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CONTENTS

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/Rev.1, A/C.5/L.337, A/C.5/L.339) (*continued*)

1. The CHAIRMAN invited the Committee to continue its discussion of the joint draft resolution on judicial review of judgements of the United Nations Administrative Tribunal (A/C.5/L.335/Rev.1) and the Indian delegation's proposal for amendments thereto (A/C.5/L.339).

2. Mr. McCANN (Canada) said that his delegation's position had been stated in full, both in the Special Committee and in the Fifth Committee. It considered that the Special Committee's recommendations were in conformity with General Assembly resolution 888 B (IX) and that they represented the best possible compromise solution of the problem. His Government had sponsored the joint draft resolution in the hope that delegations would adopt it unanimously in a spirit of conciliation. The amendments proposed by the Indian delegation, however, revived differences which had been settled in the Special Committee and some of them brought into question the basis of the compromise proposal. His delegation could accept paragraphs 2 and 3 of the Indian amendments but it was opposed to all the others.

3. Lord FAIRFAX (United Kingdom) commended the Indian delegation for its efforts to find a more acceptable solution, but regretted that most of the amendments proposed were unacceptable to his delegation. He had no objection to the amendment in paragraph 2, although the contingency it provided for was little likely to arise. The amendment in paragraph 3 was also acceptable, for the additional words it proposed would simply serve to emphasize the intention of the original draft. The remainder, however, concerned points of substance, of which he would mention three.

4. With regard to the first point, that Member States should be denied the right to initiate review, he would only say that the participation of Member States was an essential feature of the compromise solution recommended by the Special Committee and he could not agree to its elimination.

5. The second, that a Full Bench of all the members of the Tribunal should take the place of the International Court of Justice as reviewing body, had been considered by the Special Committee and rejected for reasons which his delegation had found convincing. In the first place, as three members of the Tribunal would already have heard the case in first instance, the Full Bench would lack the independence of the International Court as a reviewing body. In the second place, it would be more appropriate for the International Court, as the principal judicial organ of the United Nations, to be the final authority on questions concerning Charter law. Thirdly, experience had shown that the claim that the use of the Tribunal would render the review procedure less costly and more expeditious was not valid.

6. The proposal in the third amendment of substance, namely, that a three-member chamber of the Tribunal should take the place of the fifteen-member screening committee had also been discussed in the Special Committee. The main objection to it was that if the International Court of Justice were agreed upon as the review body, the right to request a review must be vested in an organ of the United Nations so authorized by the General Assembly under Article 96 of the Charter. He doubted whether it would be either appropriate or legal to confer that right on a chamber of the Administrative Tribunal. The objection of insufficient independence also applied and, again, he would reject the claim that the procedure proposed was economical and expeditious.

7. While, therefore, his delegation could accept the proposals in paragraphs 2 and 3, it would be obliged to vote against all the others.

8. Mr. QUIJANO (Argentina) said that his delegation, too, would be able to accept the amendments in paragraphs 2 and 3 but would be obliged to vote against the remainder, since they were directed against the substance of the joint proposals.

9. Mr. BIHIN (Belgium) said that Belgium had consistently opposed the suggestion that Member States should be granted the right to initiate review and it therefore approved the Indian delegation's amendment in paragraph 1, which would deny Member States that right. His delegation had no objection to the changes in detail provided in the next two paragraphs. As for the remaining amendments, he was aware that the new procedure they introduced was not in accordance with the norms of Latin law but he felt that in an organization like the United Nations no one could expect to have his national institutions adopted as model for establishing an organ of international character. He would therefore support those proposals as being better than the ones made in the joint draft resolution.

10. He would ask the Indian representative for some clarification of the provision that the chamber of the Tribunal might grant a stay of operation of the award if it deemed fit. His delegation attached considerable importance to the granting of compensation awarded, notwithstanding the lodging of an appeal: it was pre-

cisely during the period of uncertainty following his termination that a staff member would be most in need of money. He suggested that the Indian representative might modify his amendment accordingly. His delegation would also be grateful for an explanation of the last sentence in paragraph 6, and in particular of the reference to "the rules framed in this behalf".

11. Mr. MERROW (United States of America) said that, as a sponsor of the joint draft resolution, the United States accepted paragraphs 2 and 3 of the Indian amendments which entailed no basic modification of the Special Committee's recommendations. The remaining paragraphs, however, introduced proposals that had already been rejected by the Special Committee after full consideration. The inclusion of the words "a Member State" in the proposed article 11, paragraph 1, was an integral part of the compromise arrived at by the Special Committee, which would be undermined if the Fifth Committee accepted paragraph 1 of the Indian amendments. The main purpose of the establishment of a judicial review procedure was to provide some recourse to meet the concern of Member States; that purpose would be defeated if that part of the amendment was accepted.

12. The United States had made concession after concession in an endeavour to achieve a compromise acceptable to all, successively abandoning the position that the General Assembly should have the right to review Administrative Tribunal awards and that a Member State or small group of Member States should be empowered to compel such review; the proposal for the establishment of a fifteen-Power committee to screen applications for review represented the extreme concession which the United States could make. If the words "a Member State" were deleted as India proposed, it would mean that the conciliatory spirit shown by the United States was not shared by a majority of the United Nations.

13. Paragraphs 5 and 6 of the Indian amendments, while in accordance with Indian judicial procedure, did not meet the requirements of the situation they were designed to cover. In view of the criticism which had been levelled at the Special Committee's recommendations on the ground that they did not provide for judicial review, it was surprising that the Indian delegation should now propose to give that Tribunal the last word upon whether its own original decisions had been right or wrong.

14. The United States would oppose all but paragraphs 2 and 3 of the Indian amendments, on the following grounds. First, neither a chamber of the Tribunal nor the Full Bench could review a decision of three members of the Tribunal as independently as could the International Court of Justice. Secondly, it was fitting that the International Court of Justice should be the final authority on interpretation of the Charter or of staff regulations based thereon which might be involved in the Tribunal's decisions. Thirdly, the members of the International Court of Justice pre-eminently met the requirement enunciated by the Secretary-General in his statement at the 493rd meeting (A/C.5/635, para. 6 (2)), that the members of the review tribunal should have the highest qualifications and stature. Fourthly, the Indian proposal was open to the criticism which had been levelled at the Special Committee's recommendations, namely, that they showed disrespect to the members of the Administrative Tribunal. The Indian procedure would tend to arouse conflict between individual members of the Tribunal and undermine their independence.

15. Lastly, it was partly on considerations of efficiency and economy of operation, which the Indian representative claimed for his proposals, that the same provisions had been rejected by the Special Committee. It would be difficult and expensive to assemble a three-member chamber of the Tribunal to scrutinize an application for review, and even more difficult and expensive to assemble the proposed Full Bench.

16. Mr. VENKATARAMAN (India) asked the Secretariat what it would cost to adopt the method of review proposed in the joint draft resolution and whether experience confirmed that it was difficult to assemble the Administrative Tribunal.

17. Mr. STAVROPOULOS (The Legal Counsel) undertook to supply the information requested, after consultation with the Secretary of the Administrative Tribunal.

18. Mr. VENKATARAMAN (India), replying to the United States representative, said that paragraphs 5 and 6 of his amendments did not conform to Indian judicial procedure, where as a rule appeal lay to a higher court. In view of the Special Committee's criticism that such appeal involved extra cost, India had proposed an alternative procedure likewise known to jurisprudence. He did not wish the Committee to gain the impression that India was endeavouring to foist its domestic procedure on other States.

19. With regard to the possibility of conflict arising between the members of the Tribunal, it was customary for members of a high court to sit on either the original or the appellate side, and they frequently changed places. It was never felt that a decision on appeal reflected on the ability or independence of the members of a lower court.

20. The compromise in favour of which the Special Committee had rejected the Indian proposal had been adopted by a majority of only one vote. India's present proposal was based on the International Court's advisory opinion of 13 July 1954 that the Administrative Tribunal was a judicial body. Under the joint draft resolution applications for review of the Administrative Tribunal's decisions would first be screened by representatives of Member States who, whether jurists or not, would represent their Governments and hence would be neither independent nor competent to fulfil that function. For such a body to decide whether or not a substantial question of law was raised by an application for review would be a flagrant violation of justice. His main concern was that that function should be performed by a judicial body; he was quite prepared to accept alternative proposals which did not involve a screening committee composed of representatives of Member States.

21. In reply to the Belgian representative, he pointed out that the filing of an appeal did not operate as a stay of any award of the Administrative Tribunal. While in some cases an order by the Tribunal might have to be suspended or modified, to provide for all contingencies it was necessary that complete discretion on the granting of a stay should be vested in the judicial body. The rules referred to in the last sentence of paragraph 6 of his amendment would be framed by the Administrative Tribunal itself.

22. Mr. MAURTUA (Peru) asked the Indian representative whether paragraph 6 of his amendments would

have the effect of converting the review procedure proposed by the Special Committee into an appeals procedure. He would also like to know what part would be played in the Full Bench proceedings by the three members of the Tribunal who had delivered the judgement under review and what the voting procedure in that Bench would be.

23. Mr. VENKATARAMAN (India) replied that applications would not be dealt with as appeals, the scope of the review having been limited in a preceding paragraph of the article. The Full Bench would confine itself to considering the grounds that had been admitted as grounds for review.

24. Where the proceedings in the Full Bench were concerned, the original judgement would be delivered by three members of the Tribunal, while the decision to admit review should be taken by three other members. The Full Bench of seven members would be in a position to discuss the arguments on which the original judgement and the decision to admit review had been based and to come to a majority decision. It was scarcely likely that the members of a judicial body like the Tribunal would adhere to their original opinions merely because they were embodied in a previous decision; they would naturally be open to arguments put forward by other members.

25. Mr. BLANCO (Cuba) said that, as he had indicated in the general debate, his delegation considered that Member States should have the right to initiate review of Tribunal judgements; it was therefore unable to accept paragraph 1 of the Indian amendments. Like the other sponsors of the joint draft resolution, it was prepared to accept paragraphs 2 and 3, although it considered the latter paragraph superfluous since a fundamental error in procedure clearly implied a failure of justice.

26. Where paragraphs 5 and 6 of the amendments were concerned, the feasibility of the review being undertaken by the Tribunal itself had been fully considered in the Special Committee, which had come to the conclusion that such a system would not conform to two principles which the Secretary-General considered basic for any review procedure, namely, that the review should be truly judicial in character and that the members of the review tribunal should have the highest qualifications and stature. The only body that met those two requirements was the International Court of Justice. As a subsidiary organ of the General Asssembly and an administrative body, the Administrative Tribunal did not enjoy a comparable status. For that reason, the Cuban delegation could not accept paragraphs 5 and 6 of the Indian amendments.

27. Mr. van ASCH van WIJK (Netherlands) said that his delegation not only opposed the Special Committee's proposals in principle because it saw no need to institute a review procedure, but had a number of objections to the details of those proposals. Many of those objections had been removed by the Indian amendments. If, therefore, a review procedure was to be established at all, his delegation would prefer that it should take the form proposed in the Indian amendments rather than that proposed in the joint draft resolution.

28. Mr. CALDERON PUIG (Mexico) said his delegation was grateful to the Indian delegation for the amendments it had submitted, which greatly improved the joint draft resolution. It was glad that the sponsors of the latter had accepted paragraphs 2 and 3 of the amendments in a spirit of compromise. In addition to those two paragraphs, his delegation also accepted paragraph 1 of the Indian amendments, since it considered that the right to initiate review should be limited to the parties to the original judgement.

29. Where paragraph 6 was concerned, his delegation would have preferred the arrangement suggested by the Staff Council in document A/C.5/634, namely, that the review of judgement should be entrusted to an independent tribunal of three members to be appointed by the President of the International Court, since that arrangement would have guaranteed the judicial character of the review procedure. If, however, that suggestion was not generally acceptable, it felt that the arrangement proposed in paragraph 6 of the Indian amendments should be given serious consideration by the Committee, since it was free of the political element inherent in the joint draft resolution's proposal for a screening committee.

The meeting rose at 4.20 p.m.

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