



Ninth session
Agenda item 48

AWARDS OF COMPENSATION MADE BY THE UNITED NATIONS
ADMINISTRATIVE TRIBUNAL: ADVISORY OPINION OF THE
INTERNATIONAL COURT OF JUSTICE

Report of the Fifth Committee

Rapporteur: Mr. A. LIVERAN (Israel)

1. The General Assembly, in connexion with the consideration at its eighth session of supplementary estimates for the payment of certain awards of the United Nations Administrative Tribunal, decided by resolution 785 A (VIII) of 9 December 1953 to request an advisory opinion from the International Court of Justice on the following legal questions:

"(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?"

2. The International Court of Justice in its Advisory Opinion of 13 July 1954 (A/2701) held, by 9 votes to 3, that the General Assembly has no 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 first question was answered in the negative it was not necessary for the Court to reply to the second question.

3. On the recommendation of the General Committee the item "Awards of compensation made by the United Nations Administrative Tribunal: Advisory Opinion of the International Court of Justice" was placed on the agenda of the ninth session by the General Assembly at its 477th meeting on 24 September 1954 and was referred to the Fifth Committee by the General Assembly at its 478th meeting on 25 September 1954.
4. The Fifth Committee also had before it a report by the Secretary-General on Budgetary Arrangements for the Payment of Indemnities (A/C.5/607) which had been prepared pursuant to a statement made by the Secretary-General to the Fifth Committee during the eighth session of the General Assembly following a proposal made by the representative of Argentina (A/2615, paras. 58-60). The report of the Secretary-General classified indemnity payments under two different categories, namely, indemnity payments made under the provisions of the Staff Regulations and the Staff Rules and indemnity payments arising out of decisions by the Administrative Tribunal. With respect to the first category the report recommended that appropriate provision for such payments should continue to be made in the annual budget of the Organization in the same way as for other common staff costs. With respect to the second category, however, it was considered impossible to forecast with any degree of certainty the amounts which may be required from year to year to meet awards of the Administrative Tribunal. The report considered that in order to remove the possibility of wide fluctuations between estimates and actual expenditures there would be considerable merit in making special budgetary arrangements for their payment, which would take account of the fact that the Secretary-General should be in a position to finalize such payments within a reasonable time. It was, therefore, proposed that a special indemnity fund should be established from which the Secretary-General would be authorized to make all payments arising out of decisions by the Administrative Tribunal; such a fund would be maintained out of income from staff assessment and would stand at a level of \$250,000 at the beginning of each year.

5. The Advisory Committee on Administrative and Budgetary Questions in its 33rd report to the ninth session of the General Assembly (A/2837) concurred in the Secretary-General's proposal concerning the first category of indemnity payments. With respect to the second category the Advisory Committee expressed its agreement that the special indemnity fund proposed by the Secretary-General might offer some advantage in obviating any wide variation between the amounts appropriated annually in respect of common staff costs and those actually expended. The Committee recommended, however, that the fund should be established in the first instance on an experimental basis and be subject to review at the end of two years.

6. The Fifth Committee considered the item at its 474th to 480th meetings from 3 to 9 December 1954. At the opening of the general discussion the representatives of Argentina and the United States of America introduced a joint draft resolution (A/C.5/L.317) providing that the General Assembly, having considered the Advisory Opinion of the International Court of Justice and the report of the Secretary-General on Budgetary Arrangements for Payment of Indemnities, would decide to take note of the Advisory Opinion.

7. The joint draft resolution further proposed the following amendments to the Statute of the United Nations Administrative Tribunal:

"1. Omit present paragraph 2 of Article 10 and renumber remaining paragraphs accordingly;

"2. Insert following new Article 11 and renumber following articles accordingly:

'Article 11

'1. Subject to suspension and review by the Board of Judicial Review as provided in paragraphs 2, 3 and 4 of this Article, and to the power of the General Assembly to request an advisory opinion of the International Court of Justice on questions of law, judgments of the Administrative Tribunal shall be final and without appeal effective ninety days following the date of judgment.

'2. Upon the proposal of a Member State or of the Advisory Committee on Administrative and Budgetary Questions of the General Assembly, any judgment of the Administrative Tribunal may, by simple majority vote of the General Assembly be referred to the Board of Judicial Review constituted pursuant to paragraph 3 below. The Board of Judicial Review may remand a case for rehearing or reconsideration by the members originally sitting in the case or by the full membership, and may confirm, set aside or revise a judgment of the Tribunal, in accordance with such rules as it may establish to govern its proceedings.

"3. The Board of Judicial Review shall be composed of three members, one to be elected by the General Assembly for a term of three years, the second to be named by the President of the International Court of Justice for a similar term, and the third to be named by the first two members acting jointly when a case is referred to the Board by the General Assembly.

"4. If within ninety days of judgment by the Administrative Tribunal a Member State or the Advisory Committee on Administrative and Budgetary Questions notifies the Secretary-General of an intention to make a proposal of the kind referred to in paragraph 2, or a proposal to seek an advisory opinion of the International Court of Justice, the judgment will be suspended pending disposition of such proposal at the current or next regular session of the General Assembly, as the case may be, and the Secretary-General will give notice to the Tribunal, the parties, and all Members of the intended proposal.'

"3. Insert the following at the beginning of the first sentence of Article 2 (1):

'Acting within the authority granted to it by the General Assembly, particularly by the present Statute and the Staff Regulations',

"4. Add the following sentence at the end of Article 2(1):

'In discharging its responsibility under the present statute, the Tribunal shall have due regard for the intention and understanding of the General Assembly concerning the application of the Statute and the Staff Regulations as that intention and understanding are evidenced by the pertinent records'.

"5. Add the following at the end of Article 2(4):

'nor shall it be competent to substitute its judgment in areas reserved for the discretion of the Secretary-General.'

"6. Omit the final two sentences of Article 9(1) and substitute the following:

'If, in its opinion, special circumstances so warrant, the Tribunal may recommend to the General Assembly an additional ex gratia payment.'

8. Finally, the joint draft resolution of Argentina and the United States provided for the establishment of a Special Indemnity Fund against which the Secretary-General would be authorized to charge any payments for awards, costs and expenses finally adjudged by the United Nations Administrative Tribunal or by the Board of Judicial Review whose establishment was proposed in the joint

draft resolution. It provided that the Secretary-General on 1 January 1955 would transfer to the Fund from the income from staff assessment as a first charge against such income an amount of \$250,000.00 and on 1 January of each subsequent year such amount as would be necessary to bring the credit in the Fund up to \$250,000.00.

9. The representative of the United States in introducing the joint draft resolution referred to the Advisory Opinion of the International Court of Justice. He stated that his Government, like the minority of the members of the Court, disagreed with the opinion of the Court. The United States remained firmly convinced that the General Assembly had the right to refuse to give effect to decisions made by one of its subsidiary organs. It also continued to disagree with the particular awards by the Administrative Tribunal, considered at the eighth session. However, consistent with its policy in other cases, the Government of the United States was prepared to respect the authority of the International Court of Justice.

10. The representative of the United States further stated that it remained for the General Assembly to decide what action was called for as a consequence of the construction placed upon the Statute of the Administrative Tribunal by the International Court of Justice. He referred to the statement of the Court to the effect that in order that judgments be subjected to review by any body other than the Tribunal itself, it would be necessary that the Statute of the Tribunal or some other legal instrument governing it should contain an express provision to that effect. The Court noted that the General Assembly had 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 (A/2701, I.C.J. Reports 1954, p.56).

11. The representative of the United States pointed out that domestic systems of law are accustomed to the process of judicial review which he considered a prerequisite of a mature and sound judicial system. In order to provide against the contingency of grievous error by the Tribunal, it would be sufficient that judicial review should be provided when, in the opinion of a responsible organ of the United Nations, such review was necessary. The amendments to the Statute

of the Administrative Tribunal proposed in the joint draft resolution of Argentina and the United States, provided the machinery for such review. The legal resources of the International Court of Justice would be available where broad and general issues of international and Charter law were involved and a more flexible judicial procedure would be provided where there might be complex issues of fact involved in specific individual cases.

12. The United States would have preferred a simple amendment subjecting any award to challenge and rejection in the General Assembly but it had made its present proposals in deference to the statement by the International Court to the effect that should the Assembly contemplate, for dealing with future disputes, the making of some provision for the review of the awards of the Tribunal, the Court was of the opinion that the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ for that purpose.

13. With respect to the proposed amendment to Article 9(1) of the Tribunal's statute, the representative of the United States recalled the amendment made at the eighth session of the General Assembly which limited the amount of an award to two years net base salary. He pointed out that the Assembly, however, had added a proviso that the Tribunal might in exceptional cases when it considered it justified, order the payment of a higher indemnity. This proviso was intended to guard against extraordinary hardship cases and the representative of the United States believed the same objective could be served by permitting the Tribunal without exceeding the two-year maximum in its awards to recommend ex-gratia payments.

14. With respect to the proposed amendments to Article 2(1) and (4), the representative of the United States said that they were intended to make it clear that the Tribunal should have due regard for the intention and understanding of the General Assembly concerning the statute and the Staff Regulations and that by disregarding the expressed intention of the General Assembly or by substituting its judgment in areas reserved for the discretion of the Secretary-General, the Tribunal would be acting in excess of its competence. These basic principles he believed should not be left to implication but should be spelled out.

15. The representative of the United States emphasized the importance which his Government attached to the proposals for the provision of a judicial review of

judgments of the Administrative Tribunal and considered that the proposed amendments represented the minimum which the General Assembly was called upon to do in the light of the advice of the International Court of Justice.

16. The representative of the United States pointed out that the joint draft resolution also contained the Secretary-General's proposal for the establishment of a special fund for the payment of Tribunal awards which his delegation considered consistent with the guiding principle of providing in advance for the smooth functioning of the Administrative Tribunal system.

17. The representative of the Union of Soviet Socialist Republics stated that the question of amending the Statute of the Tribunal was not on the agenda of the General Assembly and the General Assembly had not authorized the Fifth Committee to consider it. The Committee was only concerned with taking note of the Advisory Opinion and with the question of how to give effect to the judgments of the Administrative Tribunal. He proposed therefore that the Fifth Committee should decide that it was not competent to consider the question of amendments to the Statute of the United Nations Administrative Tribunal under the agenda item as it was transmitted to the Fifth Committee by the General Assembly.

18. Some representatives expressed the view that the Committee was competent to consider any question arising out of the Advisory Opinion, including the establishment of a review procedure. The International Court of Justice had in fact referred to such a possibility. Other representatives doubted if the fact that the Court mentioned the problem of review was enough to automatically include it on the agenda of the General Assembly. It was also stated by some representatives that amendment of the Statute of the Administrative Tribunal, although considered by the Fifth Committee in the past, might be more appropriately dealt with by the Sixth Committee.

19. Still other representatives expressed the view that while the Committee might be competent to consider the proposal from a legal point of view, it would not be desirable to discuss the proposed amendments during the present session of the General Assembly because of the lack of time for adequate consideration and for consultation with Governments. The fact that they would vote in favour of the competence of the Committee was not intended to exclude the possibility of postponement.

20. The representative of Lebanon moved that a vote on the proposal of the representative of the Union of Soviet Socialist Republics be postponed until after the conclusion of the general debate. After a procedural discussion, he withdrew this motion in order to expedite the work of the Committee. The Committee rejected the proposal of the Union of Soviet Socialist Republics by 15 votes to 6 with 21 abstentions.

21. The representative of Poland explained that he had voted for the Union of Soviet Socialist Republics proposal because his delegation believed that the Committee should confine its consideration to the subject of the payment of indemnities and should not discuss the question of amendment to the statute of the Administrative Tribunal since that question was not on the agenda and had not been referred to the Committee by the General Assembly. The representative of Israel explained that he had abstained because he was unable to take an impromptu decision on such a complex matter and the representative of the Netherlands stated that he had abstained because he was not satisfied that the question could be properly discussed at the present session.

22. It was the consensus of the Committee that it should take note of the Advisory Opinion and that the awards in question should be paid. In the discussion, a number of representatives expressed appreciation for the position of the United States in accepting the Advisory Opinion of the International Court of Justice even though disagreeing with the conclusions of that opinion.

23. With respect to the method of payment of the awards, a number of representatives stated that they had no strong views on whether the necessary funds should be voted directly in the budget, or whether payment should be made from a special indemnity fund to be established. They had no objection to the establishment of such an indemnity fund and were prepared to follow the suggestion of the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions.

24. The representative of the Union of Soviet Socialist Republics, supported by the representative of Czechoslovakia, was opposed to the establishment of a special indemnity fund. He considered such a fund unnecessary since awards could be paid, as in previous years, from budget appropriations allocated to common staff costs. Furthermore, he believed that the financing of such a fund from staff assessment might prejudice the use of staff assessment for purposes of tax equalization in accordance with proposals to be considered at the tenth session. In that connexion he recalled the statement made by the United States representative at the 472nd meeting, during the consideration of the Tax Equalization Fund, and warned the Committee of the possible effect the action referred to in that statement might have on the proposed Special Indemnity Fund. The representatives of the United States and Australia stated that if a tax equalization plan utilizing the staff assessment were approved at the next session of the General Assembly, the method of financing the special indemnity fund could then be reconsidered.

25. In response to a request for clarification, the representative of the Secretary-General stated that it was correct to say that the effect of payments to the Special Indemnity Fund would not be felt in full by Member States which received tax payments from their nationals who were staff members of the United Nations in excess of their share in the suggested Tax Equalization Fund. A similar effect would be felt under the plan offered by the United States representative at the 472nd meeting.

26. With respect to the proposals for amendment of the Statute of the United Nations Administrative Tribunal, while a few representatives were prepared to accept the proposed amendments immediately, many representatives were of the view that the proposals raised complex questions which could not be adequately considered in the time remaining in the ninth session. They also considered it essential to consult their Governments before taking a decision. A few representatives questioned whether review of Tribunal judgments would be desirable. While recognizing that in national judicial systems there was ordinarily a right of appeal, they believed that it was sometimes necessary to ensure the finality of judgments in order not to weaken the authority of a Tribunal or impair administrative efficiency by excessive delay. They pointed out that there had been no provision for review of judgments of the Administrative Tribunal of the League of Nations, and that the omission of review procedure from the Statute of the United Nations Administrative Tribunal had been deliberate in order not to affect adversely the morale of the staff.

27. A number of representatives, some of whom accepted the principle that there should be a judicial review of judgments of the Administrative Tribunal, expressed doubts concerning certain details of the procedure provided in the joint draft resolution of Argentina and the United States. It was generally believed that any procedure to be established should be truly judicial and that the authority, independence and judicial character of the Administrative Tribunal should be preserved. Some representatives doubted whether the proposed Board of Judicial Review, being merely an ad hoc body, would have sufficient permanency and stature for this purpose. Doubts were also expressed concerning the proposed method of constituting the Board.

28. The method by which the review was to be initiated was also a matter of considerable concern. Some representatives, although recognizing the desirability of some machinery to act as a filter for ensuring that only serious cases were reviewed, believed that the parties, including the staff member concerned, should have the right to request a review. They doubted that the General Assembly should

be asked to decide which cases should be reviewed, since the Assembly was a political organ and could not easily examine judicial issues as they applied to individual cases. They further considered that initiation of review might be an undue burden on the General Assembly, and that there would be danger to the administrative efficiency of the Secretariat if Member States were to use the proposed procedure to support their nationals in cases which had been decided by the Tribunal. They also believed the initiation of a review by the Advisory Committee to be a function inappropriate for that organ.

29. The suggestion was made by some representatives that a review might be made by a special chamber of the International Court of Justice under Article 26 of its Statute. The possibility of a procedure similar to that provided in the Statute of the Administrative Tribunal of the International Labour Organisation was also mentioned.

30. At the 478th meeting of the Fifth Committee on 8 August 1954 Argentina and the United States, in the light of the views expressed in the general debate, withdrew their joint draft resolution (A/C.5/L.317) and in its place a joint draft resolution (A/C.5/L.321) was submitted by Argentina, Canada, Chile, Cuba, Turkey and the United States of America.

31. Part B of the new six-Power draft resolution provided that the Assembly would accept in principle the establishment of a procedure for judicial review of judgments of the Administrative Tribunal (paragraph 1); would establish a Special Committee composed of eleven members to develop such a procedure, taking into account the views of Member States, and to report thereon to the tenth session of the General Assembly (paragraph 2); would request the Secretary-General to notify all Member States of the date on which the Special Committee should meet and to invite them to submit proposals for a judicial review procedure for the consideration of the Committee (paragraph 3); and finally, would decide that as a transitional measure judgments of the Administrative Tribunal should become final on the thirty-first day following date of judgment, provided further that if, within thirty days of judgment, any Member of United Nations or either of the parties should notify the Secretary-General of their view that a particular judgment should be reviewed, the judgment in question would be subject to review by such judicial review procedure as the General Assembly should provide at its

tenth session. The Secretary-General should notify the parties, the Tribunal and Member States of receipt of such notice (paragraph 4).

32. Part C of the new six-Power draft resolution providing for the establishment of a Special Indemnity Fund, while in substance similar to the final paragraph of the joint draft resolution of Argentina and the United States, adopted the text recommended by the Advisory Committee in this respect (A/2837).

33. The representative of the United States explained that the new proposal reflected the view of members of the Committee that there was not sufficient time at the present session to give detailed consideration to the amendment of the Statute of the Administrative Tribunal in order to provide for a judicial review of the judgments of that body. The new six-Power draft resolution accordingly provided only for the acceptance of principle of judicial review at this stage. It also accepted the suggestion that a special inter-sessionary committee of Member States should meet at Headquarters to study the details of its application as the most satisfactory method of expediting action by the General Assembly at its tenth session. This draft resolution contained as a transitional measure a provision making it possible to suspend awards rendered between the ninth and tenth sessions of the General Assembly in order that they be subject to review by such procedure as the General Assembly would provide at its tenth session. He considered this measure necessary to guard against a miscarriage of justice in the interval before detailed procedure was approved, and explained that under this proposal, the judgment would be considered final at the end of the tenth session if no procedure for review was established during that session.

34. Amendments to the six-Power draft resolution were submitted jointly by Belgium, Brazil, Egypt, India, Norway and Pakistan (A/C.5/L.322). These amendments would add to the preamble of the draft resolution the considerations that under article 11 of the Statute of the Administrative Tribunal the General Assembly could amend that Statute, and that the question of the possible establishment of procedure for appeal against the judgments of the Administrative Tribunal required careful examination.

35. The amendments would also delete Part B of the six-Power draft resolution and replace it by a text providing that the General Assembly would request Member States to communicate to the Secretary-General before 1 July 1955 their views on the possible establishment of procedure for appeal against the judgments of the Administrative Tribunal and to submit any suggestions which they might consider useful; would invite the Secretary-General to consult on this matter with the specialized agencies concerned; and request him to transmit to the General Assembly at its tenth session the communications received from Member States and from specialized agencies.

36. The representatives of Belgium, Brazil, Egypt, India and Pakistan as sponsors of the joint amendments explained that these proposed amendments did not mean that they were opposed to the principle of judicial review but that they considered it premature to take a final decision on it at the present session.

37. Those representatives who supported the joint draft proposal of Argentina, Canada, Chile, Cuba, Turkey and the United States of America were of the view that the General Assembly at its present session should accept the principle of judicial review which was generally recognized and which was not, they thought, in serious dispute. The acceptance of the principle would not commit any member with respect to the form the procedure should take. A procedure for judicial review, rather than adversely affecting staff morale, would, they believed, offer greater legal protection to the staff. They expressed appreciation for the spirit of compromise evidenced by the United States and Argentina in withdrawing their original proposal. They pointed out that the joint amendments provided neither for the acceptance of the principle of judicial review nor even for a study of the subject before the tenth session of the Assembly. They did not believe that the communication of the views of Governments to the Secretary-General for transmittal to the General Assembly at its tenth session would be particularly useful in facilitating the work of the Assembly, which, as a result, might not be prepared to take action even during that session.

38. Those supporting the joint amendments of Belgium, Brazil, Egypt, India, Norway and Pakistan considered that it was unfair to ask States, who had not had the opportunity to study the matter fully and to receive instructions from their Governments, to decide on the question of principle during the present session. They were also of the opinion that the question of principle could not be completely separated from the details of procedure since acceptance of judicial review would depend on whether a satisfactory form for that review could be devised. They further believed that the specialized agencies should be consulted, particularly with respect to the Tribunal's jurisdiction in cases affecting the joint pension fund. They also opposed paragraph 4 of Part B of the six-Power draft resolution which provided for the suspension of judgments and for their review by procedure which had yet to be developed. Some representatives considered such a proposal to be legally unsound as constituting ex post facto action which might result in a denial of justice, while others who did not question its legality believed that it did not represent sound administrative practice. It was also pointed out that this paragraph would in fact modify the application of the Statute of the Tribunal without formally amending it.

39. Those supporting paragraph 4 of Part B of the six-Power draft resolution argued that that paragraph would not constitute ex post facto action since the suspension of any judgments and their subsequent review would be in accordance with the decision existing at the time that the judgment was handed down. There could therefore be no question of retroactive effect.

40. After discussion by the Committee of the six-Power draft resolution and of the joint amendments, the sponsors of the draft resolution (A/C.5/L.321) accepted several amendments. They accepted an amendment to paragraph 2 of Part B in order to meet the point in the joint amendments (A/C.5/L.322) concerning consultation with the specialized agencies. They also accepted a suggestion made by the representative of Australia that the proposed transitional measure should be clarified by the adding of a sentence to the effect that if no review procedure were provided by the tenth regular session before 31 December 1955, any suspended judgments would become final on that date. They further agreed that the Special Committee should consist of fifteen, instead of eleven, members and accepted a

suggestion by the representative of Lebanon that notification from ten Members, rather than from only one Member of the United Nations should be required in order to suspend a particular judgment under paragraph 4 of Part B.

41. The sponsors also accepted the first proposed addition to the preamble contained in the joint amendments (A/C.5/L.322). They also accepted the second proposed addition to the preamble provided the words "the question of the possible" were deleted, so that the paragraph would read "believing that the establishment of procedure for appeal against the judgments of the Administrative Tribunal requires careful examination". A revised joint draft resolution was submitted by Argentina, Canada, Chile, Cuba, Turkey and the United States which embodied these amendments. (A/C.5/L.321/Rev.1).

42. The representative of Belgium, speaking for the sponsors of the joint amendments, announced that they also were prepared to make certain modifications in their proposed text. In particular, they would agree to the establishment of a special committee of Member States to study the question. The revision of the amendments (A/C.5/L.322/Rev.1) provided that Part B of the revised six-power draft resolution would be deleted. It would be replaced by a text providing that the General Assembly would request Member States to communicate to the Secretary-General, before 1 July 1955, their views on the possible establishment of procedure for appeal against the judgments of the Administrative Tribunal and to submit any suggestions which they might consider useful; would invite the Secretary-General to consult on this matter with the specialized agencies concerned; would establish a special committee composed of fifteen members to meet at a time to be fixed in consultation with the Secretary-General to study the question of the establishment of such a procedure in all its aspects and to report to the General Assembly at its tenth session; and would request the Secretary-General to notify all Member States of the date on which the special committee should meet.

43. The principal remaining differences in substance between the proposals in the revised six-power draft resolution (A/C.5/L.321/Rev.1) and the proposals in the revised joint amendments (A/C.5/L.322/Rev.1) were the following: (1) The revised six-power draft resolution contained a provision accepting in principle

the establishment of a procedure for judicial review of judgments of the Administrative Tribunal, whereas the revised joint amendments contained no such provision. (2) the function of the special committee to be established under the revised six-power draft resolution would be to develop a review procedure, whereas the function of the special committee under the joint amendments would be to study the question of the establishment of a procedure for appeal in all its aspects. (3) The revised joint six-power resolution would contain a transitional measure providing for the possibility of suspending judgments made in the interval between the ninth and tenth sessions of the General Assembly pending the establishment of a review procedure at the tenth session, whereas the revised joint amendments contained no such provision.

44. The Fifth Committee, at its 480th meeting on 9 December 1954, proceeded to vote on the revised joint draft resolution of Argentina, Canada, Chile, Cuba, Turkey and United States of America and on the amendments thereto submitted jointly by Belgium, Brazil, Egypt, India, Norway and Pakistan. The first and the second paragraphs of the preamble were adopted unanimously by a vote of 55 in favour, none against and no abstentions.

45. At the request of the representative of the Union of Soviet Socialist Republics, a separate vote was taken on the third paragraph of the preamble. The third paragraph of the preamble was approved by 49 votes in favour, none against, and 5 abstentions.

46. Part A of the revised joint draft resolution was unanimously approved by 55 votes in favour, none against, with no abstentions.

47. The representative of the Union of Soviet Socialist Republics requested a separate vote on the last two paragraphs of the joint amendments to Part B of the revised joint draft resolution. After a procedural discussion, the representative of the Union of South Africa, in order to facilitate a decision by the Committee, objected under Rule 130 of the Rules of Procedure of the General Assembly to the request for a division and asked that, in accordance with that rule, the question of division be decided by the Committee. The representative of the Union of Soviet Socialist Republics then withdrew his request.

48. The amendments proposed jointly by Belgium, Brazil, Egypt, India, Norway and Pakistan were approved by a roll-call vote of 28 votes in favour, 24 against and 4 abstentions. The voting was as follows:

In favour: Brazil, Burma, Costa Rica, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, France, Iceland, India, Indonesia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republics, Union of Soviet Socialist Republics, Yemen, Yugoslavia, Belgium.

Against: Byelorussian Soviet Socialist Republic, Canada, Chile, China, Cuba, Dominican Republic, Greece, Guatemala, Honduras, Iran, Iraq, Lebanon, Liberia, Nicaragua, Panama, Paraguay, Philippines, Thailand, Turkey, Union of South Africa, United States of America, Argentina, Australia, Bolivia.

Abstaining: Colombia, Israel, United Kingdom of Great Britain and Northern Ireland, Venezuela.

49. Part C of the revised joint draft resolution was approved by 50 votes to 5 with one abstention.

50. The amended joint draft resolution as a whole was approved by a roll call vote of 26 votes in favour, 3 against and 27 abstentions. The voting was as follows:

In favour: India, Indonesia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Saudi Arabia, Sweden, Syria, United Kingdom of Great Britain and Northern Ireland, Yemen, Yugoslavia, Australia, Belgium, Brazil, Burma, Costa Rica, Denmark, Ecuador, Egypt, El Salvador, France, Iceland.

Against: Turkey, United States of America, China.

Abstaining: Iran, Iraq, Israel, Lebanon, Liberia, Nicaragua, Panama, Paraguay, Philippines, Poland, Thailand, Ukrainian Soviet Socialist Republics, Union of South Africa, Union of Soviet Socialist Republics, Venezuela, Argentina, Bolivia, Byelorussian Soviet Socialist Republic, Canada, Chile, Colombia, Cuba, Czechoslovakia, Dominican Republic, Greece, Guatemala, Honduras.

51. The representative of the United States of America explained that he had abstained on Part C of the revised joint draft resolution and had voted against the resolution as a whole since the refusal of the Committee to accept the principle of judicial review had completely changed the character of the resolution.

52. The representatives of Argentina and Cuba explained that they had abstained on the revised joint draft resolution as a whole because the adoption of the amendment had destroyed the goodwill which the sponsoring states had sought to achieve in not pressing for an amendment of the statute at the present session. They reserved the right to submit amendments during the consideration of the matter in the General Assembly.

53. The representative of Israel explained that he had abstained in the vote on the draft resolution as a whole because he believed that in its present form the amended resolution did not embody the maximum of agreement which in fact existed. Had there been an opportunity to vote on Part B of the revised joint draft resolution he would have approved the first three paragraphs and abstained on paragraph 4 which concerned the transitional measure.

The representatives of the Dominican Republic and Colombia explained that they had abstained in the vote on the draft resolution as a whole because they believed the principle of judicial review should have been established at the present session.

54. The representatives of Costa Rica, Egypt, India, Mexico explained that their vote in favour of the amendments should not be considered as expressing opposition to the idea of judicial review but that they considered that a decision should not be taken until after careful study.

55. The representative of Australia explained that he had voted against the amendments but in favour of the draft resolution as a whole because, although he did not consider it the most satisfactory, he did find the draft resolution one which his delegation could accept. His vote in favour of the draft resolution should not be considered inconsistent with a vote to support amendments which might be proposed during the consideration of the matter in a plenary meeting of the General Assembly.

56. The Representative of Turkey, at the 481st meeting of the Fifth Committee on 10 December 1954, explained that he had voted against the draft resolution as a whole because his delegation was not in agreement with all the amendments adopted by the Committee. His negative vote should not be interpreted as opposition to the payment of the awards or to the establishment of a special indemnity fund.

57. The Chairman, at the 482nd meeting on 11 December 1954, announced that pursuant to arrangements agreed to by the Fifth Committee, he had prepared a list of Members for the Special Committee to be established under Part B of the draft resolution. He accordingly proposed the following fifteen Members: Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, France, India, Iraq, Israel, Pakistan, the U.S.S.R., the United Kingdom and the United States. No objection being raised, the membership of the Committee was approved.

AWARDS OF COMPENSATION MADE BY THE UNITED NATIONS
ADMINISTRATIVE TRIBUNAL: ADVISORY OPINION OF THE
INTERNATIONAL COURT OF JUSTICE

The General Assembly,

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

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

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

A

Decides to take note of the Advisory Opinion;

B

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

which they may consider useful;

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

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

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

C

Decides that:

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

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

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