

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

EFFECT OF AWARDS OF
COMPENSATION MADE BY THE UNITED
NATIONS ADMINISTRATIVE TRIBUNAL

ADVISORY OPINION OF JULY 13th, 1954

1954

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

EFFET DE JUGEMENTS DU TRIBUNAL
ADMINISTRATIF DES NATIONS UNIES
ACCORDANT INDEMNITÉ

AVIS CONSULTATIF DU 13 JUILLET 1954

This Opinion should be cited as follows :

*“Effect of awards of compensation made by the U. N. Administrative Tribunal, Advisory Opinion of July 13th, 1954 :
I. C. J. Reports 1954, p. 47.”*

Le présent avis doit être cité comme suit :

*« Effet de jugements du tribunal administratif des N. U. accordant indemnité, Avis consultatif du 13 juillet 1954 :
C. I. J. Recueil 1954, p. 47. »*

Sales number **120**
N° de vente :

INTERNATIONAL COURT OF JUSTICE

YEAR 1954

July 13th, 1954

EFFECT OF AWARDS OF
COMPENSATION MADE BY THE UNITED
NATIONS ADMINISTRATIVE TRIBUNAL

Definition of first question put to the Court : its limited scope.

Examination of the texts upon which the answer depends : Statute of the Administrative Tribunal, Staff Regulations and Staff Rules.—Nature of the Tribunal.—Character and effect of its awards.—Parties to the contract of service.—Parties bound by the awards.—Question of power of review.

Examination of principal arguments in favour of the view that the General Assembly is entitled to refuse to give effect to awards : provisions of Charter ; power of the Organization, and in particular of the General Assembly, to establish a tribunal to deal with disputes between the Organization and staff members ; effect of awards of this Tribunal as regards the General Assembly itself ; nature and consequences of the budgetary powers of the General Assembly ; delimitation by the General Assembly of the respective powers of the Secretary-General and of the Tribunal ; relevance of decision of the League of Nations in 1946.

ADVISORY OPINION

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.

In the matter of the Effect of Awards of Compensation made by the United Nations Administrative Tribunal, submitted to the Court for advisory opinion at the request of the General Assembly of the United Nations,

THE COURT,

composed as above,

gives the following Advisory Opinion :

With a letter of December 16th, 1953, which was filed in the Registry on December 21st, the Secretary-General of the United Nations transmitted to the Court a certified true copy of a Resolution of the General Assembly of the United Nations of December 9th, 1953, which was in the following terms :

“The General Assembly,

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

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

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

Decides

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

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

The letter of the Secretary-General of the United Nations with the annexed Resolution was communicated on December 24th, 1953, to all States entitled to appear before the Court, in accordance with Article 66, paragraph 1, of the Statute. The Court was not sitting and the President considered that the States Members of

the United Nations and the International Labour Organisation were likely to be able to furnish information on the questions referred to the Court. Accordingly, the Registrar, in conformity with Article 66, paragraph 2, of the Statute, notified these States and the International Labour Organisation on January 14th, 1954, that the Court was prepared to receive written statements from them within a time-limit fixed by an Order of the same date at March 15th, 1954.

The following availed themselves of this opportunity to present written statements: The International Labour Organisation and the Governments of France, Sweden, the Netherlands, Greece, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Philippines, Mexico, Chile, Iraq, the Republic of China, Guatemala, Turkey and Ecuador. The Governments of Canada, the Union of Soviet Socialist Republics, Yugoslavia, Czechoslovakia and Egypt, while not submitting written statements, drew attention to the views expressed by their representatives in the General Assembly when the question which has given rise to the request for an Advisory Opinion was debated there.

In accordance with Article 65, paragraph 2, of the Statute, the Secretary-General of the United Nations transmitted to the Court the documents likely to throw light upon the question. He also submitted a written statement.

Public hearings were held on June 10th, 11th, 12th and 14th, 1954, for the purpose of hearing oral statements. The following addressed the Court in the order which was decided by the President of the Court in consultation with them:

Mr. C. A. Stavropoulos, Principal Director in charge of the Legal Department of the Secretariat, representing the Secretary-General of the United Nations;

The Honorable Herman Phleger, Legal Adviser of the Department of State, representing the Government of the United States of America;

M. Paul Reuter, Professor of the Faculty of Law of Paris, Assistant Legal Adviser of the Ministry for Foreign Affairs, representing the Government of the French Republic;

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

The Right Honourable Sir Reginald Manningham-Buller, Q.C., M.P., Solicitor-General, representing the Government of the United Kingdom of Great Britain and Northern Ireland;

M. A. J. P. Tammes, Professor of International Law at the University of Amsterdam, representing the Government of the Netherlands.

* * *

The first Question submitted to the Court is as follows :

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

This Question is strictly limited in scope. It relates solely to an award made by the Administrative Tribunal of the United Nations in favour of a staff member of the United Nations whose contract of service has been terminated without his assent. According to Article 2, paragraph 1, of the Statute of that Tribunal, it “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”. A comparison between this provision and the terms of the first Question submitted to the Court shows that an award as defined by that Question must be considered as falling within the competence of the Tribunal as defined by Article 2. A claim arising out of the termination of a contract of service without the assent of the staff member must, in fact, either fall within the term “non-observance of contracts of employment”, or relate to “the terms of appointment” of the staff member. The Question concerns, in other words, only awards which are made within the limits of the competence of the Tribunal as determined by Article 2. The Court does not therefore seem to be requested to express its view with regard to awards which may exceed the scope of that statutory competence.

In the Resolution by which the present Advisory Opinion is requested, the General Assembly refers to the request for a supplementary appropriation made in a report of the Secretary-General for the purpose of covering the awards made by the Administrative Tribunal in eleven cases. It also refers to the concurrence in that appropriation by the Advisory Committee on Administrative and Budgetary Questions in its report to the General Assembly, and the first Question refers to the Statute of that Tribunal and “to any other relevant instruments and to the relevant records”. In none of these reports or relevant records is to be found any suggestion indicating that the Tribunal, when rendering its awards in those eleven cases, was not legally constituted according to the provisions of Article 3 of its Statute. In such circumstances the Court understands that the first Question submitted to it contemplates awards made by a properly constituted Tribunal.

It is true that by this Question the Court is requested to say whether the General Assembly has the right to refuse to give effect to an award "on any grounds". But it is difficult to hold that the General Assembly, by inserting these words, intended to modify the meaning which naturally follows from the other terms of the Question and from the above-mentioned considerations contained in its Resolution. The Court will, however, come back to this matter later in another connection.

The first Question is further limited to awards which grant compensation to a staff member, and it relates solely to awards in favour of a staff member whose contract of service has been terminated without his assent. It does not include awards in other disputes arising out of a contract of service. The Court is requested to say whether the General Assembly has the right to refuse to give effect to an award as defined by the Question. The term "right" must signify *legal* right. The Court is asked to say whether the General Assembly is legally entitled to refuse to give effect to such awards. The Court is not called upon to express any view with regard to the particular awards which have given rise to the present Advisory Opinion.

This examination of the first Question shows that the Court is requested to consider the general and abstract question whether the General Assembly is legally entitled to refuse to give effect to an award of compensation made by the Administrative Tribunal, properly constituted and acting within the limits of its statutory competence. The answer to this question depends on the provisions of the Statute of the Tribunal as adopted by the General Assembly on November 24th, 1949, and on the Staff Regulations and Rules as in force on December 9th, 1953. But the Court will also take into account the amendments which were made to the Statute on the latter date. The Court will first consider whether the Tribunal is established either as a judicial body, or as an advisory organ or a mere subordinate committee of the General Assembly.

Article 1 of the Statute provides: "A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal." This Tribunal shall, according to Article 2, paragraph 1, "be competent to hear and pass judgment upon applications", whereupon the paragraph determines the limits of the Tribunal's competence as already mentioned above.

Article 2, paragraph 3, prescribes:

"In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal."

Article 10 contains the following provisions:

"2. The judgments shall be final and without appeal."

"3. The judgments shall state the reasons on which they are based."

These provisions and the terminology used are evidence of the judicial nature of the Tribunal. Such terms as "tribunal", "judgment", competence to "pass judgment upon applications", are generally used with respect to judicial bodies. The above-mentioned provisions of Articles 2 and 10 are of an essentially judicial character and conform with rules generally laid down in statutes or laws issued for courts of justice, such as, for instance, in the Statute of the International Court of Justice, Article 36, paragraph 6, Article 56, paragraph 1, Article 60, first sentence. They provide a striking contrast to Staff Rule III.1 of the United Nations, which provides :

"A Joint Appeals Board is established to consider and advise the Secretary-General regarding appeals filed under the terms of Staff Regulation 11.1 by staff members serving at Headquarters."

The Statute of the Administrative Tribunal contains no similar provision attributing an advisory character to its functions, nor does it in any way limit the independence of its activity. The independence of its members is ensured by Article 3, paragraph 5, which provides :

"No member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he is unsuited for further service."

The original Statute, as adopted on November 24th, 1949, contained in Article 9 the following provisions :

"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 ; but if, in exceptional circumstances, such rescinding or specific performance is, in the opinion of the Secretary-General, impossible or inadvisable, the Tribunal shall within a period of not more than sixty days order the payment to the applicant of compensation for the injury sustained. The applicant shall be entitled to claim compensation in lieu of rescinding of the contested decision or specific performance...."

These provisions were amended on December 9th, 1953. Article 9 now provides in paragraph 1 :

"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. 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, within thirty days of the notification of the judgment, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case ; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The Tribunal may, however, 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 shall accompany each such order."

These provisions prescribe both in the original and in the amended text that the Tribunal shall, if it finds that the application is well founded, order the rescinding of the decision contested or the specific performance of the obligation invoked. As the power to issue such orders to the chief administrative officer of the Organization could hardly have been conferred on an advisory organ or a subordinate committee, these provisions confirm the judicial character of the Tribunal. The amended text contains certain modifications of the Tribunal's powers and procedure, but these modifications have no bearing upon the judicial nature of its functions.

This examination of the relevant provisions of the Statute shows that the Tribunal is established, not as an advisory organ or a mere subordinate committee of the General Assembly, but as an independent and truly judicial body pronouncing final judgments without appeal within the limited field of its functions.

According to a well-established and generally recognized principle of law, a judgment rendered by such a judicial body is *res judicata* and has binding force between the parties to the dispute. It must therefore be examined who are to be regarded as parties bound by an award of compensation made in favour of a staff member of the United Nations whose contract of service has been terminated without his assent.

Such a contract of service is concluded between the staff member concerned and the Secretary-General in his capacity as the chief administrative officer of the United Nations Organization, acting on behalf of that Organization as its representative. When the Secretary-General concludes such a contract of service with a staff member, he engages the legal responsibility of the Organization, which is the juridical person on whose behalf he acts. If he terminates the contract of service without the assent of the staff member and this action results in a dispute which is referred to the Administrative Tribunal, the parties to this dispute before the Tribunal are the staff member concerned and the United Nations Organization, represented by the Secretary-General, and these parties will become bound by the judgment of the Tribunal. This judgment is, according to Article 10 of the Tribunal's Statute, final and without appeal. The Statute has provided for no kind of review. As this final judgment has binding force on the United Nations Organization as the juridical person responsible for the proper observance of the contract of service, that Organization becomes legally bound to carry out the judgment and to pay the compensation awarded to the staff member. It follows that the General Assembly, as an organ of the United Nations, must likewise be bound by the judgment.

This view is confirmed by express provisions in the Statute of the Administrative Tribunal. Article 9 in the original Statute of 1949 provided :

“In any case involving compensation, 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.”

A similar provision is contained in Article 9, paragraph 3, of the amended Statute. Both provisions show that the payment of an amount of compensation awarded by the Tribunal is an obligation of the United Nations as a whole or, as the case may be, of the specialized agency concerned.

Article 12 is based on the same legal considerations. It provides that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations, and it continues :

“Each such special agreement shall provide 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 in respect of a staff member of that agency....”

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As mentioned above, the Statute of the Administrative Tribunal has not provided for any kind of review of judgments, which according to Article 10, paragraph 2, shall be final and without appeal. This rule is similar to the corresponding rule in the Statute of the Administrative Tribunal of the League of Nations, Article VI, paragraph 1, which equally prescribed that “judgments shall be final and without appeal”. The report of the Supervisory Commission, proposing the Statute of this Tribunal of the League of Nations, shows that the omission of any provision for a review of judgments was deliberate. The report stated :

“No provision for the revision of judgments of the Tribunal is inserted in the statute. It is considered that, in the interests of finality and of the avoidance of vexatious proceedings, the Tribunal’s judgments should be final and without appeal as is provided in Article VI, paragraph 1.”

It is likewise the result of a deliberate decision that no provision for review of the judgments of the United Nations Administrative Tribunal was inserted in the Statute of that Tribunal. According to the official records of the General Assembly, Fifth Committee meeting on November 15th, 1946, the representative of Belgium asked the rapporteur of that Committee

“whether the decisions of the administrative tribunal would be final or whether they would be subject to a revision by the General Assembly”.

The rapporteur replied

“that according to the draft Statute as prepared by the Advisory Committee, there could be no appeal from the administrative tribunal. The Advisory Committee feared an adverse effect on the morale of the staff if appeal beyond the administrative tribunal delayed the final decision in a case which had already been heard before organs within the Secretariat created for that purpose.”

The General Assembly could, when it adopted the Statute, have provided for means of redress, but it did not do so. Like the Assembly of the League of Nations it refrained from laying down any exception to the rule conferring on the Tribunal the power to pronounce final judgments without appeal.

This rule contained in Article 10, paragraph 2; cannot however be considered as excluding the Tribunal from itself revising a judgment in special circumstances when new facts of decisive importance have been discovered ; and the Tribunal has already exercised this power. Such a strictly limited revision by the Tribunal itself cannot be considered as an “appeal” within the meaning of that Article and would conform with rules generally provided in statutes or laws issued for courts of justice, such as for instance in Article 61 of the Statute of the International Court of Justice.

It may be asked whether the General Assembly would in certain exceptional circumstances be legally entitled to refuse to give effect to awards of compensation made by the Administrative Tribunal. The first Question submitted to the Court asks, in fact, whether the General Assembly has the right to refuse to do so “on any grounds”. When the Court defined the scope of that Question above, it arrived at the conclusion that the Question refers only to awards of compensation made by the Administrative Tribunal, properly constituted and acting within the limits of its statutory competence, and the previous observations of the Court are based upon that ground. If, however, the General Assembly, by inserting the words “on any grounds”, intended also to refer to awards made in excess of the Tribunal’s competence or to any other defect which might vitiate an award, there would arise a problem which calls for some general observations.

This problem would not, as has been suggested, raise the question of the nullity of arbitral awards made in the ordinary course of arbitration between States. The present Advisory Opinion deals with a different legal situation. It concerns judgments pronounced by a permanent judicial tribunal established by the General Assembly,

functioning under a special statute and within the organized legal system of the United Nations, and dealing exclusively with internal disputes between the members of the staff and the United Nations represented by the Secretary-General. In order that the judgments pronounced by such a judicial tribunal could be subjected to review by any body other than the tribunal itself, it would be necessary, in the opinion of the Court, that the statute of that tribunal or some other legal instrument governing it should contain an express provision to that effect. The General Assembly has the power to amend the Statute of the Administrative Tribunal by virtue of Article 11 of that Statute and to provide for means of redress by another organ. But as no such provisions are inserted in the present Statute, there is no legal ground upon which the General Assembly could proceed to review judgments already pronounced by that Tribunal. Should the General Assembly contemplate, for dealing with future disputes, the making of some provision for the review of the awards of the Tribunal, the Court is of opinion that the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ—considering the arguments of the parties, appraising the evidence produced by them, establishing the facts and declaring the law applicable to them—all the more so as one party to the disputes is the United Nations Organization itself.

* * *

The Court must now examine the principal contentions which have been put forward, in the written and in the oral statements, by the Governments that take the position that there are grounds which would justify the General Assembly in refusing to give effect to awards of the Administrative Tribunal.

The legal power of the General Assembly to establish a tribunal competent to render judgments binding on the United Nations has been challenged. Accordingly, it is necessary to consider whether the General Assembly has been given this power by the Charter.

There is no express provision for the establishment of judicial bodies or organs and no indication to the contrary. However, in its Opinion—*Reparation for Injuries suffered in the Service of the United Nations*, Advisory Opinion : I.C.J. Reports 1949, p. 182—the Court said :

“Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.”

The Court must therefore begin by enquiring whether the provisions of the Charter concerning the relations between the staff members and the Organization imply for the Organization the power to establish a judicial tribunal to adjudicate upon disputes arising out of the contracts of service.

Under the provisions of Chapter XV of the Charter, the Secretariat, which is one of the principal organs of the United Nations, comprises the Secretary-General and the staff. The Secretary-General is appointed by the General Assembly, upon the recommendation of the Security Council, and he is "the chief administrative officer of the Organization". The staff members are "appointed by the Secretary-General under regulations established by the General Assembly". In the words of Article 101 (3) of the Charter, "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".

The contracts of service between the Organization and the staff members are contained in letters of appointment. Each appointment is made subject to terms and conditions provided in the Staff Regulations and Staff Rules, together with such amendments as may be made from time to time.

When the Secretariat was organized, a situation arose in which the relations between the staff members and the Organization were governed by a complex code of law. This code consisted of the Staff Regulations established by the General Assembly, defining the fundamental rights and obligations of the staff, and the Staff Rules, made by the Secretary-General in order to implement the Staff Regulations. It was inevitable that there would be disputes between the Organization and staff members as to their rights and duties. The Charter contains no provision which authorizes any of the principal organs of the United Nations to adjudicate upon these disputes, and Article 105 secures for the United Nations jurisdictional immunities in national courts. It would, in the opinion of the Court, hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.

In these circumstances, the Court finds that the power to establish a tribunal, to do justice as between the Organization and the staff members, was essential to ensure the efficient working of the Secretariat, and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity. Capacity to do this arises by necessary intendment out of the Charter.

The existence of this capacity leads to the further enquiry as to the agency by which it may be exercised. Here, there can be no room for doubt.

In Article 7 of the Charter, after naming the six principal organs, it is provided in paragraph (2) :

“Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.”

Article 22 provides :

“The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.”

Further, in Article 101, paragraph 1, the General Assembly is given power to regulate staff relations :

“The Staff shall be appointed by the Secretary-General under regulations established by the General Assembly.”

Accordingly, the Court finds that the power to establish a tribunal to do justice between the Organization and the staff members may be exercised by the General Assembly.

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But that does not dispose of the problem before the Court. Some of the Governments that take the position that there are grounds which would justify the General Assembly in refusing to give effect to awards, agree that the powers of the General Assembly, and particularly its power to establish regulations under Article 101, imply the power to set up an administrative tribunal. They agree that the General Assembly would be able to establish a tribunal competent to hear and decide staff grievances, to prescribe its jurisdiction, and to authorize it to give a final decision, in the sense that no appeal could be taken as of right. They nevertheless contend that the implied power does not enable the General Assembly to establish a tribunal with authority to make decisions binding on the General Assembly itself.

In the first place, it is contended that there was no need to go so far, and that an implied power can only be exercised to the extent that the particular measure under consideration can be regarded as absolutely essential. There can be no doubt that the General Assembly in the exercise of its power could have set up a tribunal without giving finality to its judgments. In fact, however, it decided, after long deliberation, to invest the Tribunal with power to render judgments which would be “final and without appeal”, and which would be binding on the United Nations. The precise nature and scope of the measures by which the power of creating a tribunal was to be exercised, was a matter for determination by the General Assembly alone.

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In the second place, it has been argued that, while an implied power of the General Assembly to establish an administrative tribunal may be both necessary and essential, nevertheless, an implied power to impose legal limitations upon the General Assembly's express Charter powers is not legally admissible.

It has been contended that the General Assembly cannot, by establishing the Administrative Tribunal, divest itself of the power conferred by paragraph (1) of Article 17 of the Charter, which reads :

“The General Assembly shall consider and approve the budget of the Organization.”

This provision confers a power on the General Assembly, for the exercise of which Article 18 requires the vote of a two-thirds majority. Accordingly, the establishment of a tribunal competent to make an award of compensation to which the General Assembly was bound to give effect would, it has been argued, contravene the provisions relating to the budgetary power. The Court is unable to accept this contention.

The Court notes that Article 17 of the Charter appears in a section of Chapter IV relating to the General Assembly, which is entitled “Functions and Powers”. This Article deals with a function of the General Assembly and provides for the consideration and approval by it of the budget of the Organization. Consideration of the budget is thus an act which must be performed and the same is true of its approval, for without such approval there can be no budget.

But the function of approving the budget does not mean that the General Assembly has an absolute power to approve or disapprove the expenditure proposed to it; for some part of that expenditure arises out of obligations already incurred by the Organization, and to this extent the General Assembly has no alternative but to honour these engagements. The question, therefore, to be decided by the Court is whether these obligations comprise the awards of compensation made by the Administrative Tribunal in favour of staff members. The reply to this question must be in the affirmative. The obligatory character of these awards has been established by the considerations set out above relating to the authority of *res judicata* and the binding effect of the judgments of this Tribunal upon the United Nations Organization.

The Court therefore considers that the assignment of the budgetary function to the General Assembly cannot be regarded as conferring upon it the right to refuse to give effect to the obligation arising out of an award of the Administrative Tribunal.

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It has also been contended that the implied power of the General Assembly to establish a tribunal cannot be carried so far as to enable the tribunal to intervene in matters falling within the province of the Secretary-General. The Court cannot accept this contention.

The General Assembly could at all times limit or control the powers of the Secretary-General in staff matters, by virtue of the provisions of Article 101. Acting under powers conferred by the Charter, the General Assembly authorized the intervention of the Tribunal to the extent that such intervention might result from the exercise of jurisdiction conferred upon the Tribunal by its Statute. Accordingly, when the Tribunal decides that particular action by the Secretary-General involves a breach of the contract of service, it is in no sense intervening in a Charter power of the Secretary-General, because the Secretary-General's legal powers in staff matters have already been limited in this respect by the General Assembly.

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A similar problem is involved in the contention that the General Assembly cannot authorize and the Secretary-General cannot enter into contracts of service which are not in conformity with the Charter. The Staff Regulations are made a part of the contracts of service and No. 11.2 reads as follows :

“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.”

It is contended that the incorporation, in the contracts of service, of the right to rely on the Statute of the Administrative Tribunal would conflict with the powers conferred on the General Assembly and on the Secretary-General by the Charter. In view of the foregoing considerations, the Court cannot accept this contention. There can be no doubt that, by virtue of the terms thus incorporated in the contracts of service, and so long as the Statute of the Administrative Tribunal in its present form is in force, the staff members are entitled to resort to the Tribunal and rely on its judgments.

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In the third place, the view has been put forward that the Administrative Tribunal is a subsidiary, subordinate, or secondary organ ; and that, accordingly, the Tribunal's judgments cannot bind the General Assembly which established it.

This view assumes that, in adopting the Statute of the Administrative Tribunal, the General Assembly was establishing an organ which it deemed necessary for the performance of its own functions. But the Court cannot accept this basic assumption. The Charter does not confer judicial functions on the General Assembly and the relations between staff and Organization come within the scope of Chapter XV of the Charter. In the absence of the establishment of an Administrative Tribunal, the function of resolving disputes between staff and Organization could be discharged by the Secretary-General by virtue of the provisions of Articles 97 and 101. Accordingly, in the three years or more preceding the establishment of the Administrative Tribunal, the Secretary-General coped with this problem by means of joint administrative machinery, leading to ultimate decision by himself. By establishing the Administrative Tribunal, the General Assembly was not delegating the performance of its own functions: it was exercising a power which it had under the Charter to regulate staff relations. In regard to the Secretariat, the General Assembly is given by the Charter a power to make regulations, but not a power to adjudicate upon, or otherwise deal with, particular instances.

It has been argued that an authority exercising a power to make regulations is inherently incapable of creating a subordinate body competent to make decisions binding its creator. There can be no doubt that the Administrative Tribunal is subordinate in the sense that the General Assembly can abolish the Tribunal by repealing the Statute, that it can amend the Statute and provide for review of the future decisions of the Tribunal and that it can amend the Staff Regulations and make new ones. There is no lack of power to deal effectively with any problem that may arise. But the contention that the General Assembly is inherently incapable of creating a tribunal competent to make decisions binding on itself cannot be accepted. It cannot be justified by analogy to national laws, for it is common practice in national legislatures to create courts with the capacity to render decisions legally binding on the legislatures which brought them into being.

The question cannot be determined on the basis of the description of the relationship between the General Assembly and the Tribunal, that is, by considering whether the Tribunal is to be regarded as a subsidiary, a subordinate, or a secondary organ, or on the basis of the fact that it was established by the General Assembly. It depends on the intention of the General Assembly in establishing the Tribunal, and on the nature of the functions conferred upon it by its Statute. An examination of the language of the Statute of the Administrative Tribunal has shown that the General Assembly intended to establish a judicial body; moreover, it had the legal capacity under the Charter to do so.

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The view has been advanced that the Court should follow what has been called the precedent established by the League of Nations in 1946. On that occasion, the Assembly of the League rejected certain awards of its Administrative Tribunal. It is unnecessary to consider the question whether the Assembly, which in very special circumstances was winding up the League, was justified in rejecting those awards. The cases adjudicated upon by the Tribunal of the League, and the circumstances in which they arose, are different from those which led to the request for this Opinion. Moreover, the cases arose under the Statute of the Administrative Tribunal of the League, and not under the Statute of the Administrative Tribunal of the United Nations, and the Assembly was acting under the Covenant and not under the Charter.

In view of the complete lack of identity between the two situations, and of the conclusions already drawn by the Court from the Charter and the Statute of the Administrative Tribunal of the United Nations and other relevant instruments and records, the Court cannot regard the action of the Assembly of the League in 1946 as an applicable precedent or as an indication of the intention of the General Assembly when the Statute of the Administrative Tribunal was adopted in 1949.

* * *

The Court has accordingly arrived at the conclusion that the first Question submitted to it must be answered in the negative. The second Question does not therefore call for consideration.

* * *

For these reasons,

having regard to the Statute of the United Nations Administrative Tribunal and to any other relevant instruments and to the relevant records,

THE COURT IS OF OPINION,

by nine votes to three,

that the General Assembly has not the right on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal of the United Nations in favour of a staff member of the United Nations whose contract of service has been terminated without his assent.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of July, one thousand nine hundred and fifty-four, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Arnold D. McNAIR,
President.

(Signed) GARNIER-COIGNET,
Deputy-Registrar.

Judge WINIARSKI, while voting in favour of the Opinion of the Court, avails 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 declare that they do not share the Court's Opinion and, availing themselves of the right conferred on them by Articles 57 and 68 of the Statute, append thereto statements of their dissenting opinions.

(Initialled) A. D. McN.

(Initialled) G.-C.
