article 17, with regard to a liability incurred by another principal organ of the United Nations: and that is, I suggest, the first major issue, not the position and functions of the General Assembly generally, but the position and functions of the General Assembly under Article 17 with regard to a liability incurred by another principal organ of the United Nations. And I submit that the second major issue is as to the jurisdiction of the Administrative Tribunal of the United Nations, having regard to the fact that it was created by a principal organ, namely, the General Assembly.

But before, Mr. President, I begin to expound my argument, may I say that Her Majesty's Government believe that the answer to the first question is that the Assembly has no right on any ground to interfere with or to refuse to give effect to a decision of the Tribunal, and consequently that the second question put to this Court does not require an answer. I would add that if it were evident that the decision of the Tribunal was really a nullity, either on account of the Tribunal acting in excess of the jurisdiction conferred upon it, that is to say, acting *ultra vires*, or on account of serious misconduct on the part of the Tribunal, as, for example, allowing itself to be influenced by considerations of a venal character, or on account of conduct which amounts to a denial of justice, as, for instance, refusing to hear one of the parties to the dispute, then the correct view, in my submission, would be that such

an award was a nullity and of no effect, and that consequently no obligation arose to comply with the decision of the Tribunal.

In such a case there would be no need for the General Assembly to interfere with or to review the award, for, as I have said, the award should be treated as a nullity.

Now in none of the cases which have given rise to the opinion of this Court being requested has it, I think, been suggested that the Tribunal acted *ultra vires* in the sense in which I have used that expression. My learned friend Mr. Phleger has in his speech suggested that certain of the decisions of the Tribunal were wrong. But a wrong decision is not necessarily *ultra vires* and I do not think that it has been seriously suggested that the Tribunal acted in excess of the jurisdiction given to it. The argument has been that its decisions are not binding on the Assembly. Nor has it been suggested that the Tribunal was guilty of misconduct of the sort to which I have referred. I do not think, therefore, that it is necessary for me to consider further what would be the position if *ultra vires* action or misconduct on the part of the Tribunal was evident. I consequently propose to address my argument to the question whether the Assembly has any right on any ground to refuse to give effect to a valid award of the Tribunal—valid in the sense that it is *intra vires* and not vitiated by misconduct on the part of the Tribunal.

As I have indicated, the view of Her Majesty's Government is that the answer to this question is in the negative.

[Public sitting of June 14th, 1954, morning]

May it please the Court.

When the Court adjourned on Friday, I said that I proposed to address my argument to the question whether the Assembly had any right on any ground to refuse to give effect to a valid award of the Tribunal, valid in the sense that it is *intra vires* and not vitiated by misconduct on the part of the Tribunal. And in considering this question, I submit that one must have in mind the character of the United Nations Organization and its constitution. The United Nations Organization is not composed of several independent organizations : it is one organization, of which the General Assembly and the Secretariat are two of the principal organs—that is provided by Article 7 of the Charter. Each organ has its own functions to perform on behalf of the Organization. Each is responsible in its own field, but each acts not on its own behalf but on behalf of the organization of which it forms part. Each organ is, so to speak, in my submission, the agent within its sphere of the United Nations, and it is, I submit, most important to bear in mind that the General Assembly, although its membership consists of all the countries belonging to the United Nations, is not the United Nations itself. It is just one of the principal organs of the Organization. And while I naturally do not seek to suggest that it is not one of supreme importance, it is wrong, I submit, to regard it as a sovereign body, in the way my learned friend Mr. Spiropoulos suggested. Article 10 shows that his contention in this respect is not justified, for Article 10 declares that the General Assembly may discuss any questions or any matters within the scope of the present Charter, or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in

Article 12, may make recommendations to the Members of the United Nations or to the Security Council, or to both, on any such questions or matters. So that its power to make recommendations is limited, but it is given power to discuss any questions or matters within the scope of the present Charter, or relating to the powers and functions of any organs provided for in the present Charter. It is not, as my learned friend has sought to suggest, a completely sovereign body.

Now when this Court gave its advisory opinion with regard to the Reparation for Injuries suffered (its Advisory Opinion of April 11th, 1949) it said (and I quote) :

> "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...."

The Opinion went on to say :

> "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."

This passage specifically refers to capacity on the international plane, but it is clear that the Court did not intend to limit the capacity of the Organization to that sphere, for later it said that its conclusion that the Organization was an international person did not imply that all its rights and duties must be upon the international plane any more than all the rights and duties of a State must be upon that plane.

And I submit that it is a proper conclusion from that opinion of the Court that the United Nations as an organization has juridical personality, and that it is capable not only of assuming rights but also of incurring duties and obligations in the private, as well as in the public, sphere.

Further, Article 104 of the Charter itself provides 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 fulfilment of its purposes. On 13th February, 1946, in accordance with the provisions in Articles 104 and 105 of the Charter, the General Assembly adopted the Convention on the Privileges and Immunities of the United Nations. Section 1 of that Convention said in terms that the United Nations should possess juridical personality and that it should have capacity

> to contract ;
> to acquire and dispose of immovable and movable property ; and
> to institute legal proceedings.

Now, I submit, it is plain from that Section of the Convention that the United Nations has the capacity to assume rights and obligations not only in international law, but also under any branch of law, whether it be considered international or not. It may do so by means of contracts. To take a simple case, can it be doubted that it is within the capacity of the United Nations to incur a liability for the rent of property ? If it can, and if it does incur such a liability, can it be said that the

General Assembly has any legal right to refuse to recognize that obligation ? The answer surely must be "No".

And before I come to consider a liability which results from a judicial determination, it is, I think, important to have regard to the position where there is no dispute as to the liability and consequently no judicial determination.

The Secretariat, in the proper discharge of its functions, may incur a liability. It incurs it on behalf of the Organization, the United Nations. It is a liability of the United Nations. Mr. Spiropoulos in his interesting argument accepted that the United Nations could incur obligations.

In my submission the Assembly has no legal right to refuse to give effect to obligations entered into by the United Nations, and no legal right to repudiate a liability incurred by another principal organ in the proper discharge of its functions. I say "legal right", for this Court is concerned with legal and not with moral or political questions, and it was, I submit, to emphasize that the questions put to this Court are legal questions that the word "lawfully" appears in the second question.

II. What, then, is the function of the General Assembly with regard to a liability incurred by the United Nations ? As is pointed out in the Written Statement of Her Majesty's Government, a clear distinction must be drawn between the powers of the General Assembly and its legal rights. By Article 17 of the Charter, the Assembly is charged with the duty of considering and approving the Budget of the Organization. In performing that duty it is acting not for itself, but on behalf of the United Nations as a whole.

One purpose of a budget is to make provision for expenditure that is going to be made in the current year. In drawing up a budget, regard must be had to commitments involving expenditure which have already been entered into and, of course, to contemplated expenditure in relation to which there is no present commitment.

It is of course within the power of the Assembly to omit any particular item from its Budget. If it does so, there is no appeal from its decision. It has power to omit to make any provision for payment of a particular liability, but it does not follow from that, from the possession of this power, that it has the legal right to repudiate a liability of the United Nations, whether incurred by the Secretariat or by any other organ of the United Nations in the exercise of its functions.

To take, if I may, a simple illustration, let me assume that in my country a particular liability falls upon the Crown. When the Budget is drawn up, let us assume that no provision is made in the Budget to meet that liability. That does not mean that those responsible for drawing up the Budget have the legal right to deny the debt, to repudiate liability.

To take another simple illustration, the directors of a public company may decide not to pay a debt, may decide not to make provision for it in their annual budget. They have power to make such a decision. But it does not follow, and it is not the case, that because they have that power, they have any legal right to refuse payment. If directors took such a course, under the municipal law there would be means of enforcing payment. The fact that there is no method of enforcing payment against the United Nations does not mean that the Assembly possesses a legal right to refuse payment. It has no more right to refuse

payment of a liability incurred by the Secretariat than it has to refuse to make financial provision for this Court. It has the power to omit to make financial provision for this Court in the Budget, as it has power to omit to make financial provision for any liability, but as I have said, possession of that power is a very different thing from possession of a right, a legal right, to refuse payment.

I have spent some time on Article 17 of the Charter because it is upon this Article that a great part of the case put forward on the other side depends.

In my submission, those who take the contrary view to that I am putting forward attach far too much weight to the word "Budget" in Article 17 and misinterpret that Article in consequence.

III. So far I have been speaking of a liability incurred by one of the principal organs of the United Nations on its behalf, a liability about which there is no dispute, with regard either to the manner in which the liability arose, or as to its extent.

To summarize my argument so far, I submit that under the constitution of the United Nations, the General Assembly has no legal right to refuse to meet such a liability, though it has the power to omit to make provision for it in its Budget.

Now I come to the position where the liability has been disputed. And in my submission, it makes no difference whether or not the liability on the part of the United Nations arises in consequence of a judicial determination. If the Assembly has the right to refuse payment of a liability incurred by another principal organ as a result of a judicial determination, it must surely have the right to do so when liability is admitted by that organ. Equally, if it has not, as we submit it has not, the right in the one case, it also has not the right in the other.

In three types of case, the question of the liability of the United Nations or its organs can become justiciable, and in considering the effect of a decision of the Administrative Tribunal, regard should be had to the other two types of case.

The Headquarters Agreement made between the United Nations and the United States of America on the 26th June 1947 provides by Section 21 for any dispute between the United Nations and the United States concerning the interpretation or application of the Agreement to be referred for (and I quote the words) "final decision" to a Tribunal of three arbitrators.

Section 21 also provides that the Secretary-General of the United Nations may ask the General Assembly to request of this Court an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the Arbitral Tribunal is to be observed by both parties. Thereafter the Arbitral Tribunal is to render a final decision, having regard to the opinion of the Court.

No doubt if there was a case for arbitration under this Agreement, the case on behalf of the United Nations would be submitted to the arbitrators by the Secretary-General. I suggest that it is clear beyond all doubt that the award of the Arbitral Tribunal, whether as an interim decision or as a final decision, would be binding on the United Nations Organization and not merely on the Secretary-General, and binding not.

only on the United Nations Organization but also on the principal and subsidiary organs of the United Nations, including the General Assembly.

The General Assembly might, it is true, fail to make provision for meeting the award of the Arbitral Tribunal, but in my submission the award would clearly be legally binding, though it might be unenforceable. The General Assembly would have no legal right to repudiate the award, no legal right to refuse payment, though it would have power to omit to make provision for payment. The final decision of the Arbitral Tribunal is final, just as is the decision of the Administrative Tribunal.

Now the second type of case, where the question of liability of the United Nations may become justiciable, arises under the General Convention on the Privileges and Immunities of the United Nations. Section 2 of that Convention provides that the United Nations shall enjoy immunity from every form of legal process, except in so far as in any particular case it has expressly waived its immunity. As I have indicated, the United Nations has power to enter into a contract. A dispute may arise between the United Nations and the other party to the contract. The latter may make a claim for damages against the United Nations. Immunity might be waived. Judgment might be given against the United Nations for a sum of money.

The successful party would, however, be unable to enforce his judgment, for Section 2 of the Convention provides that no waiver of immunity shall extend to any measure of execution.

None the less, it could hardly be disputed that in such circumstances the United Nations was under a legal obligation to satisfy the judgment, but again, the Assembly might not make provision for doing so in the Budget. In my submission, the Assembly would have no legal right to repudiate the judgment, no legal right to refuse to make provision, but rather a duty which it might not, and has power not to, discharge, of satisfying the judgment.

In my submission the position is precisely the same whether the decision be that of the Arbitral Tribunal under the Headquarters Agreement, or that of a court of one of the Members of the United Nations, or that of the Administrative Tribunal created by the Statute of the United Nations. In none of these cases has the General Assembly any legal right to repudiate the liability.

IV. I now come, Mr. President, to the position of the Administrative Tribunal in relation to the General Assembly and to consider the effect of a decision of that Tribunal. A great deal of argument has been devoted to the question whether or not the Tribunal is a subsidiary organ. It is clear that the Tribunal was created by the Assembly. In one sense it may be that it is subsidiary: in the same sense it may perhaps be said that the Arbitral Tribunal set up under the Headquarters Agreement is subsidiary, but in my submission the Administrative Tribunal is not subsidiary in the sense in which that word is used by those who take a contrary view to that which I am submitting.

Their argument runs as follows: the General Assembly, it is said, is a principal organ of the United Nations. It has certain functions to perform. It may create subsidiary bodies to assist it in the performance of its functions, but it cannot divest itself of its responsibility. It cannot delegate to a subsidiary body power to discharge functions exercisable only by itself. The Tribunal can advise: it can make recommendations

to the Assembly, but it cannot make a decision binding on the Assembly. So runs the argument. And the argument goes on, if the Statute of the Tribunal gives it wider powers than this, and gives it power to make decisions which are binding on the Assembly and the United Nations, then the General Assembly in passing a Statute with this effect was acting *ultra vires*.

I now propose to reply to this argument. In the first place, Article 22 of the Charter gives the Assembly power to create such subsidiary organs as it deems necessary for the performance of its functions. My learned friend, Mr. Phleger, attached importance to the difference between the draft at San Francisco, which referred to bodies and agencies, and the use of the expression "subsidiary organs" in Article 22. In my submission, there is no importance to be attached to that difference in wording. Bodies and agencies created by the General Assembly would be subsidiary organs.

What is important is that the draft and the Article both say—and I quote—"as it deems necessary for the performance of its functions".

It is to be noted that the Article does not read "as it deems necessary to *assist* it in the performance of its functions". If the Charter had said that, then clearly the function of a subsidiary body could only have been advisory. In fact, the Article does not say that, and the fact that it does not do so is significant.

The Article is wide enough in its terms to enable the Assembly to delegate the performance of some of its functions to a body it has created. The fact that its terms are so wide is sufficient to counter the contention that it was *ultra vires* for the Assembly to create a Tribunal with power of final decision and to delegate to the Tribunal functions which are initially vested in the General Assembly.

To establish that the Tribunal is subsidiary to the Assembly is not sufficient. To argue that, because it is subsidiary, it cannot give a final decision with which the Assembly has no right to interfere is a *non sequitur*. What one must have regard to is to the powers and authority given to the subsidiary body and to the task it is required to perform. Then, and only then, can one determine whether it is merely an advisory body or a body to which complete power within a certain field has been delegated. Mr. Stavropoulos, for the Secretary-General, has already shown the wide variety of bodies created by the United Nations, bodies which may be subsidiary, and he has established that it cannot be said in relation to all those bodies that their primary function is advisory. His speech reinforces my contention that one must look at the powers and authority given to the body and to the task it is required to perform.

Now, what was the problem with which the Administrative Tribunal was created to deal? Article 101, sub-section 3, of the Charter states that the paramount consideration in the employment of the staff and the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. That was the paramount consideration to which the General Assembly had to have regard in establishing staff regulations. But the highest standards of efficiency, competence and integrity are not likely to be achieved unless the individual who enters the employ of the United Nations is able to feel that in a dispute with his employers, the matter can be submitted to adjudication by a tribunal or body which is impartial, fair and independent. Unless that can be secured, the best individuals

are not likely to be attracted to the service. They know that they cannot bring before the Court of any country in which they are, a dispute with the United Nations as to their terms of employment.

Some machinery had to be devised, just as it had to be devised in the days of the League of Nations, to secure that staff employed by the United Nations could have recourse to an impartial and independent tribunal which could adjudicate a dispute as to their terms of employment.

It was to this end, I submit, that the Administrative Tribunal was created, as part of the essential machinery if staff of the highest efficiency, competence and integrity were to be secured.

This contention is supported by the wording of the Statute, Article 2 (1) of which states that the Tribunal shall be competent to hear and pass judgment upon applications alleging non-performance of contracts of employment of staff members, and Article 10 (2) of which states that "The judgments shall be final and without appeal". The use of the words "judgment" and "judgments" is in my submission quite inconsistent with the theory that the only function of the Tribunal is to assist the Assembly by advice and recommendations. If that theory was well-founded, would you not have had "advisory opinion" instead of "judgment" ?

The Statute makes it clear that the Tribunal is the deciding body. Unless it is the deciding body, it does not meet the need for an independent and impartial tribunal. If it is not the deciding body, the General Assembly must be, but it is the General Assembly which establishes the Staff Regulations. If the General Assembly is the deciding body, the Tribunal is no substitute for the courts to which an ordinary citizen can have recourse in the event of a dispute with his employer as to the terms of his service.

In my submission, this Tribunal was created to be, and is for the employee of the United Nations, what the courts of a country are for the ordinary employee. It is a very vital feature for protecting the rights of members of the Secretariat. In the opinion of Her Majesty's Government, the existence of the Administrative Tribunal, its power to hear complaints that a staff member has been wrongfully treated or dismissed, its power to order financial compensation in certain cases if it considers the complaint well-founded, constitutes part of the basis on which persons join the Secretariat, or having joined it, remain in it.

If, as I have submitted, the United Nations can be bound by the decision of an arbitral tribunal, set up under the Headquarters Agreement, to the creation of which it has assented, if it can be bound by the judgment of a national court when it has waived its immunity, there is no reason why it should not equally be bound by the award of a tribunal not created by agreement with any State, but created by its own act.

As I have said, unless it can create such a tribunal, unless it has created such a tribunal, an essential piece of machinery for the protection of its employees is lacking.

The contrary view is that the Assembly is not, that the United Nations are not, bound by the decisions of this Tribunal, but that it is open to the Assembly to set them aside, to repudiate them entirely or to reduce, or indeed increase, the compensation awarded. If this is right, on what principles is the Assembly to act ? The Charter does not state them. If it is open to the Assembly to do this, it must be open to the Assembly

to do so if it considers the award to be erroneous, or unwise or politically undesirable.

Mr. Spiropoulos contended that the Assembly was entitled to do so on—and I quote his words—"serious grounds". He made great play with the use of the words "principal grounds" in the second question. No one would suggest that the Assembly would act in a spirit of levity. To say that it could take that action on serious grounds is to say that the Assembly is perfectly free to repudiate any decision of the Tribunal on any ground ; for if it wished to repudiate on any ground it would be bound to say that that ground was serious.

Mr. Spiropoulos recognized the existence of an obligation on the General Assembly as a result of an award by the Tribunal. For him to go on and say that such a legal obligation can be repudiated on any ground the Assembly considers serious is to deny the existence of the legal obligation. With the greatest respect to him I submit that his argument is inconsistent. If he says, as I submit he says rightly, that a legal obligation on the Assembly arises from the award of the Tribunal, he cannot be right in saying that the Assembly has complete discretion to repudiate the obligation on any ground it considers serious.

If the Assembly is legally entitled to repudiate an award of the Tribunal, why does the Statute speak of "judgments" ? Why is a Tribunal created ? Why not just a committee or advisory commission—not to give decisions or pass judgments, but merely to tender advice that can be accepted or rejected at will ?

The real employer of the staff is the United Nations. Before the Tribunal it is of course represented by the Secretary-General. But it is because in reality the United Nations is the other party to a dispute brought by an employee before the Tribunal that you find the express provision in the Statute that the Tribunal shall order the payment of compensation and that the compensation awarded shall be—and here I quote—"paid by the United Nations". How can it really be said that a judgment shall be final and without appeal, a judgment in substance against the United Nations, if the Assembly have any right to review that judgment ; if it is entitled to say, "We do not like this decision ; we do not agree with it ; we have the legal right to refuse to implement it and we exercise that right" ?

V. I said a little time ago that some machinery had to be devised, just as it had to be devised in the days of the League of Nations, to secure that staff employed by the League of Nations could have recourse to an independent and impartial tribunal to adjudicate upon disputes between them and their employers.

The history of the Administrative Tribunal of the League of Nations begins, and is, indeed, founded, on the Report made by the Rapporteur of the Supervisory Commission in 1925. As the Memorandum by the International Labour Office shows at pages 31 and 32 of the booklet, the concept of the Rapporteur was of a juridical tribunal which would ensure to officials (here I quote) "the firm conviction of safety and security emanating from justice." The Statute creating that Tribunal would, so the Rapporteur said, provide (and again I quote) "a judge for every dispute" and prevent one of the parties from being (again I quote) "a judge in his own case". Its judgments would be final. "An advisory body", the Report stated, "dependent or independent, may be useful

but can never replace a body empowered to give final decisions." That was in 1925.

The Supervisory Commission of the League in 1927 submitted a Report including a draft statute and this was the basis of the Statute ultimately adopted by the Assembly of the League. That Report throws much light on the character of the Tribunal established by the League of Nations and on the effect of its awards. It pointed out that officials could not bring actions in the ordinary courts to enforce the terms of their appointments ; that disputes might arise as to the exact legal effect of the terms of their appointment, and that it was not satisfactory that officials—and here again I quote—"should have no possibility of bringing questions as to their rights to the decision of a judicial body".

Similar, indeed, precisely similar, observations might have been made—and I think were made—with regard to the staff of the United Nations before the creation of the Administrative Tribunal.

The Report of the 1927 Supervisory Commission of the League said in terms that the proposed tribunal was—I quote again—"to be exclusively a judicial body set up to determine the legal rights of officials on strictly legal grounds", and that it was to pronounce finally upon any allegation that the Administration had refused to give any official treatment to which he was legally entitled or had treated him in a manner which constituted a violation of his legal rights. No provision was made for the review or alteration of the judgments of the Tribunal and, in the words of the Memorandum submitted to this Court by the International Labour Organization, the Report (I quote) "made clear that it was not envisaged that awards of the Tribunal would be subject to review in the exercise of budgetary authority".

The award of the Tribunal was clearly intended to be final and binding, not only on the administration but also on the League, or, as the case might be, on the International Labour Organization.

Mr. President, I do not propose to take up time in comparing the Statute of the Administrative Tribunal of the League of Nations and that of the Administrative Tribunal of the United Nations. Comparison of the two, in my submission, clearly establishes that the latter Statute is modelled on the former. The intent behind the two Statutes, in my submission, is the same ; both are intended to deal with precisely the same problem.

The Court has heard a most interesting and able argument on the Statute of the United Nations Administrative Tribunal by those arguing on the other side. It is not without interest to reflect that a precisely similar argument could have been put forward with regard to the Statute of the Administrative Tribunal of the League of Nations. It could equally have been said that the League could not have delegated its functions to a Tribunal. It could equally have been argued that the League could revise and review.

But such arguments, if they had been put forward and if they had prevailed, would have entirely defeated the object and purpose for which that Tribunal was created. The Reports to which I have referred show that.

The arguments to which this Court has listened would, if they prevailed, also entirely defeat the object and purpose for which the Administrative Tribunal of the United Nations was created.

The Report of the 1927 Supervisory Commission of the League said it was unsatisfactory for the Administration to be both judge and party in any dispute as to the legal rights of officials. If there were no provision for any reference to a Tribunal, the Administration would be judge in its own cause. Claims by officials against the Administration arise out of the acts or omissions of the Administration. If the last word rested with the Administration it would be judge in its own cause. The Administration does not act *in vacuo*. It acts on behalf of the Organization, so that its cause is also the cause of the Organization.

Mr. President, I willingly concede that the view may be taken by some that an employer is the best judge in his own cause ; that is not a view that I can support, nor is it, I think, a view which many employees would support.

The need for a "fair hearing body" (that was the expression used by Mr. Phleger), the need for a "fair hearing body" in any administration is recognized. It is, I submit, quite inconsistent with that that it should be open to the employer to repudiate or to amend the conclusion to which such a "fair hearing body" has impartially and independently arrived. Yet that is what those who take the contrary view seek to assert in this case.

It is because the Administration acts for the Organization that an award in favour of a claimant before the League of Nations' Tribunal was made chargeable to the League. Similarly, it is because the Secretary-General acts for the United Nations in his relations with staff that one finds the provision that awards by the Tribunal shall be paid by the United Nations.

VI. I now come, Mr. President, to the decision in 1946 of the Assembly of the League, which it is said affords a precedent for saying that the General Assembly of the United Nations has the right to refuse to pay an award of the Tribunal.

Examination of this alleged precedent shows that it is really not entitled to be so described. The Administrative Tribunal of the League of Nations had under consideration a resolution of the Assembly of the League, and by its award the Tribunal sought to set aside the Assembly's legislative act, and having come to the conclusion that the legislative act in question was an infringement of the rights of the staff, to attribute a particular intention to that act. Thus it can be said that the Tribunal acted in excess of its powers in refusing to recognize the validity of a decision of the Assembly of the League, and in refusing to recognize the intent behind that decision.

Similarly, I do not suggest for one moment that if the General Assembly amended their Staff Regulations and thereby affected the rights of the staff, it would be open to the Administrative Tribunal of the United Nations to declare such amendments invalid, or that it would be open to the Tribunal to attribute to such amendments an intent which they did not bear. I do not suggest for one moment that it is within the competence of the Administrative Tribunal to rule that a legislative act of the Assembly is null and void and of no effect, but to say this does not mean that the decision of the Tribunal made in the exercise of jurisdiction which, at the time of the decision, is vested in it, can be challenged or reviewed by the General Assembly.

It was because, in this instance, the Tribunal of the League had clearly acted in excess of its powers that Sir Hartley Shawcross of the United Kingdom, who was Rapporteur of the Sub-Committee which had to consider the awards of the Tribunal, and upon whose Report the decision of the League was based, said that he approached the matter on the broad basis of what was politic and right rather than on the basis on what might be strictly in accordance with the law.

I am not suggesting that the decision of the Assembly of the League was wrong. I am not suggesting that the decision of the Administrative Tribunal of the League was right. What I am saying is this—that that was a decision of the Tribunal which was really in excess of their powers, and the fact that that decision in excess of their powers was repudiated by the Assembly is no support for the proposition that an award by that Tribunal which was *intra vires*, not in excess of its powers, could also be lawfully repudiated or amended by the Assembly.

I want to make it clear that my contention that the Administrative Tribunal of the United Nations was expressly given power to deliver *final* judgments binding on the United Nations does not mean the supremacy of that Tribunal over the General Assembly. The Assembly can, if it wishes, abolish the Tribunal. It can, if it wishes, amend the Statute, but while that Statute is in existence, in its present form, the Assembly as an organ of the United Nations is bound by its terms.

The Tribunal would not be competent to reverse decisions of the Assembly ; it would not be acting within its powers if it refused to give effect to Resolutions of the General Assembly modifying the Staff Rules and Regulations ; but so long as the Tribunal exists under this present Statute, it is given power by the General Assembly to determine in certain circumstances whether or not any obligation to any particular member of the staff rests upon the United Nations.

Under the constitution in my country, the Crown may be bound by the terms of a particular Statute. A Statute to be effective requires the Royal assent and while it is open to Parliament, with the consent of Her Majesty, to repeal or to amend any Act, so long as an Act which is intended to apply to the Crown is in force, the Crown is bound by that Act just as much as any ordinary individual.

This, I submit, is a close analogy to the position of the United Nations and General Assembly with regard to a Statute passed by the General Assembly. In my submission, a Statute passed by the General Assembly may well affect, while the Statute is in force, the powers of the General Assembly in a particular field. Indeed, it may be designed and intended to that end. In this case, in my submission, it was clearly designed and intended to that end in order to secure that the Assembly should not be a judge in its own cause, and to secure that disputes between the United Nations and its employees, disputes which were not amenable to the jurisdiction of the ordinary courts, should be determined by an independent and judicial tribunal.

While that Statute is in force, in my submission, the General Assembly is bound by its terms.

I desire to reiterate that I am not suggesting that the Tribunal can override the Assembly ; if the Assembly decides to abolish the Tribunal it can do so. If it decides to trim its wings, again it can do so. But while it has delegated these powers to the Tribunal, it is obligatory upon the

Assembly to have regard to and to observe and comply with the decisions of the Tribunal to which such powers are delegated.

VII. Mr. President, as I have said, the case which I have to meet has really fallen into two distinct sections, the first of which is as to the position and functions of the General Assembly. It has been argued that it is not possible for the General Assembly to delegate any of its functions and to divest itself of the performance of the functions imposed upon it by the Charter.

I have already dealt with this argument. In my submission it is unsound. I have sought to show that it is within the sphere and it may be part of the functions of a principal organ of the United Nations to incur a liability on behalf of the United Nations. If such a liability is incurred, then, under Article 17, the question of making provision for meeting that liability arises for consideration of the Assembly.

I have sought to show that it is incorrect to say that it is open to the General Assembly to repudiate the liability incurred by any principal organ acting within its sphere on behalf of the United Nations.

The second line of argument which has been advanced is that the Tribunal is subsidiary to and, if I may use the expression, a creature of the Assembly. I think I have dealt with this line of argument sufficiently. I would only summarize my reply to it by saying, as has already been said in this Court, that subsidiary organs may take many forms and a subsidiary organ may have delegated to it by the principal organ executive powers in such a fashion as to exclude interference with the actions of that organ by the General Assembly.

I cannot help but feel that a great deal of the argument that I have to meet is due to treating the word "power" as synonymous with a right; that the Assembly has power to omit to make provision for any liability, whether or not liability determined by a judicial tribunal, I concede. But while it lies within the power of the Assembly to omit to make provision for any liability, it is quite a different thing to assert that under Article 17 the Assembly has a legal right to repudiate a liability.

It is upon the distinction between a power and a right that this case largely turns, and the fact that this distinction has not been sufficiently appreciated appears to me to be the substantial fallacy in the arguments I have to meet.

If I may just give one simple illustration of the distinction: a man may have the power to drive a motor car; it may be lawful for him to do so; he may have passed the necessary driving tests, obtained the necessary licences, certificates of insurance, etc., it may not be possible to dispute that in law he has power to drive a motor car on the highway —but the possession of this power does not mean that he has any legal right to drive recklessly or dangerously. The possession by the Assembly of the power to omit an item from its Budget does not mean that the Assembly has any legal right to repudiate any liability properly incurred by any principal organ of the Assembly or a liability which, after a dispute has arisen, has either been determined by the Administrative Tribunal or by the court of any country, immunity having been waived, as a liability resting upon the United Nations.

Mr. President, I would add that if the Assembly deliberately omitted to make provision for meeting an award binding upon the United Nations, it might well be regarded as a breach of faith on the part of the United

Nations ; no machinery exists at present for enforcing a legal judgment against the United Nations.

I do not suggest that it is not within the power of the Assembly to be guilty of a breach of faith, if it so decides, but what I do say is that such a power does not imply any legal right either to refuse payment of an award or to repudiate a liability.

I would say in conclusion, speaking as I am on behalf of Her Majesty's Government, that we feel considerable regret that there should be such a division of opinion between Members of the United Nations upon this issue.

At the same time, I should like to make it clear that Her Majesty's Government regard it as an issue of very considerable importance, for upon the existence of an independent and impartial Tribunal which can adjudicate in the event of disputes between members of the staff and their employers, the United Nations, and which can give a final decision upon such disputes, largely depends the possibility of securing for the United Nations a staff of the highest efficiency, competence and integrity.

6. ORAL STATEMENT BY PROFESSOR TAMMES

(REPRESENTING THE NETHERLANDS GOVERNMENT)
AT THE PUBLIC SITTINGS OF JUNE 14th, 1954

[Public sitting of June 14th, 1954, morning]

Mr. President, Honourable Members of the Court.

Important and difficult questions have been put before the Court, questions involving the rights of persons in the service of the United Nations. Only a few years ago the advisory opinion of the Court was requested on questions of a different character but likewise connected with the position of persons in the service of the United Nations. This may impress us with the importance of the group of international officials whose number is increasing simultaneously with the growth of the phenomenon of international organization. Nowadays thousands and thousands of people are in the peculiar position of international civil servants and modern international co-operation would be unthinkable without their devoted work. It is for this reason that the Netherlands Government has from the beginning taken a special interest in problems relating to the personnel of international secretariats, particularly of the League of Nations and of the United Nations. And therefore we welcome the opportunity of presenting an oral exposition in addition to our written statement on the questions regarding the effect of awards of compensation made by the United Nations Administrative Tribunal. However, after the extensive information which has been given and after the many arguments set out so skilfully and eloquently, I beg the Court to permit me to concentrate on a few main issues which have the special attention of my Government. These issues may be grouped under two headings which can be considered separately : the nature of the United Nations Administrative Tribunal and the budgetary power of the General Assembly. The complexes of problems, indicated in this way, can be considered separately, for even if the nature and thus the powers and competence of the Administrative Tribunal were completely clear, the General Assembly, in the exercise of its budgetary function, might be regarded as having its own independent and dominant responsibility.

As to the nature of the Tribunal I first wish to state that my Government completely agrees with those who have considered the provision of the Statute that "the judgments shall be final and without appeal" (Article 10, paragraph 2) sufficiently clear and expressing the true intention of the Assembly in setting up the Tribunal. To prove this, many arguments taken particularly from the legislative history of the Statute have been put forward and I will refrain from repeating them. In any case, we have found it difficult to imagine a conception of a procedure of review or reconsideration without any regulation of its application, of the conditions for invoking it and of its limits and effects.

I will have to dwell at some length, however, upon the nature of the Tribunal as far as it is laid down in Article 2, paragraph 3 : "in the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal". This, of course, has partic-

ular reference to preliminary objections as to the competence of the Tribunal to take cognizance of the case *ratione personæ* and *ratione materiæ*. It is an established principle of jurisprudence, laid down in many national and international legal texts, that a tribunal generally must have the power to determine its competence on the basis of the instrument which is the source of its jurisdiction. But, taking into consideration the clause that judgments are final and without appeal, and the absence of any provision regulating a procedure of challenging the final judgments, I think that the provision making the Tribunal the judge of its own competence means more. It also means that in case there should be some objection to the effect that the Tribunal, by its final decisions, would have exceeded or misconstrued its competence, the construction by the Tribunal of its competence would still remain the last word in the matter. It is a well-known fact that the distinction between lack of competence and excess of competence is not an absolute one. The Tribunal may decide (as it actually has decided in a number of cases) that the Secretary-General has misused his discretionary power to terminate at any time a temporary appointment if, in his opinion, such action would be in the interest of the United Nations. The objection may be made—and has been made—from some quarters that the Tribunal, in deciding so, has exceeded or misconstrued its competence because it has given an opinion on matters reserved to the opinion of another authority, has encroached upon the discretionary power of that authority, and has substituted its judgment for that of the Secretary-General. The Tribunal, on its part, will find that it is competent to interpret its own Statute, that it has rightly concluded from this Statute to be competent to interpret the Staff Regulations, and that it is completely within its competence to come to an interpretation leading to the conception of misuse of a discretionary power. Obviously, it has been the intention of the legislature—namely, the Assembly adopting the Statute and deciding that the Tribunal should be the judge of its own competence in final instance—*that the last word should be with the Tribunal in interpreting its competence, including the competence to interpret the Staff Regulations.*

[Public sitting of June 14th, 1954, afternoon]

What I attempted to set out this morning was that it is typical of a judicial body, being the judge of its own competence—maître de sa compétence—to possess the widest powers to interpret the instrument which is the source of its jurisdiction and to construe the law to which this instrument refers. This being so, *an exception to this rule may not be supposed.* If the legislator had intended to make such exception, he would and should have expressly provided to this effect. This becomes the more clear when it is noticed that in the case of some other international organizations the legislator actually has provided so, accurately indicating, of course, the limits of the exception and the authority which decides in case the competence of the tribunal is challenged either by way of a preliminary objection or, after the judgment, on the ground of a fundamental fault in the manner in which the decision of the Tribunal has been reached. A provision of this type is inserted in the Statute of the Administrative Tribunal of the International Labour Organization,

Article XII. This is also in force, *mutatis mutandis*, in respect of those international organizations, like the UNESCO, which recognize the jurisdiction of this Tribunal, and as appears from the Memorandum of the International Labour Office: "this Article [Article XII] was designed to set at rest the perplexing difficulty that confronted the League Assembly in 1946.... The significance of the Article lies in the fact that such challenge is made to superior judicial authority and is not left to the decision of a representative body." As a matter of fact, in the cases of 1946 the Secretary-General had contested the competence of the Administrative Tribunal by way of a preliminary objection. The Assembly, for its part, had challenged the judgments of the Tribunal because, in the opinion of the majority of the Assembly, the Tribunal had exceeded its powers by putting its authority above the authority of the Assembly. In order to deal with a similar situation and to do this, if I may say so, in a more elegant manner, the International Labour Organization, in taking over the Administrative Tribunal upon the dissolution of the League in 1946, added the new Article mentioned to the old Statute.

However, the General Assembly of the United Nations, discussing in 1949 a similar Statute for a new Administrative Tribunal, consciously did *not* create an exception to the normal rule that a tribunal is the judge of its own competence. Twice during the discussions in connection with Article II, paragraph 3—first by the U.S.S.R. and afterwards by the Canadian Representative—the suggestion was made that decisions as to the competence of the Tribunal should be taken by the General Assembly rather than by the Tribunal itself. These suggestions were opposed by the Chairman of the Advisory Committee on Administrative and Budgetary Questions and by other members of the Fifth Committee, and the point was not pressed. The Committee, in dealing with the matter of competence in connection with the proposed wording of paragraph 3 of Article II, had especially in mind the case of preliminary objections. Nevertheless—as was already the conclusion of the Netherlands Written Statement, page 83, from the analysis of the discussion of this point—the repeated contrasting of the Tribunal as the judicial body with the Assembly as the political body makes it clear that on the whole the Committee did not consider the Assembly fit for a judicial function, either in respect of settling preliminary disputes as to the competence of the Tribunal, or as regards reviewing final decisions of the Tribunal because of alleged lack of competence. This had been the established opinion since the days when, in the League of Nations, the Council as a political organ for settling disputes between the Organization and the individual staff members had been replaced by an Administrative Tribunal. I have felt obliged to refer again to this piece of legislative history of the Statute because the learned Representative of the United States in his statement the other day reached—what he called—the "inescapable" conclusion "that the General Assembly, not having provided in advance a procedure for dealing with challenged awards"—that is to say a procedure on the model of the ILO precedent—"left the matter to be dealt with under the Assembly's ordinary procedure when and if the question should arise". It is submitted that this conclusion is not justified by the relevant records to which I have referred.

It is evident that willingness to recognize grounds for challenging the final decisions of the Tribunal, although such grounds are nowhere mentioned in the relevant texts of the United Nations, is inspired by a

comparison with the practice of international arbitration, but the analogy, however instructive, should be applied with great care. My colleague from France, in his statement here, already has given a lucid exposition of the problem, and I can only add a few observations in order to support his opinion as to the fundamental difference between international arbitration and judicial settlement of disputes within the system of an international organization.

It is generally accepted that a decision contrary to the powers conferred on the Tribunal is null and void. However, in instruments concerning international arbitration, there is normally no provision for another impartial authority above the Tribunal to declare the nullity, that is to say, to annul. Mostly in international negotiations, it is already difficult to create only one instance for deciding certain disputes or certain categories of disputes. Now one party may consider the awards null and void, the other party may consider them perfectly valid, and a tribunal, by implication, is convinced that it has acted regularly and within its powers. In the absence of a regular procedure for solving the conflict, whose standpoint shall prevail? International society, admittedly imperfect, has a typical solution for the dilemma: the conflict will be solved on the basis of the right of the strongest. The party which is feeling strong enough politically and morally will ignore the award, declaring it null and void and in practice its opinion will prevail. The award simply will have no effect and it will be said that the party—the State—has resumed its inherent sovereignty in the fact of evident nullity. A deplorable mass of State practice is constructed on one-sided declarations of nullity on such grounds as lack of jurisdiction, excess of jurisdiction, failure to apply the law prescribed by the compromis, and other grounds. It might be said that the parties undertaking to have recourse to arbitration implied these ways of escape in giving their consent.

The situation is different in the event of the creation of a special legal order within the loose system of general international law. Such legal order—in this case an international organization—normally is provided with a legislative body like the General Assembly of the United Nations. Thus, the legislative machinery is much more highly developed than the comparatively primitive process of law-creation in the unorganized international society. It should not easily be supposed, therefore, that the legislator, in creating a system for the judicial settlement of certain disputes within the Organization, had in mind, without at the same time expressly providing so, an additional means of challenging the judgments. The ways of escape which so often have rendered ineffective the legal obligation of a final settlement of a dispute through arbitration do not form part of an internal system of judicial settlement within an international organization based on law. This becomes the more clear when it is considered that in connection with administrative adjudication in international organizations, the factor State sovereignty does not play the same part as in connection with international arbitration. The protection of sovereignty by way of a narrow interpretation of the powers conferred on the Tribunal may—in the case of internal arbitration of an administrative tribunal—be left out of consideration. *It is submitted that the administrative tribunals of international organizations do not belong to the chapter of international arbitration but are a form of specialized administrative adjudication within an international*

frame—namely, the frame of an international organization. This is the conclusion to which a comparison of both systems of impartial settlement of disputes, international arbitration and administrative adjudication, must lead. In both systems certain grounds of nullity of final decisions may be accepted in principle. The practice of international arbitration shows a primitive way of declaring the nullity, namely, by one-sided statements by a State—party—making the award ineffective. If, however, on the other hand, neither the procedure to be followed, nor the grounds for challenging the decisions of an administrative tribunal are indicated in the legislation of an international organization, there is no possibility of nullification. Nullity which cannot be declared does not exist.

These observations may sound a little theoretical. Nevertheless, I think that they have a bearing on what has been said before the Court during the last few days. The Honorable Representative of the United Kingdom has stated in his opening words (this volume, page 75) that he did not consider it necessary to deal with the problem of decisions being a nullity because of the Tribunal having acted, *inter alia, ultra vires*, that is to say, in excess of power. I quote: "In such a case there would be no need for the General Assembly to interfere with or to review the award, for .... the award should be treated as a nullity. Now in none of the cases which have given rise to the opinion of this Court being requested, has it been suggested that the Tribunal acted *ultra vires*." The distinguished Representative of the United States, in his speech, however, has reaffirmed the opinion of his Government that the Tribunal has disregarded or misapplied both Assembly resolutions and Charter provisions. And a little earlier he made clear that disregard or misapplication of Assembly resolutions like the Staff Regulations and the Statute and of the Charter was deemed by him as acting *ultra vires* or beyond authority, a ground on which the Assembly—and I quote him—"would have not only the right but also the duty to call the Tribunal to account by refusing to give effect to its invalid awards" (this volume, p. 40). In view of these remarks, I cannot take Sir Reginald's position of refraining from any attention to the ground of *ultra vires*, of excess of power. On the contrary, I am prepared to regard it as a principal issue, and as a highly practical one. Some other grounds which have been mentioned from time to time like serious misconduct or curruption are not of a practical nature, and, in this sense, are no principal grounds. But excess of power is, so to speak, a classic ground on which final decisions always have been challenged, in international law as well as in organized legal systems like the State. It was the argument on which, in 1946, the Assembly of the League of Nations refused to give effect to thirteen judgments of the Administrative Tribunal of the League, considering—in the words of the reporting committee—I quote: "that the awards made by the Tribunal are invalid and are of no effect both because they sought to set aside the Assembly's legislative act and because of their mistaken conclusion as to the intention of that act".

I think all this comes down only to one ground, namely, that the Tribunal, by giving a certain interpretation to a legislative act of the Assembly, had not given to that act the effect which the Assembly had desired. Now the only observation which can be made in this respect —as set out more elaborately in the Netherlands Written Statement (pp. 89 f.)—is that the Assembly should have made its intention clearer

from the outset and should not have come forward with a sort of retroactive interpretation after the final interpretation by the Tribunal. To recognize the ground referred to by the League Assembly in 1946 as a ground for the General Assembly of the United Nations to refuse to give effect to awards of compensation made by the Administrative Tribunal, would be contrary to the express words of Article 2 of the present Statute ; under that provision the Tribunal is competent to hear and pass judgment upon applications alleging non-observance of contracts or terms of appointment including "all pertinent regulations and rules in force at the time of alleged non-observance". It was the considered opinion of the Netherlands Government already in the 1946 case that the majority of the League Assembly was wrong, maybe not in the substance of its interpretation of its own Resolution, but in putting its interpretation above that of the Tribunal. For it was the specific function of the Tribunal, as of all tribunals, to decide on conflicts of interpretation held by various interested quarters, including the Assembly. Professor Georges Scelle has called the 1946 decision of the League Assembly a regrettable "excès de pouvoir", "méconnaissance du principe le plus élémentaire de la technique juridique : l'autorité de la chose jugée", in his *Cours de droit international public*, 1948, page 568.

As appears from the memorandum of the International Labour Office (p. 50 of the Written Statements), the decision of the League Assembly was also sharply criticized in the Governing Body of the International Labour Office and in its Finance Committee. In view of this strong opposition, there is the more reason to consider the full consequences of recognizing the argument of 1946—that is essentially the *ultra vires* ground—as one of the grounds for refusing the compensations awarded. Saying that the League Assembly in 1946 was right, as has been stated during the present hearings, would mean that one of the grounds for refusal to give awards would be the ground that the Tribunal had interpreted the Staff Regulations and its amendments in a manner which the Assembly does not accept. That would be the consequence.

There are, however, no signs pointing the way of repetition of the 1946 precedent. On the contrary, the General Assembly in 1952, facing a problem which from a legal point of view was, in our opinion, of the same character, reacted differently from the League Assembly's reaction in 1946. It was clear that the Secretary-General did not agree with the Tribunal's interpretation (Judgment No. 4 in the case of Howrani and four others, 14 September 1951, AT/DEC/4) of the intention of the General Assembly, when in the Provisional Staff Regulations it gave the Secretary-General the right to terminate temporary appointments. Apparently the Chairman of the Advisory Committee and some Delegations agreed with the implied opinion of the Secretary-General that the Tribunal had given an erroneous interpretation to the Assembly's intention. Nevertheless, during the whole discussion of the item of the Permanent Staff Regulations in the Fifth Committee, no suggestion was made to put the Assembly's interpretation of its own intention above the interpretation of the Tribunal. On the contrary, several speakers in the debate felt the need of expressly confirming the unassailable authority of the Tribunal in interpreting the texts. And the only thing that happened—as it should happen in such a situation—was that an amendment to the texts was proposed in order to make the intention

of the legislators as clear as possible. But the General Assembly did not take the decision of the League Assembly as a precedent for its own conduct.

One of the main issues regarding the nature of the Administrative Tribunal of the United Nations has been the question whether or not the Tribunal is a subsidiary organ of the General Assembly and, if so, whether this would encroach upon the Tribunal's independence as it might otherwise be deduced from the text of the Statute and its legislative history. Relating to this question, the distinguished Representative of the Secretary-General has presented to the Court an illuminating and, as it seems, exhaustive exposition of the system of the Charter—or lack of system—regarding organs of the United Nations. After having listened to this, the only thing I can do now is to try to draw a few conclusions from the information he has given.

It seems justified, then, to conclude that the Charter does not bring into existence a narrow and rigid system of categories of organs and does not intend to limit the creation of new organs and types of organs. On the contrary, the Charter recognizes various kinds of organs, some of which are neither principal nor subsidiary. Further, the Charter does not exclude the possibility of new organs being established by a principal organ in the performance of its functions "in accordance with the Charter" (Article VII, paragraph 2), but without special authorization by the Charter (as in Articles XXII and XXIX). Latitude for progressive development and adaptation to new needs and conditions is entirely in keeping with the purpose of international organization. This will be the case as long as the evolution does not come into conflict with the basic instrument, the Charter, being at the same time a treaty, reserving a field of sovereignty to Member States, and a constitution, declaring certain fundamental principles and general purposes and dividing powers between the various organs. It is submitted that, in keeping with the principles, purposes and obligations of the Organization, further, that within the constitutional framework and outside the reserved rights of Member States, an organ of an international organization generally will be free to take measures, not only essential to, but desirable for, the better exercise of the function conferred on it by the Constitution. And the General Assembly of the United Nations, held by the Charter under Article 101, paragraph 1, to make regulations for the appointment of the staff by the Secretary-General, will be free to create a machinery for promoting the observance of the terms of appointment. Now that the General Assembly *has* acted according to this principle and *has* established the Administrative Tribunal, it is not admissible to argue that the Assembly for the performance of its functions could only establish subsidiary organs, that the Tribunal therefore cannot be anything else but a subsidiary organ and that certain qualities implied in that notion adhere to the Tribunal and limit its powers. Such an argument would be a *petitio principii*. For it is clear that the Assembly in setting up the Tribunal never intended to create a subsidiary organ in the sense of a dependent organ, but in the sense of —supposing one would stick to the term "subsidiary organ"—an organ to fulfil a typical judicial task for which the Assembly itself as a legislating and political body did not feel fit. The Tribunal is only one of the various types of organs which the Organization from the outset or in the conduct of its business has needed for its better functioning, a variety of organs

of which the Charter itself shows some examples apart from the simple distinction between principal organs and subsidiary organs. The Assembly, in regulating the position of the staff in accordance with the Charter, was entirely within its powers to create such a specialized body. It is not permissible by denying these powers of the Assembly to arrive at a narrow and artificial construction and qualification of the position of the Tribunal contrary to the Assembly's intention as it appears from the text of the Statute and its legislative history.

The power of the General Assembly to set up a judicial body like the Administrative Tribunal becomes the more clear when it is taken into consideration that the Assembly is the appropriate legislative organ within the Organization. From the moment when, within the United Nations, an Administrative Tribunal was deemed desirable, it was a matter of course that it should be established by the Assembly. It is significant that during the preparatory stages of the Statute, the Assembly, its committees and sub-committees never considered the question whether they had the power to establish a judicial body of that scope and on what article of the Charter that power was based. There was never any discussion, as far as the records go, of the question whether or not the Tribunal would be a subsidiary organ. Resolution 351 (IV), by which the General Assembly finally adopted the Statute of the Tribunal, is silent as to these questions and so is the covering Report. The Assembly of the League of Nations as the legislative organ of that Organization established a similar Administrative Tribunal without proving its competence to do so. The remarkable thing is that the Covenant of the League did not grant to the Assembly any special powers as to the staff of the Secretariat, nor did it empower the Assembly to establish "subsidiary organs", a term unknown to the Covenant. Only in paragraph 2 of Article V did the Covenant provide that "all matters of procedure at meetings of the Assembly .... including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly". It is clear that the establishment of an Administrative Tribunal, whatever the nature of such organ might be, certainly was not "the appointment of a committee to investigate certain matters" as it was intended in the Covenant. *Apparently the Assembly has acted in a self-evident and uncontested general legislative capacity. The General Assembly of the United Nations having a similar function within the United Nations has the power to establish a similar independent judicial body, and even more so because the General Assembly is especially entrusted by the Charter with regulating the position of the staff.*

If the term "subsidiary organ" should be maintained also in the case of the Administrative Tribunal, it should be taken in the general sense of Article VII, paragraph 2, referring to such subsidiary organs as may be found necessary to be established in accordance with the Charter, that is to say, any organs which may assist the Organization in the performance of its functions, apart from the assistance to the particular functions of the establishing organs. Although established by the General Assembly, the Administrative Tribunal of the United Nations, as it is established now, is no more related to the Assembly than to any other organ ; it is an organ in the service of the United Nations as a whole and, according to Article 12 of the Statute, it can even be an organ in the service of a specialized agency.

Now, suppose that the conception of the Tribunal as a subsidiary organ of the General Assembly of the United Nations were accepted, together with the conclusion drawn from that conception, namely, that the Assembly in the performance of its budgetary power could on certain grounds reconsider the final judgments of the Tribunal. What would be the position of the Tribunal in relation to the agency which would have accepted the Tribunal's jurisdiction? In that capacity, of course, the Tribunal would become an organ of the agency in question, but would it be a "subsidiary organ", and, if so, subsidiary to what organ of the agency? This, of course, is very difficult to be determined, because the whole argument of the distinction between principal and subsidiary organs is based on the use of certain words in the Charter of the United Nations. The argument will not apply to the statute of the specialized agency. Nevertheless, suppose that the organ which has the budgetary power in the specialized agency would consider itself to be in the same sovereign position as the position which, according to some, the United Nations Assembly is occupying. Suppose the budgetary organ of the specialized agency would consider to refuse to give effect to an award of compensation made by the Tribunal in favour of a staff member of the agency whose contract of service has been terminated without his consent. Would this really be in keeping with the provision to be inserted in the special agreement concluded by the agency? This provision, even more categorically than Article IX of the Statute ("the amount awarded shall be fixed by the Tribunal and paid by the United Nations, or, as appropriate, by the specialized agency participating under Article 12"), but Article IX more clearly prescribes "that the agency concerned shall be bound by the judgments of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal". *Shall be* bound by the judgments and responsible for the payments. Now, if an organization is bound by an award and, moreover, has confirmed this binding character of the award by special agreement freely entered upon, can then an organ of the Organization—probably the representative organ which finally had to approve the agreement—legally repudiate the commitment? This certainly cannot be the intention of the express words of Article XII of the Statute. The conclusion is inevitable that the Statute can never be interpreted in such a way as to bring the Tribunal in a subsidiary or any subordinate position in relation to any organ of the specialized agency. The Administrative Tribunal of the United Nations, thus conceived, can find no place in a specialized agency brought into relationship with the United Nations. But can it then have been the intention of the Statute to give the Tribunal that subordinate place within the United Nations itself? It would be an absurd supposition. And the only clear and acceptable construction rationally following from the Statute as a whole is that of an independent, judicial body at the disposal of the United Nations as well as of those specialized agencies which accept the jurisdiction of the Tribunal as an equally independent organ.

A second group of problems relates to the budgetary power of the General Assembly (Article 17 of the Charter). For it has been stated again during these hearings that the Assembly, in the exercise of the budgetary power, is a sovereign body having its own responsibilities, not restricted nor to be restricted by the decisions of any organ of the United Nations, whatever their nature. Two questions, therefore,

arise in this respect : can the Assembly generally be bound, and, if so, is the Assembly actually bound in any way by decisions of the Tribunal ?

The contention that the General Assembly cannot be restricted in the exercise of its constitutional powers presents a certain analogy to the doctrine of the sovereignty of parliaments—*parliamentum omnia potest*. I think Professor Spiropoulos eloquently has stated to this effect. However, sovereign parliaments and, indeed, sovereigns in general, in spite of their sovereignty, remain bound by general principles of law. In the same manner and even *a fortiori*, the main representative organ of an international organization, based on law, can legally perform its discretionary powers only taking into consideration general principles of law and, particularly, principles of international law.

The principle *pacta servanda*, for instance, by which, in the observance of an agreement, an international organization is bound as much as a State and any other juristic or natural persons, will compel the representative organ in the performance of its budgetary power not to frustrate any financial implications of the agreement. This apparently is a correct statement of the law in the event of the agreement being in the nature of a treaty. For it follows from established judicial opinion that, in international proceedings, a constitutional obstacle of the sort mentioned —budgetary discretion—would not be recognized so that a State would be released of its valid international obligations. In that respect an international organization is in exactly the same position as if, within the limitations of its contractual capacity, it had concluded agreements with Member States, non-member States, or with other international organizations. For, as this Court, in its Advisory Opinion on Reparation for Injuries suffered in the Service of the United Nations (I.C.J. Reports 1949, p. 179) has said with regard to the United Nations, after having referred to the Convention on the Privileges and Immunities of the United Nations, to which the United Nations is a party :

> "..... the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not..... What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims."

It may be concluded, therefore, that, for instance, in this case of the United Nations, the provision of the Charter regarding the discretionary power of the General Assembly to consider and approve the Budget of the Organization should be interpreted restrictively as far as international obligations of the Organization are involved. It does not lie with a tribunal of international law to give such restrictive interpretation of a national constitution, municipal laws being merely facts from the standpoint of the tribunal (P.C.I.J., A.7, p. 19—Polish Upper Silesia case). But in the event of a constitution in the nature of an international instrument like the Charter of the United Nations being laid before an international tribunal in connection with treaty obligations of the Organization, it would be incumbent upon the tribunal to give that restrictive interpretation. So we have here a clear example of the General Assembly by a principle of law being bound in the exercise of its discretion to consider and approve the Budget of the Organization. And the example will be the more convincing when it is

realized that usually it will have been the Assembly itself which has approved the agreement from which the international rights and duties of the Organization as a whole originate. It may then rightly be said that the Assembly would have bound itself. The principle *pacta sunt servanda* would equally bind the Assembly if the agreement, instead of being international, should be of an internal or private character, like those agreements which regulate the relationship between persons in the service of the United Nations and the Organization itself.

The General Assembly of the United Nations, further, in the performance of its budgetary functions, will be bound by an obligation of the Organization as an international person to make reparation in the event of the breach of an engagement entered into by the Organization in its recognized contractual capacity. In its Advisory Opinion on Reparation for Injuries suffered in the Service of the United Nations—already quoted from—the present Court has said that the Organization has the capacity to maintain its rights by bringing international claims. Would not this imply, reciprocally, that *in principle* a claim against the United Nations, being a subject of international law and capable of possessing not only international *rights* but also international *duties*, can be brought and prosecuted before an international tribunal? Actually, in some international agreements to which the United Nations is a party, the jurisdiction of an international tribunal is recognized as to differences arising out of the interpretation or application of the agreement. And, as the Permanent Court of International Justice has said in the Chorzów Factory (Jurisdiction) case (P.C.I.J., Series A, No. 9, p. 21):

> "Differences relating to reparations, which may be due by reason of failure to apply a convention, are differences relating to its application."

Reference in this connection has already been made by the Honourable Representative of the United Kingdom in his speech this morning to Article VIII, Section 30, of the General Convention on the Privileges and Immunities of the United Nations, making this Court competent to decide differences as to interpretation and application in the form of a binding Advisory Opinion; further, to Article VIII, Section 21, of the Headquarters Agreement between the United Nations and the United States; in addition, I refer to Article VIII, Section 27, of the Interim Agreement on Privileges and Immunities of the United Nations concluded between the United Nations and the Swiss Confederation and to Article 13 of the Agreement on the Ariana Site with Switzerland. All these compromissory clauses refer to the jurisdiction of this Court or of an arbitral tribunal *ad hoc*.

More examples might be found, but enough has been said to prove that in its discretion to approve the Budget, the General Assembly is bound by general principles of law and has not the right to refuse to give effect to the financial obligations of the Organization *ex contractu*, *ex delicto*, and particularly to the financial obligations following from the final decisions of arbitral or judicial tribunals whose jurisdiction has been accepted by the Organization.

Now, is the Assembly actually bound by the decisions of the Tribunal? The effect of the obligations of a juristic person as a whole on the discretionary powers of its organs is, I think, a general problem, and the question whether or not the General Assembly of the United Nations,

in the exercise of its budgetary power, is bound by awards of compensation of the Administrative Tribunal, relates only to a special case of this general problem. As in the cases previously mentioned, final decision of administrative disputes forms an integral part of an agreement. Obviously the terms of appointment and the contracts of employment between staff members and the United Nations, represented by the Secretary-General, are not of an international character, because a staff member is devoid of international personality. Nevertheless, they are agreements in so far as they cannot be unilaterally renounced or modified, except as provided by the agreement itself.

Now the special feature of the agreement between the United Nations and a staff member is that it contains an important element which is subject to unilateral modification by the United Nations, thus altering —and entirely lawfully so—the position of the staff member as existing at the time of appointment. But as long as amendments have not been made, the staff member may rely on the fact that his legal position is still the same as at the time of his appointment. The staff member at his appointment knows from the Staff Regulations that an Administrative Tribunal is open to him, but he also knows that the Tribunal may be abolished by the General Assembly and that the Statute may be amended. Nevertheless, as long as it has not happened, and as long as the Tribunal stands, its competence undiminished, the staff member may rely on it as one of the guarantees of his legal position according to the terms of appointment. Saying that the staff member may rely on that guarantee is saying in other words that the United Nations is under the obligation to keep the guarantee effective and, as in the cases previously mentioned, the General Assembly of the United Nations, in the exercise of its budgetary power, is bound by that obligation of the Organization as a whole.

It follows from this statement that we can find no grounds on which a right of the General Assembly to refuse to give effect to awards of compensation made by the Administrative Tribunal might be based. The nature of the Tribunal as an independent judicial body delivering binding judgments in the last instance has been clearly expressed in the relevant texts, in accordance with the intention of the legislator. This interpretation is not contradicted by the subsequent practice of the organs concerned. No procedure for revision, reconsideration or challenging the final judgments having been provided for, such procedure cannot arbitrarily be constructed and improvized. Staff members are in the service of the United Nations ; there is a contractual relationship between them and the Organization as a juristic person. Therefore disputes following from this relationship, adjudication of those disputes and awards of compensation impose obligations on the Organization as a whole, and, consequently, bind the organs thereof, even restricting the exercise of their discretionary powers. The General Assembly cannot lawfully refuse to give effect to awards of compensation which, in the words of the Statute of the Administrative Tribunal, "shall be paid by the United Nations".

In denying any grounds referred to in question 1, we have not attempted to deal with absurd situations, supposing, for instance, that the Tribunal would have considered certain cases to be so evidently outside the scope of its Statute that there can be no uncertainty as to the interpretation thereof. It is obvious that decisions of the Tribunal

which only to outward appearance would present themselves as such, but which would have no real connection with the Statute, would not exist from a legal point of view. Being non-existent, they can have no effect, and therefore we have considered them falling outside the scope of the questions laid before the Court. Problems arising from absurd supposition certainly fall outside the scope of question 2 referring to *principal* grounds.

Our conclusion remains that where no higher resort is provided for, no grounds to challenge final decisions should be admitted. In this respect, the words of Grotius still hold good. Although, says Hugo de Groot, municipal law in some cases has provided that it shall be lawful to appeal from arbitrators and to complain of injustice, nevertheless, such a procedure cannot become applicable in relations (to kings and peoples) where there is no higher power which can either hold fast or loosen the bond of the promise. And now I quote him literally: "Under such conditions, therefore, the decision of arbitrators, whether just or unjust, must stand absolutely.... It is in fact one thing to make enquiry concerning the duty of the arbitrator, and another to enquire concerning the obligation of those who promise."

Mr. President, Honourable Members of the Court, I wish to thank the Court for its close attention.