

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/2817
11 January 1956
ENGLISH
ORIGINAL: FRENCH

REQUEST FOR AN ADVISORY OPINION TO THE INTERNATIONAL
COURT OF JUSTICE, SUBMITTED BY THE UNITED NATIONS
EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

In conformity with article XI, paragraph 4 of the Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization, the Secretary-General has the honour to communicate herewith to the Economic and Social Council, for its information, the text of a letter dated 30 November 1955 which he has received from the Director-General of UNESCO:

"I have the honour to inform you that, at its 42nd session, the Executive Board of the United Nations Educational, Scientific and Cultural Organization, acting under article XII of the Statute of the Administrative Tribunal of the International Labour Organisation, decided to challenge the judgements given by the Administrative Tribunal on 26 April 1955 in the Duberg, Leff and Wilcox cases, and on 29 October 1955 in the Bernstein case, and to submit the question of their validity to the International Court of Justice.

"Accordingly, the Executive Board of the United Nations Educational, Scientific and Cultural Organization adopted the following resolution on 25 November 1955:

'WHEREAS the Administrative Tribunal of the International Labour Organisation, by its judgements Nos. 17, 18 and 19, dated 26 April 1955, and its judgement No. 21, dated 29 October 1955, upheld its jurisdiction in the complaints filed by Mr. Duberg, Mr. Leff, Mrs. Wilcox and Mrs. Bernstein against the United Nations Educational, Scientific and Cultural Organization,

'AND WHEREAS article XII of the Statute of the Administrative Tribunal of the International Labour Organisation provides:

"1. In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.

"2. The opinion given by the Court shall be binding."

'AND WHEREAS the Executive Board, after due consideration, proposes to avail itself of the provisions of the aforesaid article,

'NOW THEREFORE THE EXECUTIVE BOARD

'DECIDES to submit to the International Court of Justice, for an advisory opinion, the following questions of law:

Having regard to the Statute of the Administrative Tribunal of the International Labour Organisation;

Having regard to the Staff Regulations and Staff Rules of the United Nations Educational, Scientific and Cultural Organization, and all other pertinent instruments and texts;

Having regard to the provisions of the contracts of employment of Mr. Duberg, Mr. Leff, Mrs. Wilcox and Mrs. Bernstein,

I. Was the Administrative Tribunal competent, under article II of its Statute, to hear the complaints filed against the United Nations Educational, Scientific and Cultural Organization on 5 February 1955 by Mr. Duberg, Mr. Leff and Mrs. Wilcox, and on 28 June 1955 by Mrs. Bernstein?

II. In the event of an affirmative reply to question I:

(a) Was the Administrative Tribunal competent to determine whether the power vested in the Director-General to refrain from renewing fixed-term appointments was exercised for the good of the service and in the interest of the Organization?

- (b) Was the Administrative Tribunal competent to say what attitude the Constitution of the United Nations Educational, Scientific and Cultural Organization requires the Director-General to adopt in his relations with a Member State, especially with regard to the application of the Governmental policy of such Member State?

III. What, in any event, is the validity of the decisions given by the Administrative Tribunal in its judgements Nos. 17, 18, 19 and 21?

"In accordance with article XI, paragraph 4, of the Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization, I should be grateful if you would be good enough to inform the United Nations Economic and Social Council of this request for an advisory opinion."
