The Introduction of the ICJ (1955)322

Introduction

Soon after the ICJ had given its Opinion of 13 July 1954 regarding the Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, the General Assembly adopted on 17 December 1954 resolution 888 (IX) in which, inter alia, it accepted “in principle judicial review of judgements of the United Nations Administrative Tribunal” and set up a Special Committee “to study the question of the establishment of such a procedure in all its aspects.” The intensive and at times passionate debate that followed on this issue, first in the Special Committee and then in the Fifth Committee, culminated in the adoption by General Assembly on 8 November 1955 of resolution 957 (X) which, inter alia, amended the Tribunal’s statute by introducing into it a new Article 11 providing for the possibility of challenging judgements of the Tribunal before the International Court of Justice.

The Court’s Suggestion, 13 July 1954

As indicated in the preceding chapter, the ICJ noted in July 1954 the peculiar aspect of the way by which the General Assembly – in the absence of any provision for that purpose in the statute of the United Nations Administrative Tribunal – had decided to challenge the Tribunal’s judgements before the Court through a request for its Advisory Opinion. In this connexion, the Court declared:

In order that the judgments pronounced by such a judicial tribunal could be subjected to review by any body other than the tribunal itself, it would be necessary, in the opinion of the Court, that the statute of that tribunal

322 For an authoritative and exhaustive account of the “travaux préparatoires” leading to the adoption by the General Assembly of this amendment to the Tribunal’s Statute, as seen from the perspective of a Court’s judge, see Section B, paragraphs 11–28 of the dissenting opinion of ICJ Judge Stephen Schwebel, from the United States, in “Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1982, p. 325,” pp. 142–153.
or some other legal instrument governing it should contain an express provision to that effect. The General Assembly has 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. But as no such provisions are inserted in the present Statute, there is no legal ground upon which the General Assembly could proceed to review judgments already pronounced by that Tribunal. Should the General Assembly contemplate, for dealing with future disputes, the making of some provision for the review of the awards of the Tribunal, the Court is of opinion that the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ – considering the arguments of the parties, appraising the evidence produced by them, establishing the facts and declaring the law applicable to them – all the more so as one party to the disputes is the United Nations organization itself.323

This was a clear suggestion by the Court to the General Assembly to amend the Tribunal’s Statute by providing for such a possibility of recourse to the Advisory Opinions of the ICJ. It should be underlined that the specific language used above by the Court for describing the envisaged procedures – “means of redress by another organ,” “to review judgements,” “the review of the awards,” “considering the arguments of the parties, appraising the evidence produced by them, establishing the facts and declaring the law applicable to them” – clearly refer to a judicial process of appeal and not to a purely advisory procedure.

Agreement in Principle to the Judicial Review of the Tribunal’s Judgements, 17 December 1954

Less than five months later, at its following ninth session, the General Assembly adopted on 17 December 1954 Resolution 888 (IX) by which it decided to “take note of the advisory opinion of the Court” and accepted “in principle judicial review of judgments of the United Nations Administrative Tribunal.” Believing that the establishment of a procedure for review of the judgements of the Tribunal required “careful consideration,” the General Assembly established for this purpose a Special Committee composed of 18 countries, including all the five permanent members of the Security Council, which it mandated