United Nations
GENERAL ASSEMBLY
TENTH SESSION
Official Records

FIFTH COMMITTEE, 494th
MEETING

Monday, 17 October 1955, at 3.15 p.m.

New York

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Chairman: **Mr. Hans ENGEN (Norway).**

AGENDA ITEM 49

Report of the Special Committee on Review of Administrative Tribunal Judgements (A/2909, A/2917 and Add.1 and 2, A/C.5/634, A/C.5/L.335 and Add.1, A/C.5/L.337) (*continued*)

1. Mr. VAN ASCH VAN WIJCK (Netherlands) said that at the previous session, the Netherlands delegation had abstained from voting against the creation of a special committee whose responsibility would be not to establish a procedure for review of judgements of the Administrative Tribunal, but to study the question in all its aspects and to present its conclusion to the tenth session of the Assembly. However it had maintained the right to reject that Committee's recommendations if they proved unacceptable.

2. Having now acquainted itself with the Special Committee's proposals (A/2909), his delegation still thought that the establishment of a review procedure was not only unnecessary but undesirable.

3. It had been argued that review machinery existed in almost all judicial systems. That was true, but it should be pointed out that in practice a lawsuit before the Administrative Tribunal already constituted something in the nature of a review, since before being submitted to the Tribunal cases had been examined by several advisory organs. If there were a considerable number of administrative tribunals in existence in the international field it might perhaps be worth while to try to set up one review court with a view to achieving some uniformity of jurisdiction in respect of personnel policy. But that was not the case at present. Moreover, the introduction of a further review might well unduly delay the final solution of disputes.

4. Further, the necessity for establishing a review procedure might have made itself felt if there had in general been reason for serious dissatisfaction with the way in which the Administrative Tribunal carried out its duties. The Tribunal could not be accused of having given evidence of partiality: in the 58 cases which had been submitted to it, 17 had been decided in favour of the applicant (one judgement referring to 16 identical cases) and 26 in favour of the Administration. It might also be noted that the Secretary-General and the staff, who were the principal interested parties, did not appear to feel any necessity for a review procedure.

5. Those who argued in favour of a review procedure would presumably quote the precedent of the Administrative Tribunal of the International Labour Organisation, whose Statute contained a provision for possible review of the Tribunal's judgements. But that provision had been adopted in order to meet a very special case. Moreover it had been intended primarily to avoid interference with the execution of judgements, and provided solely for the possibility of requesting the International Court of Justice for a definition of the Tribunal's jurisdiction.

6. His delegation also had serious objections to the procedure proposed by the Special Committee.

7. In the first place, there would in practice be no limit set to the competence of the reviewing organ, because a judgement of the Administrative Tribunal could be challenged on the ground of an error of law relating to the provisions of the Charter, which was an instrument very wide in its scope.

8. Secondly, any Member State would have the right to institute proceedings for review, a right which normally belonged only to the parties to a dispute. That would introduce a political element into the system. Moreover, to confer such a right on Member States might give rise to highly undesirable relations between staff members and Member States, and might lead to situations contrary to the Charter and to the Staff Regulations.

9. The procedure recommended by the Special Committee also established an inequality between the two parties, in that private individuals had no status before the International Court of Justice. That inequality would be increased by the fact that the committee which was to be responsible for deciding whether or not the Court should be requested for an advisory opinion would be composed entirely of Member States, and would accordingly be by definition purely political in character.

10. Under those circumstances, and whatever might be the merits of the Special Committee and the qualities of its report, his delegation would find it impossible to approve the review procedure which it recommended.

11. Mr. BIHIN (Belgium) said that at the ninth session the Belgian delegation had maintained that a review procedure was unnecessary, and moreover liable to impair the authority of the Administrative Tribunal. In a spirit of compromise, however, it had agreed to the establishment of a Special Committee to study the question of such a procedure, hoping that the Committee might find an acceptable solution.

12. In the opinion of his delegation, such a procedure must fulfil a number of requirements. In the first place, the review organ must present the same guarantees of independence and have the same jurisdictional character as the Administrative Tribunal, i.e., it must be composed of judges enjoying some permanence of tenure and the procedure followed must be judicial. In the second place, equality between the parties must be ensured at all stages of the proceedings. Furthermore,

Member States, since they were not parties to such disputes, should not be given the right to contest judgements of the Administrative Tribunal.

13. The new articles 11 and 12 proposed by the Special Committee by no means fulfilled those conditions. Not only would they enable Member States to contest judgements of the Administrative Tribunal, but they set up a committee of a political character whose almost unlimited powers of jurisdiction would enable it definitively to rule out appeal by one of the parties. Furthermore, there would be no equality between staff members, the Secretary-General and Member States, because the International Court was not open to private individuals. The United Kingdom delegation, in suggesting that Member States and the Secretary-General should undertake not to make oral statements before the International Court of Justice, where the Court was requested for an advisory opinion, was merely uttering a wish that was devoid of legal force and that might very well be disregarded.

14. The Belgian delegation, while it rejected the recommendations of the Special Committee, was none the less prepared to give favourable consideration to any proposal which took the foregoing points into account and which constituted a properly drafted legal instrument, easy to apply and giving fair treatment to staff members. As the present system worked quite satisfactorily, it should be changed only if it could be improved.

15. Mr. MERROW (United States of America) referred to the interest and concern of the United States Government in the matter. He emphasized that the recommendations of the Special Committee were a compromise solution at which that Committee had arrived after careful study of all the legal aspects of the question in the best democratic and diplomatic tradition; it therefore deserved the support of all members of the Fifth Committee.

16. The members of the Special Committee had agreed that the review body must be one of the highest prestige, commanding universal respect. The International Court of Justice was obviously such a body. Again, since questions of law arising from Administrative Tribunal judgements might involve the interpretation or application of provisions of the Charter, the Special Committee had thought it wise to choose as review body the International Court, which was the final judicial arbiter on questions of Charter law. As the General Assembly was able to secure a review of legal questions by the International Court of Justice only under the advisory opinion procedure, it had been inevitable that the Special Committee should recommend that procedure. Furthermore, the Statute of the ILO Administrative Tribunal provided for a review of that nature, and most of the specialized agencies had accepted the jurisdiction of that Tribunal. It was therefore natural that States which were members of those agencies (and all the States represented on the Fifth Committee were members of one or more of the specialized agencies), should accept a precedent which they themselves had established.

17. The proposed system had been criticized on the ground that it was not strictly judicial in nature, because the only body authorized to request an advisory opinion would be a committee composed of representatives of Member States. But the committee's task would be to screen requests for advisory opinions for the purpose of protecting the Court from frivolous applications. The only body entitled to decide on those questions of law which might affect Tribunal judgements would be a judicial organ, the International Court of Justice.

18. The proposed procedure would entail no unfairness to staff members. At the present time, staff members had no right to have a review of Administrative Tribunal judgements against them. Under the recommendations of the Special Committee, they would have the right to apply for a review. Before any inequity could result, the Secretary-General, despite all the internal procedure which at present existed for the protection of staff members, would have to make an improper decision which deprived a staff member of his contractual rights; the Administrative Tribunal would have to confirm the Secretary-General's decision and, finally, a committee of Member States constituted on the pattern of the General Committee would have to act quite arbitrarily and refuse to ask the advisory opinion of the Court. That was a whole series of assumptions which nobody would be justified in making. If, on the other hand, the Administrative Tribunal made a decision conflicting with that of the Secretary-General on an important question such as the interpretation or application of the Charter, the dispute would have to be settled, and it could not be argued that to ask the advisory opinion of the Court constituted an injustice. If the screening committee decided not to initiate review procedure, the Administrative Tribunal's decision would stand; if it decided to do so, the International Court of Justice would decide on the questions of law, and there was no reason to assume that the final decision would be unjust to the staff member.

19. Nor was there any injustice in the procedure for obtaining the Court's advisory opinion. Under article 11, paragraph 2, as proposed by the Special Committee, the staff member would be able to submit his views to the Court in writing, on the same footing as the Secretary-General or a Member State. To avoid inequality of any kind, it was recommended in operative paragraph 2 of the draft resolution submitted by a number of delegations including the United States (A/C.5/L.335 and Add.1 that Member States and the Secretary-General should refrain from making oral statements to the Court. Delays inherent in the procedure had been reduced to a minimum, and the provisions of article 11, paragraph 5, were more generous than those existing in any national review or appeal procedure; they showed that the Special Committee had taken great care to avoid injustice of any kind.

20. With regard to the scope of review, three grounds were specified by the Special Committee as the basis for requesting an advisory opinion, namely, when the Tribunal had exceeded its jurisdiction, when it had erred on a question of law relating to the provisions of the Charter, or when it had committed a fundamental error of procedure. The second category would include such questions as whether the Secretary-General's judgement should be upheld in regard to the conduct of a staff member under United Nations standards of efficiency, competence, and integrity as prescribed in accordance with Article 101 of the Charter, or, whether the Secretary-General's action should be sustained in giving directions to a staff member or taking disciplinary action against him, in view of the Secretary-General's position as Chief Administrative Officer of the Organization under Article 97 of the Charter; or a question involving the staff member's duty to refrain from any action which might reflect on his position as an inter-

national official responsible only to the Organization, as laid down in Article 100 (1).

21. Certain representatives had thought that Member States should apply to the Secretary-General and leave it to him to decide whether review procedure should be initiated; but in the United States view it would be wrong to put the Secretary-General in an impossible position by compelling him to choose between different Member States, that would moreover be a breach of Article 100 of the Charter. It had also been said that a Member State which was not a party to a dispute should not be given the right to ask the screening committee to obtain the Court's advisory opinion; but it was quite reasonable that States not represented in the General Committee of the Assembly should be able, like others, to make their views known before the screening committee took a decision.

22. Lastly, there was no justification for referring the question to the Sixth Committee for its opinion, for the Statute of the Administrative Tribunal and all the amendments to it had been drafted and adopted by the Fifth Committee. Many countries were represented in the Fifth Committee by eminent jurists who also sat on the Sixth Committee; and all Governments had had sufficient time to have the report of the Special Committee analysed by their experts. The Fifth Committee had studied the question thoroughly, and the decision should be left to it alone.

23. Mr. CHAMBERS (Australia) observed that at the ninth session of the General Assembly his delegation had been a co-sponsor of the draft resolution adopted by the Assembly (515th plenary meeting) whereby it had accepted in principle the review of Administrative Tribunal judgements and had set up the Special Committee to study the question. Australia had been a member of the Special Committee, but its representative had abstained in the vote on the recommendation now before the Fifth Committee because certain aspects of the procedure proposed by the Special Committee did not seem acceptable to him.

24. The Australian delegation was perfectly aware of the political aspects of the problem and of the necessity for finding a solution during the present session. Such a solution would inevitably have to be a compromise. Perhaps the recommendations formulated by the majority of the Special Committee would be accepted by the Fifth Committee. Accordingly, the Australian delegation, in a spirit of compromise, would not vote against them, but would abstain, as it had done in the Special Committee.

25. The Australian delegation had submitted to the Special Committee a number of draft amendments to article 9 of the Statute of the Administrative Tribunal, which he now formally submitted to the Fifth Committee in document A/C.5/L.337. Those amendments, which had been rejected by the Special Committee by a small majority, had been proposed in pursuance of resolution 888 B (IX), in which the General Assembly had invited Member States to submit to the Secretary-General before 1 July 1955 any suggestions which they might consider useful. The Australian proposals were independent, and had no connexion with the procedure recommended by the Special Committee. It would therefore be advisable for the Committee to begin its discussion of them after deciding on the recommendations of the Special Committee.

26. Mr. ALFONSIN (Uruguay) pointed out that at the last meeting the Norwegian representative had brilliantly explained the unfortunate consequences which would result from the adoption of the amendments proposed by the Special Committee to the Administrative Tribunal's Statute. It was questionable whether there was any point in creating a new jurisdiction and whether it could be given a judicial character. At present, a staff member who felt aggrieved could appeal to the Joint Appeals Board; only in exceptional cases could an application be made direct to the Administrative Tribunal. The Administrative Tribunal was therefore in fact an appeals court.

27. Certain delegations proposed that the review of Administrative Tribunal judgements should be entrusted to a higher tribunal. The General Assembly would be making a mistake if it placed its confidence in another judicial organ. There was no certainty that such a new organ would administer justice better than the Administrative Tribunal. Good administration of justice depended not on the number of tribunals but on the competence and integrity of judges.

28. It would certainly be logical to make the International Court of Justice responsible for the review of judgements. Under the proposed new article 11 of the Administrative Tribunal's Statute, the Court would be asked to give an advisory opinion. But when the Court gave such an opinion it was not operating strictly as a judicial organ. Moreover the two parties to the dispute would not be on an equal footing; in pleading before the Court the staff member would have less extensive rights than the Secretary-General or Member States. To remedy that inequality the authors of the joint draft resolution (A/C.5/L.335 and Add.1) were proposing that parties should refrain from making oral statements to the Court. But that would eliminate an element which was indispensable to the good administration of justice.

29. He felt therefore that it would be preferable to maintain the *status quo,* and he hoped that the Committee would agree.

30. Mr. TSAMISSIS (Greece) pointed out that at the ninth session his delegation had voted in favour of resolution 888 (IX), although, like other delegations, it would have preferred to leave things as they were, so as not to impair either the morale of the staff or the prestige of the Administrative Tribunal.

31. In voting for resolution 888 (IX), the Greek delegation had had in mind the establishment of a rapid judicial procedure which would guarantee complete equality between the parties. The review procedure should conform to the principles set forth in Article 100 of the Charter: no political consideration should be allowed to operate and only the Secretary-General and the staff member should have the right to institute proceedings. Lastly, to avoid the creation of a new organ and unnecessary expense the review should be entrusted to the International Court of Justice, a procedure already provided for in the Statute of the ILO Administrative Tribunal.

32. The Special Committee had done commendable work and had submitted to the General Assembly recommendations for amending the statute of the Administrative Tribunal. Those recommendations fulfilled only partially the conditions which he had just enumerated, but the Greek delegation was above all anxious to make agreement possible. If, in spite of

General Assembly resolution 888 B (IX), the Committee decided not to establish a review procedure, the Greek delegation would naturally reserve the right to reconsider its position during the debate in the plenary session.

33. Mr. KIANG (China) noting that certain delegations thought the Sixth Committee's advice should be obtained on the question of reviewing Administrative Tribunal judgements, quoted the relevant provisions of General Assembly resolution 684 (VII), in particular paragraph 1 (d) reading: "when a Committee considers the legal aspects of a question important, the Committee should refer it for legal advice to the Sixth Committee". But when the Fifth Committee voted on the Special Committee's report, it would be taking not a legal decision but a decision of principle. Nor must it be forgotten that most of the members of the Special Committee were jurists, and that they had studied all the legal aspects of the question. Moreover, the Fifth Committee had adopted the Statute of the Administrative Tribunal and all the amendments to it. Lastly, the Special Committee had been set up by the General Assembly on the Fifth Committee's recommendation. The question now before the Committee was mainly of an administrative character and it would therefore be inadvisable for the Committee to ask for the Sixth Committee's advice on it.

The meeting rose at 4.45 p.m.

Printed in Canada Q—77501—November 1955—1,875