Communiqué 54/18
(Unofficial)

The following information from the Registry of the International Court of Justice has been communicated to the Press:

The International Court of Justice today (July 13th, 1954) delivered its Advisory Opinion in the matter of the Effect of Awards of Compensation made by the United Nations Administrative Tribunal.

The request for Advisory Opinion had been submitted to the Court by the General Assembly of the United Nations, which, on December 9th, 1953, adopted the following Resolution for this purpose:

"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 Court had given an opportunity to the Members of the United Nations and to the International Labour Organisation to submit their views on this matter. Written statements were presented on behalf of this Organisation and on behalf of France, Sweden, the Netherlands, Greece, the United Kingdom of Great Britain and Northern Ireland, the U.S.A., the Philippines, Mexico, Chile, Iraq, the Republic of China, Guatemala, Turkey and Ecuador. In the course of hearings held for this purpose in June, oral statements were submitted on behalf of the United States, France, Greece, the United Kingdom and the Netherlands.

The Secretary-General of the United Nations had transmitted to the Court all documents likely to throw light upon the question; a written and an oral statement were also presented on his behalf.

To ....

To the first question the Court has today replied 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. As the answer to the first question was in the negative, it was unnecessary for the Court to consider the second.

The Court's Opinion was reached by nine votes to three: the statements of the Opinions of the three dissenting Judges (Judge Alvarez, Judge Hackworth and Judge Levi Carneiro) are appended to the Opinion. One Judge who did not dissent (Judge Winiarski), while voting for the Opinion, appended thereto a statement of his separate Opinion.

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In its Opinion, the Court begins by analysing the first of the questions submitted to it. This question, which is general and abstract, is strictly limited in scope. If one compares its terms with those of the Statute of the Tribunal, it is clear that it concerns only awards made by the Tribunal within the limits of its statutory competence. It is, moreover, clear from the documents submitted to the Court that it contemplates only awards made by a properly constituted tribunal. Lastly, it relates solely to awards made by the Tribunal in favour of staff members whose contracts of service have been terminated without their assent.

The reply to be given to this question - which does not involve an examination of the judgments which gave rise to the request for an Advisory Opinion - depends on the Statute of the Tribunal and on the Staff Regulations and Rules. After examination of these texts, the Court finds that the Statute of the Tribunal employs terminology indicative of its judicial character: "pass judgment upon applications", "tribunal", "judgment". The provisions to the effect that "in the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal" and that "the judgments shall be final and without appeal" are similarly provisions of a judicial character. It follows that the Tribunal is established as an independent and truly judicial body pronouncing final judgments without appeal within the limited field of its functions. The power conferred upon it to order the rescinding of decisions taken by the Secretary-General of the United Nations - the chief administrative officer of the Organization - confirms its judicial character: such a power could hardly have been conferred on an advisory or subordinate organ.

The Court next points out that, 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. Who, then, are to be regarded as parties bound by an award? The answer is to be found in the contracts of service. These are 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. The Secretary-General 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 ....

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. The judgment, which is final and without appeal and not subject to any kind of review, has binding force upon the United Nations Organization as the juridical person responsible for the proper observance of the contract of service. Since the 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. This conclusion is confirmed by the provisions of the Statute of the Tribunal itself, which makes it clear that payment 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.

The Court next points out that if, as the result of a deliberate decision, the Statute of the Tribunal contains no provision for review of the judgments or for appeal, as it might have done, it does not follow that the Tribunal cannot itself revise a judgment in special circumstances when new facts of decisive importance have been discovered. The Tribunal has, indeed, already adopted such a course, which conforms with principles generally provided in statutes and laws issued for courts of justice.

But has the General Assembly itself, in certain exceptional circumstances, the right to refuse to give effect to judgments, in cases outside the scope of the question as defined above by the Court, in the case of awards made in excess of the Tribunal's competence or vitiated by some other defect? The Tribunal is one within the organized legal system of the United Nations, dealing exclusively with internal disputes between the members of the staff and the Organization; in these circumstances, the Court considers that in the absence of any express provisions to this effect, its judgments cannot be subject to review by any body other than the Tribunal itself. The General Assembly can always amend the Statute of the Tribunal and provide for review of its awards: in any event, in the opinion of the Court, the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ, all the more so as one party to the disputes is the Organization itself.

A number of arguments were put forward in support of the view that the General Assembly may be justified in refusing to give effect to awards of the Tribunal. The Court meets these arguments in the second part of its Opinion.

It was contended that the General Assembly has no legal power to establish a tribunal competent to render judgments binding on the United Nations. But although there are no express provisions to this effect in the Charter, it appears from the Charter itself that such a power is conferred by necessary implication. Indeed, it is essential, in order 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.

It was ...

It was also contended that the General Assembly could not establish a tribunal with authority to make decisions binding on the General Assembly itself. But the precise nature and scope of the measures by which the power of creating a tribunal was to be exercised - even though the power was an implied one - was a matter for determination by the General Assembly alone. It was further argued that the power thus exercised would be inconsistent with the budgetary power reserved to the General Assembly. But a budgetary power is not absolute. Where expenditure arises out of obligations, the General Assembly has no alternative but to honour these engagements, and awards of the Tribunal fall within this category.

It was also 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. But by virtue of the provisions of the Charter, the General Assembly could at all times limit or control the powers of the Secretary-General in staff matters. It has authorized the intervention of the Tribunal in such matters within the limits of the jurisdiction which it conferred upon the Tribunal. Accordingly, when acting within these limits, the Tribunal 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.

Moreover, the fact that the Tribunal is a subsidiary, subordinate or secondary organ is of no importance. What is of importance is the intention of the General Assembly in establishing the Tribunal, and what it intended to establish was a judicial body.

With regard to what has been called the precedent established by the League of Nations in 1946, the Court cannot follow it. The very special circumstances existing then were quite different from the present circumstances; there is a complete lack of identity between the two situations.

Having thus arrived at the conclusion that the first question submitted by the General Assembly must be answered in the negative, the Court finds that the second question does not arise.

The Hague, July 13th, 1954.