COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

JUGEMENTS DU TRIBUNAL ADMINISTRATIF DE L'ORGANISATION INTERNATIONALE DU TRAVAIL SUR REQUÊTES CONTRE L'ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA CULTURE

AVIS CONSULTATIF DU 23 OCTOBRE 1956

1956

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

JUDGMENTS OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANISATION UPON COMPLAINTS MADE AGAINST THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

ADVISORY OPINION OF OCTOBER 23rd, 1956

Le présent avis doit être cité comme suit :

« *Jugements du Tribunal administratif de l'O. I. T. sur requêtes contre l'U. N. E. S. C. O., Avis consultatif du 23 octobre 1956 : C. I. J. Recueil 1956, p. 77.* »

This Opinion should be cited as follows :

"*Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the U.N.E.S.C.O., Advisory Opinion of October 23rd, 1956 : I.C.J. Reports 1956, p. 77.*"

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JUDGMENTS OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANISATION UPON COMPLAINTS MADE AGAINST THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Request for Advisory Opinion.—Challenge by the Executive Board of Unesco of judgments of the Administrative Tribunal of the International Labour Organisation.—Binding character attributed to the Opinion of the Court.—Equality of Parties in judicial proceedings.—Transmission through Unesco of observations from the officials concerned.—Absence of Oral Proceedings.—Decision of the Court to comply with Request for Advisory Opinion.

Jurisdiction of the Administrative Tribunal to hear complaints alleging non-observance of terms of appointment and of provisions of the Staff Regulations.—Non-renewal of fixed-term appointments.—Administrative Memorandum of July 6th, 1954.—Method of determining the jurisdiction of the Administrative Tribunal.

Request for Opinion limited to consideration of the jurisdiction of the Administrative Tribunal.—Distinction between a request for Advisory Opinion submitted on the basis of Article XII of the Statute of the Administrative Tribunal and a request for Advisory Opinion submitted under the more general power conferred on Unesco.

ADVISORY OPINION

Present: *President* HACKWORTH; *Vice-President* BADAWI; *Judges* BASDEVANT, WINIARSKI, ZORIČIĆ, KLAESTAD, READ, ARMAND-UGON, KOJEVNIKOV, Sir Muhammad ZAFRULLA KHAN, Sir Hersch LAUTERPACHT, MORENO QUINTANA, CÓRDOVA; *Registrar* LÓPEZ OLIVÁN.

In the matter of Judgments Nos. 17, 18, 19 and 21 of the Administrative Tribunal of the International Labour Organisation upon complaints made against the United Nations Educational, Scientific and Cultural Organization by Messrs. Duberg and Leff and Mrs. Wilcox and Mrs. Bernstein,

THE COURT,

composed as above,

gives the following Advisory Opinion :

By a letter of November 30th, 1955, filed in the Registry on December 2nd, the Director-General of the United Nations Educational, Scientific and Cultural Organization informed the Court that, by a Resolution dated November 18th, 1955, the Executive Board of that Organization, acting within the framework of Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation, had decided to challenge the decisions rendered by the Tribunal on April 26th, 1955, in the Leff, Duberg and Wilcox cases, and on October 29th, 1955, in the Bernstein case, and to refer the question of their validity to the Court ; and that, accordingly, the Executive Board, by a Resolution dated November 25th, 1955, a certified true copy of which the Director-General appended to his letter, had decided to request the International Court of Justice to give an advisory opinion on a number of questions set out in the afore-mentioned Resolution, which is in the following terms :

"*The Executive Board,*

Whereas, by its Judgments Nos. 17, 18 and 19 of 26 April 1955, and No. 21 of 29 October 1955, the Administrative Tribunal of the International Labour Organisation confirmed its jurisdiction in the complaints introduced by Messrs. Duberg and Leff and Mrs. Wilcox and Mrs. Bernstein against the United Nations Educational, Scientific and Cultural Organization,

Whereas Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation provides as follows :

> '1. In any case in which the Executive Board of an international organization which has made the declaration specified in Article II, paragraph 5, of the Statute of the Tribunal 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 Executive Board concerned, for an advisory opinion, to the International Court of Justice.
>
> 2. The opinion given by the Court shall be binding.'

Whereas the Executive Board, after consideration, wishes to avail itself of the provisions of the said Article,

Decides to submit the following legal questions to the International Court of Justice for an advisory opinion :

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 to any other relevant texts ;

Having regard to the contracts of appointment of Messrs. Duberg and Leff and Mrs. Wilcox and Mrs. Bernstein :

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

II.—In the case of an affirmative answer to question I :

(a) Was the Administrative Tribunal competent to determine whether the power of the Director-General not to renew fixed-term appointments has been exercised for the good of the service and in the interest of the Organization ?

(b) Was the Administrative Tribunal competent to pronounce on the attitude which the Director-General, under the terms of the Constitution of the United Nations Educational, Scientific and Cultural Organization, ought to maintain in his relations with a Member State, particularly as regards the execution of the policy of the Government authorities of that Member State ?

III.—In any case, what is the validity of the decisions given by the Administrative Tribunal in its Judgments Nos. 17, 18, 19 and 21 ?"

In accordance with Article 66, paragraph 1, of the Statute of the Court, notice of the Request for an Advisory Opinion was given on December 8th, 1955, to all States entitled to appear before the Court : a copy of the letter of the Director-General with the resolution appended thereto was transmitted to those States.

The President of the Court considered that those States Members of the United Nations Educational, Scientific and Cultural Organization which were entitled to appear before the Court, the International Labour Organisation as well as the international organizations which had recognized the jurisdiction of the Administrative Tribunal of the International Labour Organisation, namely, the World Health Organization, the International Telecommunication Union, the United Nations Educational, Scientific and Cultural Organization, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations and the European Organization for Nuclear Research were likely to be able to furnish information on the questions referred to the Court. Accordingly, the

Registrar, in pursuance of Article 66, paragraph 2, of the Statute, notified these States and Organizations that the Court would be prepared to receive written statements from them within a time-limit fixed by an Order of December 5th, 1955, at April 30th, 1956.

Within this time-limit, the United Nations Educational, Scientific and Cultural Organization, which had previously transmitted to the Court the documents likely to throw light upon the question, together with an introductory note, submitted a written statement with an appendix containing the observations and information formulated by Counsel acting on behalf of the persons in whose favour Judgments Nos. 17, 18, 19 and 21 of the Administrative Tribunal of the International Labour Organisation were given. Written statements were also submitted on behalf of the Governments of the United States of America, of the French Republic, of the United Kingdom of Great Britain and Northern Ireland, and of the Republic of China.

These written statements were communicated to States and Organizations to whom the communication provided for in Article 66, paragraph 2, of the Statute had been addressed. At the same time these States and Organizations were informed that the Court did not contemplate holding public hearings in the present case but that it had decided to permit them to submit in writing their comments on the written statements at any time prior to July 1st, 1956.

Within this time-limit the Legal Adviser of the United Nations Educational, Scientific and Cultural Organization sent to the Registry a letter dated June 20th, 1956, in which, referring to certain aspects of the jurisdictional issue before the Court, he stated the reasons why the Organization did not intend to avail itself of the opportunity to submit further arguments to the Court. It also transmitted to the Registry supplementary observations formulated on behalf of the persons in whose favour Judgments 17, 18, 19 and 21 were given.

In the present Opinion, the United Nations Educational, Scientific and Cultural Organization will be referred to as *Unesco*, and the Administrative Tribunal of the International Labour Organisation will be referred to as the *Administrative Tribunal*.

* * *

The Resolution of November 25th, 1955, by which the Executive Board of Unesco requested an Advisory Opinion of the Court, relies on Article XII of the Statute of the Administrative Tribunal which as cited in the Resolution and as applicable to Unesco reads :

> "1. In any case in which the Executive Board of an international organization which has made the declaration specified in Article II, paragraph 5, of the Statute of the Tribunal 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 Executive Board concerned, for an advisory opinion, to the International Court of Justice.

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

Paragraph 5 of Article II, to which reference is made in Article XII, reads :

"5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other intergovernmental international organisation approved by the Governing Body which has addressed to the Director-General a declaration recognising, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure."

Furthermore, Article II, paragraph 7, reads :

"7. Any dispute as to the competence of the Tribunal shall be decided by it, subject to the provisions of Article XII."

Unesco recognised the jurisdiction of the Administrative Tribunal by making the declaration provided for in Article II, paragraph 5, of the Statute of the Tribunal.

Relying on Article XII quoted above, the Resolution of the Executive Board challenged Judgments Nos. 17, 18 and 19 given on April 26th, 1955, in the matter of the complaints of Mr. Peter Duberg, Mr. David Leff and Mrs. Wilcox, and Judgment No. 21 given on October 29th, 1955, in the matter of the complaint of Mrs. Bernstein.

The facts underlying the complaints were essentially the same in all four cases and it is therefore sufficient to state them by reference to one of the cases decided by the Tribunal, namely, that of Mr. Peter Duberg (Judgment No. 17).

Duberg obtained a fixed-term appointment with Unesco on June 22nd, 1949. That appointment, subsequently renewed, was due to expire on December 31st, 1954. In February 1953 Duberg received from the representative of the United States to Unesco a questionnaire to be completed and returned in pursuance of an Executive Order of the President of the United States of January 9th, 1953, prescribing procedures for making available to the Secretary-General of the United Nations certain information concerning United States citizens employed or being considered for employment on the Secretariat of the United Nations. By virtue of Part 3 of that Order, its provisions were made applicable to Unesco. The complainant did not answer the questionnaire. In February 1954 the complainant received a questionnaire from the International Organizations Employees Loyalty Board of the United States Civil

Service Commission set up by Executive Order. He did not reply to the questionnaire. In June 1954 he received an invitation to appear before the Loyalty Board at the United States Embassy in Paris. On July 13th, 1954, the complainant informed the Director-General of Unesco of his decision to refuse to appear before the Board and of the reasons of conscience which caused him to take that decision. Previously, on July 6th, 1954, the Director-General had issued an Administrative Memorandum on the subject of the renewal of appointments expiring at the end of 1954. In that Memorandum the Director-General had stated that "he has decided that all professional staff members whose contracts expire between now and June 30th, 1955 (inclusive), and who have achieved the required standards of efficiency, competence and integrity and whose services are needed, will be offered one-year renewals of their appointments". By a letter dated August 13th, 1954, the Director-General informed Duberg that he would not offer him a new appointment on the expiry of his contract. This letter stated, *inter alia*, as follows :

> "... In the light of what I believe to be your duty to the Organization, I have considered very carefully your reasons for not appearing before the International [Organizations] Employees Loyalty Board where you would have had an opportunity of dispelling suspicions and disproving allegations which may exist regarding you.
>
> It is with a deep sense of my responsibilities that I have come to the conclusion that I cannot accept your conduct as being consistent with the high standards of integrity which are required of those employed by the Organization.
>
> I have, therefore, to my regret, to inform you that I shall not offer you a further appointment when your present appointment expires..."

Following an unsuccessful application to the Director-General to reconsider his decision, Duberg submitted an appeal to the Unesco Appeals Board, asking that the decision of the Director-General be rescinded. On November 2nd, 1954, the Appeals Board, by a majority, expressed the opinion that the decision should be rescinded. On November 25th, 1954, the Director-General informed the Chairman of the Appeals Board that he was unable to act in accordance with its opinion. On February 5th, 1955, Duberg brought his complaint before the Administrative Tribunal.

In its Judgment of April 26th, 1955, the Administrative Tribunal declared itself competent to entertain the complaint. It gave the following reasons for its decision :

> "ON COMPETENCE
>
> Considering that the character of a fixed-term appointment is in no way that of a probationary appointment, that is to say of a trial appointment ;

That while it is the case that Unesco Staff Rule 104.6 issued in application of the Staff Regulations stipulates that : 'A fixed-term appointment shall expire, without notice or indemnity, upon completion of the fixed term...', this text only deals with the duration of the appointment and in no way bars the Tribunal from being seized of a complaint requesting the examination of the validity of the positive or negative decision taken regarding the renewal of the said appointment ;

That it is established in the case that the Director-General, by a general measure of which the whole staff was informed on 6 July 1954, 'decided that all professional staff members whose contracts expire between now and 30 June 1955 (inclusive) and who have achieved the required standards of efficiency, competence and integrity and whose services are needed, will be offered one-year renewals of their appointments' ;

That the complainant, having been made the object of an exception to this general measure, holds that the Director-General could not legitimately thus make an exception of him on the sole ground which he invoked against him as justification for the view that he did not possess the quality of integrity recognised in those of his colleagues whose contracts had been renewed, and in the absence of any contestation of his qualities of competence and efficiency ;

That the complainant requests that this decision be rescinded and, alternatively, that an indemnity be granted ;

Considering that the question is thus a dispute concerning the interpretation and application of the Staff Regulations and Rules of the defendant Organisation ;

That by virtue of Article II, paragraph 1, of its Statute, the Tribunal is competent to hear the said dispute ;"

After having declared itself competent, the Tribunal gave a decision on the merits of the complaint. The Court is not called upon to express an opinion on that part of the Judgment.

It appears from the terms of the Resolution requesting an opinion and the citation, contained therein, of Article XII of the Statute of the Administrative Tribunal that the challenge raised against the four Judgments, and the Request for an Advisory Opinion related thereto, refer to the jurisdiction of the Administrative Tribunal and to the validity of the Judgments. The challenge and the Request for an Opinion do not refer to an allegation that these Judgments are vitiated by a fundamental fault in the procedure followed.

* * *

In formulating the Request for an Advisory Opinion, the Executive Board exercised a power conferred upon Unesco by Article XI of the Agreement between that Organization and the United Nations, approved by the General Assembly on

December 14th, 1946. The General Conference, by its amendment of Article V of the Constitution of November 16th, 1945, by which Unesco was brought into being, authorised the Executive Board to exercise that power between sessions of the General Conference.

The Court will consider at the outset whether it should comply with the Request for an Opinion.

The question put to the Court is a legal question. It arose within the scope of the activities of Unesco when the Executive Board had to examine the measures to be taken as a result of the four Judgments. The answer given to it will affect the result of the challenge raised by the Executive Board with regard to these Judgments. In submitting the Request for an Opinion the Executive Board was seeking a clarification of the legal aspect of a matter with which it was dealing.

Under Article XII of the Statute of the Administrative Tribunal, the Opinion thus requested will be "binding". Such effect of the Opinion goes beyond the scope attributed by the Charter and by the Statute of the Court to an Advisory Opinion. However, the provision in question is nothing but a rule of conduct for the Executive Board, a rule determining the action to be taken by it on the Opinion of the Court. It in no wise affects the way in which the Court functions ; that continues to be determined by its Statute and its Rules. Nor does it affect the reasoning by which the Court forms its Opinion or the content of the Opinion itself. Accordingly, the fact that the Opinion of the Court is accepted as binding provides no reason why the Request for an Opinion should not be complied with.

The Court is a judicial body and, in the exercise of its advisory functions, it is bound to remain faithful to the requirements of its judicial character. Is that possible in the present case ?

The four Judgments referred to in the Request for an Opinion are, under Article VI, paragraph 1, of the Statute of the Tribunal, "final and without appeal". However, Article XII, paragraph 1, of the Statute, in so far as it was relied upon by Unesco, confers upon the Executive Board the right to challenge "a decision of the Tribunal confirming its jurisdiction" and provides that the Executive Board shall submit its challenge to the Court by means of a Request for an Advisory Opinion. The Executive Board has availed itself of that right.

The advisory procedure thus brought into being appears as serving, in a way, the object of an appeal against the four Judgments, seeing that the Court is expressly invited to pronounce, in its Opinion, which will be "binding", upon the validity of these Judgments.

Article XII of the Statute of the Administrative Tribunal was designed to provide that certain challenges relating to the validity of Judgments rendered by the Tribunal in proceedings between an official and the international organization concerned should

be brought before the Court and decided by it. However, under Article 34, paragraph 1, of the Statute of the Court "only States may be parties in cases before the Court". In Article XII it was sought to avoid this difficulty while nevertheless securing an examination by and a decision of the Court by means of a Request, emanating from the Executive Board, for an Advisory Opinion. To the Executive Board—and to it alone—was given the right of challenging a Judgment of the Administrative Tribunal. The special feature of this procedure is that advisory proceedings take the place of contentious proceedings which would not be possible under the Statute of the Court.

The Court is not called upon to consider the merits of such a procedure or the reasons which led to its adoption. It must consider only the question whether its Statute and its judicial character do or do not stand in the way of its participating in this procedure by complying with the Request for an Advisory Opinion.

According to generally accepted practice, legal remedies against a judgment are equally open to either party. In this respect each possesses equal rights for the submission of its case to the tribunal called upon to examine the matter. This concept of the equality of parties to judicial proceedings finds, in a different sphere, an expression in Article 35, paragraph 2, of the Statute of the Court which, when providing that the Security Council shall lay down the conditions under which the Court shall be open to States not parties to the Statute, adds "but in no case shall such conditions place the parties in a position of inequality before the Court". However, the advisory proceedings which have been instituted in the present case involve a certain absence of equality between Unesco and the officials both in the origin and in the progress of those proceedings.

In the first place, in challenging the four Judgments and applying to the Court, the Executive Board availed itself of a legal remedy which was open to it alone. Officials have no such remedy against the Judgments of the Administrative Tribunal. Notwithstanding its limited scope, Article XII of the Statute of the Administrative Tribunal in this respect confers an exclusive right on the Executive Board.

However, the inequality thus stated does not in fact constitute an inequality before the Court. It is antecedent to the examination of the question by the Court. It does not affect the manner in which the Court undertakes that examination. Also, in the present case, that absence of equality between the parties to the Judgments is somewhat nominal since the officials were successful in the proceedings before the Administrative Tribunal and there was accordingly no question of any complaint on their part. This being so, it is not necessary for the Court to express an opinion upon the legal merits of Article XII of the Statute of the Administrative Tribunal. The Court must confine itself to the facts of the

present case. In this respect, it is enough for it to state that the circumstance that only the Executive Board was entitled to institute the present proceedings does not constitute a reason for not complying with the Request for an Advisory Opinion.

The question of equality between Unesco and the officials arises once more in connexion with the actual procedure before the Court. Here the absence of equality flows not from any provision of the Statute of the Administrative Tribunal but from the provisions of the Statute of the Court. In the form of advisory proceedings, the Court has before it a challenge the result of which will affect the right of the officials to the benefit of the Judgments of the Tribunal and the obligation of Unesco to comply with them. The judicial character of the Court requires that both sides directly affected by these proceedings should be in a position to submit their views and their arguments to the Court.

In the case of Unesco, the Statute and the Rules of Court constitute no obstacle in this respect. Indeed, they make available to it the necessary facilities. In the case of the officials, the position is different.

It was with that difficulty that the Court was confronted. The difficulty was met, on the one hand, by the procedure under which the observations of the officials were made available to the Court through the intermediary of Unesco and, on the other hand, by dispensing with oral proceedings. The Court is not bound for the future by any consent which it gave or decisions which it made with regard to the procedure thus adopted. In the present case, the procedure which has been adopted has not given rise to any objection on the part of those concerned. It has been consented to by counsel for the officials in whose favour the Judgments were given. The principle of equality of the parties follows from the requirements of good administration of justice. These requirements have not been impaired in the present case by the circumstance that the written statement on behalf of the officials was submitted through Unesco. Finally, although no oral proceedings were held, the Court is satisfied that adequate information has been made available to it. In view of this there would appear to be no compelling reason why the Court should not lend its assistance in the solution of a problem confronting a specialized agency of the United Nations authorized to ask for an Advisory Opinion of the Court. Notwithstanding the permissive character of Article 65 of the Statute in the matter of advisory opinions, only compelling reasons could cause the Court to adopt in this matter a negative attitude which would imperil the working of the régime established by the Statute of the Administrative Tribunal for the judicial protection of officials. Any seeming or nominal absence of equality ought not to be allowed to obscure or to defeat that primary object.

In the light of what has been said above and of the circumstances of the present case, the Court considers that it ought to comply with the Request for an Opinion.

* * *

The first question put to the Court is in the following terms:

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

The Court is here invited to pass upon the competence of the Administrative Tribunal. Article XII of the Statute of that Tribunal on which the Request is based shows that what is involved is the decision of the Tribunal confirming its jurisdiction, that is, the operative part of its Judgment on this point. The Court is not confined to an examination of the grounds of decision expressly invoked by the Tribunal; it must reach its decision on grounds which it considers decisive with regard to the jurisdiction of the Tribunal.

The words "competent to hear" used in the Request for an Opinion mean that the question is one of determining whether the Administrative Tribunal was legally qualified to examine the complaints submitted to it and to adjudicate on the merits of the claims set out therein. The circumstance that the Tribunal may have rightly or wrongly adjudicated on the merits or that it may have rightly or wrongly interpreted and applied the law for the purposes of determining the merits, in no way affects its jurisdiction. The latter is to be judged in the light of the answer to the question whether the complaint was one the merits of which fell to be determined by the Administrative Tribunal in accordance with the provisions governing its jurisdiction. That distinction between jurisdiction and merits is of great importance in the legal régime of the Administrative Tribunal. Any mistakes which it may make with regard to its jurisdiction are capable of being corrected by the Court on a Request for an Advisory Opinion emanating from the Executive Board. Errors of fact or of law on the part of the Administrative Tribunal in its Judgments on the merits cannot give rise to that procedure. The only provision which refers to its decisions on the merits is Article VI of the Statute of the Tribunal which provides that its judgments shall be "final and without appeal".

Before the Administrative Tribunal the officials concerned complained of the refusal to renew their fixed-term contracts, a

refusal which they encountered in the circumstances as recalled. They challenged before the Appeals Board the argument that the holder of a fixed-term contract had no right to the renewal of his contract. They alleged that, on the contrary, they had an acquired right to the renewal of their contracts. In doing so they relied, apart from general considerations relating to the international civil service and the practice of international organizations, on the position taken with regard to the renewal of fixed-term contracts by the Director-General in the Administrative Memorandum of July 6th, 1954, and on a document submitted by him to the General Conference which refers, in this connexion, to Staff Regulation 4.5.1. Their position, on this point, before the Administrative Tribunal appears clearly when it is borne in mind that they had been successful before the Appeals Board and that the latter, on this point, had given as a reason for its opinion the meaning which it attached to Staff Regulation 4 and to Staff Rule 52. On the other hand, the written answer of Unesco, in challenging the case for the complainants, relied on the interpretation which it put upon Staff Regulation 4.5.1, on certain provisions of the Staff Rules, and, primarily, on the meaning which it attributed to fixed-term contracts. All this serves to bring out the issue of which the Administrative Tribunal was seised. The Court has to consider whether the examination of these complaints fell within the jurisdiction of the Administrative Tribunal under Article II, paragraph 5, of its Statute which provides : "The Tribunal shall ... be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations..."

The Court cannot attach to this provision any purely formal meaning so as to require that the official should expressly indicate in his complaint the particular term or provision on which he intends to rely. In the first place, what must be alleged, according to Article II, paragraph 5, is non-observance, namely, some act or omission on the part of the Administration ; in the present case, the complainant invoked the refusal to renew his contract. Secondly, the Tribunal is entitled to ascertain and to determine what are the texts applicable to the claim submitted to it. In order to admit that the Tribunal had jurisdiction, it is sufficient to find that the claims set out in the complaint are, by their nature, such as to fall within the framework of Article II, paragraph 5, of the Statute of the Administrative Tribunal in the sense indicated in another part of this Opinion.

According to the words of this provision, it is necessary, in order to establish the jurisdiction of the Tribunal to hear a complaint by an official, that he should allege non-observance of the terms or provisions therein referred to. "Complaints alleging" is a wider expression than "complaints based on". The latter may

be interpreted as meaning that the object of such a complaint must be legally well-founded. Yet the Court, when confronted with the words "claims ... based on the provisions" of a treaty, considered that these words "cannot be understood as meaning claims actually supportable under that Treaty" (*Ambatielos case, Merits: Obligation to arbitrate,* I.C.J. *Reports 1953,* p. 17). This is particularly true in the case of the more flexible expression "complaints alleging". These words refer to what the complainant alleges—to that on which he relies for the purpose of supporting his complaint. But Article II, paragraph 5, does not mean that a mere verbal reference to certain terms or provisions would suffice to establish the jurisdiction of the Administrative Tribunal. A mere allegation by the complainant cannot be sufficient to cause the Tribunal to accept it for the purpose of examining the complaint. In the Judgment previously referred to, the Court, in construing the expression "based on", said that "it is not enough for the claimant Government to establish a remote connexion between the facts of the claim and the Treaty" invoked. However, it proceeded to add that "it is not necessary for that Government to show ... that an alleged treaty violation has an unassailable legal basis" (*ibid.*, p. 18). Similarly, in applying Article II, paragraph 5, the Court considers that this intermediate position must be adhered to, namely, that it is necessary that the complaint should indicate some genuine relationship between the complaint and the provisions invoked, but that it is not required that the facts alleged should necessarily lead to the results alleged by the complainants. Any such requirement would confuse the question of jurisdiction with that of the substance.

In the cases here in question, the officials put forward an interpretation of their contracts and of the Staff Regulations to the effect that they had a right to the renewal of their contracts. They alleged that the Administrative Memorandum was complementary to their contracts and to the Staff Regulations and that it gave them a legal right to renewal. The correctness of these allegations constitutes the substance of the issue which they submitted to the Tribunal. In order to determine the jurisdiction of the Tribunal, it is necessary to ascertain whether the terms and the provisions invoked appear to have a substantial and not merely an artificial connexion with the refusal to renew the contracts.

* * *

In the light of what has been said above, the Court will now examine the question whether, for the purpose of accepting jurisdiction, the Administrative Tribunal was entitled to find that there existed before it a complaint sufficient to bring it within the scope of *(a)* "terms of appointment" or *(b)* "Staff Regulations". These two aspects of the question will be considered in turn.

Duberg's contract, as renewed on the last occasion, was due to expire on December 31st, 1954. He maintained that that contract gave him a right to a renewal of the contract. Was that assertion sufficiently well-founded to establish the competence of the Administrative Tribunal? For that purpose, it was necessary that the assertion should have some serious juridical basis. The question of renewal arose at the time when Duberg's contract was still in force. It was in August 1954 that the decision not to renew his contract was taken; that decision was subsequently confirmed and maintained after November 25th, 1954, following upon the opinion of the Appeals Board invoked by Duberg; Duberg's contract did not expire until December 31st, 1954. Furthermore, the contract of employment expressly refers to the Staff Regulations and Rules, as well as to any amendments thereto. The expression "terms of appointment" which is used in the English text of the Statute of the Administrative Tribunal and which also appears in the document relating to Duberg's engagement—an expression which seems to be both wider and more appropriate than the expression "*stipulations du contrat d'engagement*"—must be understood in relation to the attitude assumed in the matter by the Director-General. Now the latter, in his Administrative Memorandum of July 6th, 1954, adopted a position with regard to the renewal of fixed-term contracts. He announced and brought to the knowledge of the staff his intention to offer a renewal of these contracts under certain specified conditions. This signified, on his part, a decision to recognize or establish a link between the contracts which were due to expire and their renewal. What was the nature of that link? Did it go so far as to confer upon Duberg a legal right to obtain the renewal of his contract? These questions are sufficiently related to the interpretation of the contract of employment, in terms of its observance or non-observance, to permit a finding that they fell within the competence of the Administrative Tribunal. In saying this, the Court does not pass on the question whether Duberg fulfilled the conditions required in the Administrative Memorandum for the renewal of his contract. That question is not before the Court.

* * *

The Court cannot admit that in order to appreciate the legal situation in the matter it is possible to attach exclusive importance to the letter of the contracts in question and, in particular, to the provision according to which, in case of non-renewal, these contracts expire automatically on the date fixed. The officials claimed to derive a right to renewal from their fixed-term contracts. They complained of the fact that such renewal was denied to them and it was that refusal which they regarded as non-observance of their contracts. It is clear that the mere expiry of the term fixed in the contract could not have the effect of nullifying

this non-observance occurring, if in fact it did occur, before the expiry date and of depriving the officials of their right to complain of it before the Administrative Tribunal. In fact, Article II, paragraph 6, of its Statute provides: "The Tribunal shall be open: *(a)* to the official, even if his employment has ceased..."

The Court is of the opinion that, in order to decide on the competence of the Administrative Tribunal, it is necessary to consider these contracts not only by reference to their letter but also in relation to the actual conditions in which they were entered into and the place which they occupy in the Organization.

In the practice of Unesco—as well as in the practice of the United Nations and of the Specialized Agencies—fixed-term contracts are not like an ordinary fixed-term contract between a private employer and a private employee. At the crucial period a large number of the employees of Unesco held fixed-term contracts. A similar situation seems to have obtained in the United Nations and in the Specialized Agencies. There is no need here to go into the reasons which have prompted that form of contracts. The fact is that there has developed in this matter a body of practice to the effect that holders of fixed-term contracts, although not assimilated to holders of permanent or indeterminate contracts, have often been treated as entitled to be considered for continued employment, consistently with the requirements and the general good of the organization, in a manner transcending the strict wording of the contract. In a document entitled "Personnel Recruitment Standards and Methods", which was submitted, under the authority of the Director-General, to the General Conference at its Eighth Session in 1954, it was stated in paragraph 26 that "the existing Regulation 4.5.1, adopted by the Seventh Session of the General Conference, obliges the Director-General to give indeterminate appointments to all staff members after they have satisfactorily completed a fixed-term appointment of one to three years, unless he considers that" in the light of programme requirements, "he should only give a further fixed-term appointment". In paragraph 14 of the same document may also be noted the statement that "if a staff member has fulfilled his duties efficiently and his conduct is satisfactory, his appointment is, in most cases, renewed". At the Seventeenth Meeting of the Administrative Commission during the Eighth Session of the General Conference the Director-General stated on November 29th, 1954, "that, under the existing paragraph 4.5.1 of the Staff Regulations, he was under an obligation to renew a contract for an indeterminate period (provided the person satisfied all the requirements), unless he could invoke programme needs as a reason for not doing so". The practice as here surveyed is a relevant factor in the interpretation of the contracts in question. It lends force to the view that there may be circumstances in which the non-renewal of a fixed-term contract provides a legitimate ground for complaint.

* * *

The practice referred to above should serve as a warning against an interpretation of the contract of employment which, by considering exclusively the literal meaning of its provision relating to duration, would mean that on the expiry of the fixed period a fixed-term contract cannot be relied upon for the purpose of impugning a refusal to renew it. Such an interpretation, moreover, would fail to take into account the nature of renewal as understood in the Staff Regulations to which the contract expressly refers. This is an aspect of the matter which has to be considered in order to determine whether, as has been argued, the holder of a fixed-term contract is, so far as its renewal is concerned, in the same legal position as an applicant for employment seeking to enter the service of Unesco.

Clearly, an applicant for a new appointment who fails to obtain it cannot properly invoke the jurisdiction of the Administrative Tribunal. Can the same be said of an official who fails to obtain a renewal of his fixed-term contract ? The question of the renewal of a fixed-term contract arises for one who is at the time a staff member of Unesco. That was the position of the four complainants. The text governing their appointments was Staff Regulation 4.5.1, which provided as follows :

> "Other staff members shall be appointed on fixed-term contracts for an initial period of not less than one nor more than three years, renewable either *(a)* without limit of time, or *(b)* in the light of programme requirements, for further fixed periods of not less than one year up to a maximum period of service of five years, at the discretion of the Director-General. Staff members appointed before 1 January 1952 shall be deemed, for the purpose of this regulation, to have been appointed on that date, without prejudice to their acquired rights in other respects."

The words "fixed-term contracts ... renewable" imply that renewal constitutes a further stage, a continuing period, of the former contract. There is no question here of a new contract wholly unrelated to its predecessor. That character of renewal is confirmed by a distinction between fixed-term contracts, which may be renewed, and temporary contracts in respect of which there is no provision for renewal. Staff Rule 52 *(d)* provided as follows :

> "A fixed-term appointment shall expire upon completion of the fixed-term unless a new appointment is offered and accepted three months before the expiry date, if the staff member has served for

less than one year or six months before the expiry date, if he has served for more than one year."

On the other hand, Staff Rule 53 (*d*) said merely : "A temporary appointment shall expire on the expiry date specified in the contract without notice or indemnity."

From the use of the expression "new appointment" in Rule 52 *(d)*, cited above, it cannot be concluded that what is currently called "renewal" is an appointment without any link with what precedes it and that the official to whom such renewal has been offered or refused is in the same situation as an applicant who is new to the staff of Unesco and wishes to enter it for the first time. The proper meaning of the expression "new appointment" does not lend itself to any such interpretation, and the Administration has not understood it in that sense. In fact, the Director-General introduced in Rule 52 *(d)*, which has become Rule 104.6, a modification which entered into force on November 1st, 1954, and which consists in the substitution of the expression "renewal" for the expression "new appointment". It is the text thus amended which the Administrative Tribunal has cited in the reasons for its decision on competence.

The view that there is a link between renewal and the original contract and that the situation here envisaged is different from that arising in the case of granting a new contract to an applicant corresponds to the accurate meaning of the term "renewal". That view is also in accordance with the fact that at the time when the question of renewal arises the interested person is an official of the Organization and not a stranger to it. This is the reason why Rule 52 *(d)*, both in its original version and in the amended text (which became Rule 104.6 *(d)*, then Rule 104.6 *(e)*), after having stated that the original appointment expires on the fixed date, adds, by way of exception, the following words: "unless a new appointment [or renewal] is offered and accepted" and this "before the expiry date" of the original appointment. This confirms the view that in cases of renewal it is the initial appointment which remains in existence and not a new appointment independent of its predecessor.

Similarly, Staff Rule 61 (which has become Rule 104.14) which is concerned with re-employment, shows that the latter is something different from the renewal of an appointment. The renewal of an appointment is effected differently from the grant of an original appointment. A comparison between paragraphs 13 and 14 of the Personnel Recruitment Standards and Methods makes the position clear. In paragraph 14, the following sentence occurs : "If a staff member has fulfilled his duties efficiently and his conduct is satisfactory, his appointment is, in most cases, renewed." The passage quoted suggests that the renewal is something fundamentally different from the granting of a new appointment; at the same time it indicates that a diligent staff member may normally expect renewal. The use of the word "review" in the heading of the English text

of paragraph 14 confirms the impression that the renewal is based on an examination of the record of service of the official concerned.

The provision, quoted above, of Staff Regulation 4.5.1, under which a staff member appointed on a fixed-term contract cannot be kept in that status for a period of service of more than five years, similarly implies that it is the original contract which continues in existence up to that maximum period.

Reference may also be made to the form given by the General Conference at its Eighth Session in 1954 to Staff Regulation 4.2, which thereafter provided as follows:

> "In appointing, transferring or promoting staff members, *and in renewing appointments*, the Director-General shall aim at securing the highest standards of efficiency, competence and integrity."

The words in italics were added in 1954. The fact that it was considered desirable to make this addition indicates that the renewal of an appointment was considered as being somewhat different from the act of "appointing" referred to in the earlier text. Finally—and this is more than a matter of technical detail —it is of interest to note that the document entitled "Notice of Personnel Action", which is attached to the original Letter of Appointment, defines the type of action as "appointment" whereas that attached to the second Letter of Appointment defines the type of action as "extension of contract"—a wording which recalls the notion of an original contract whose duration is simply prolonged.

All this shows that there is a relationship, a legal relationship, between the renewal and the original appointment and, consequently, between the renewal and the legal position of an official at the moment when his claim to renewal is granted or denied. Does that relationship go so far as to create in his favour, as has been claimed, a definite right to renewal? That is a question which pertains to the merits and which it is not necessary for the Court to answer. It is sufficient to note that the complaint of the appellant was related to the link created between the original contract and its renewal—a link clearly established by the Staff Regulations and Rules to which the contract expressly makes reference and which constitute the legal basis on which the interpretation of the contract must rest. Thus the complainant, in claiming to possess a right to renewal of his contract and in claiming that that right had been infringed, was placing himself on the ground of non-observance of the terms of appointment.

* * *

The legal relationship thus found to exist between a fixed-term contract and its renewal—a relationship which constitutes the legal basis of the complaints of the officials—shows itself once more in the decision taken by the Director-General in the Administrative Memorandum of July 6th, 1954.

In this Memorandum the Director-General announced that he had "decided that all professional staff members" who satisfied certain conditions and whose services were needed would "be offered one-year renewals of their appointments". It was possible to maintain that the effect of the Memorandum was to create a right to the renewal of the contracts. The Court considers that it could reasonably be maintained that an administrative notice framed in such general terms might be regarded as binding on the Organization ; and that the necessity, asserted by Unesco, of an individual offer and an individual acceptance of the offer was, in the circumstances, a matter of form rather than of substance. It is not necessary for the Court to decide whether the legal consequences thus envisaged actually followed from the Administrative Memorandum. In any case, the Court considers that if the Director-General thought fit to refuse to an official the benefit of the general offer thus extended, any dispute which might arise with regard to the matter fell within the jurisdiction of the Administrative Tribunal.

* * *

It follows from the preceding considerations that the Administrative Tribunal was entitled to assume that the complaints required it to adjudicate on an alleged non-observance of the terms of appointment, and, consequently, to declare itself competent to hear them. In the course of those considerations, the Court referred to the provisions of the Staff Regulations and of the Staff Rules. On this ground, which constitutes a second basis for the jurisdiction of the Administrative Tribunal, the Court feels it necessary to add certain observations which serve to confirm the conclusions already reached.

Before the Administrative Tribunal, Unesco contended that the complaints of the officials were based "on a profound ... misinterpretation of implications of temporary appointments" ; that they involved a "revolution in the system of temporary contracts" ; and that Unesco sought "to define ... the terms 'permanent contract' and 'temporary appointment' [... and ...] the different situations to which they correspond and their respective legal consequences". It was thus putting itself on the ground of the provisions of the Staff Regulations, that is, on the ground covered by the jurisdiction

of the Administrative Tribunal as defined in Article II, paragraph 5, of its Statute. Conversely, in the Duberg case the complainant analysed under three points the arguments of the Director-General : (1) the appellant had no acquired right to the renewal of his contract ; (2) the Director-General was not bound to state his reasons for non-renewal ; and (3) his decision in the matter was not subject to the control of a jurisdictional body. The complainant contested these propositions. He did so in reliance not only on the terms of the contract, but also of the Staff Regulations.

Under Staff Regulations 4.5.1, the renewal of fixed-term contracts was made subject to "programme requirements". The Director-General took the view that he could not anticipate what might be decided with regard to this point by the General Conference, which was to meet at the end of 1954. This fact explains why he took no action with regard to the renewal of Duberg's contract, which was due to expire on December 31st, 1954, before the date fixed for this purpose by Staff Rule 52 *(d)*, which subsequently became Rule 104.6 *(d)*. In these circumstances, the Director-General, believing "that there is general agreement that the personnel policy of the Organization should be based on the concept of an international civil service and should be aimed at retaining on a permanent basis those staff members who achieve the highest standards of efficiency, competence and integrity and whose services are needed", issued, on July 6th, 1954, an Administrative Memorandum on the subject of "Renewal of appointments expiring end 1954 and early 1955". In this Memorandum, the Director-General announced that he had "decided that all professional staff members" whose contracts would shortly expire and "who have achieved the required standards of efficiency, competence and integrity and whose services are needed, will be offered one-year renewals of their appointments". What was the character of that Memorandum ? In the view of the Court it constituted a modification of the Staff Rules then in force—a modification which the Director-General was authorized to make under Staff Regulation 12.2. By virtue of that modification, Article 52 *(d)* of the Staff Rules was provisionally altered. All officials whose contracts would expire between July 6th, 1954, and June 30th, 1955, and who possessed the required qualifications, were now informed that they would be offered a renewal of one year. The prescribed period of three months or six months had ceased to be relevant. The resulting situation shows that the Administrative Memorandum was related to the application of the Staff Regulations.

Finally, there are two other factors which bring the Administrative Memorandum of July 6th, 1954, within the terms of Article II, paragraph 5, of the Statute of the Administrative Tribunal. In the first place it referred to the phrase "in the

light of programme requirements" embodied in Staff Regulation 4.5.1. In the second place, the Memorandum relied by implication on Staff Regulation 4.2, which lays down that in appointing, transferring or promoting staff members, the Director-General shall aim at securing the highest standards of efficiency, competence and integrity. The controversy submitted to the Administrative Tribunal centred around the notion of integrity referred to both in the Memorandum and in Staff Regulation 4.2. Indeed that was the crucial point in reliance on which the complaint challenged the decision of the Director-General as open to attack. From this point of view, the allegation of non-observance of Staff Regulations seems clearly to fall within the jurisdiction of the Tribunal.

It follows from the preceding considerations that whether looked at from the point of view of non-observance of the terms of appointment or of that of non-observance of Staff Regulations, the question was, as stated by the Administrative Tribunal in the reasons which it gave for its decision in the matter of competence, one of a "dispute concerning the interpretation and application of the Staff Regulations and Rules of the defendant Organisation" and that, in consequence, the Tribunal was justified in confirming its jurisdiction.

* * *

The Court has not lost sight of the fact that both before the Administrative Tribunal and in the statements submitted to the Court it has been contended, on the one hand, that the Administrative Tribunal was an international tribunal and, on the other hand, that it was a Tribunal of limited jurisdiction *("juridiction d'attribution")* and not of general jurisdiction *("juridiction de droit commun")*. That contention has been put forward with a view to achieving a restrictive interpretation of the provisions governing the jurisdiction of the Tribunal. The Court does not deny that the Administrative Tribunal is an international tribunal. However, the question submitted to the Tribunal was not a dispute between States. It was a controversy between Unesco and one of its officials. The arguments, deduced from the sovereignty of States, which might have been invoked in favour of a restrictive interpretation of provisions governing the jurisdiction of a tribunal adjudicating between States are not relevant to a situation in which a tribunal is called upon to adjudicate upon a complaint of an official against an international organization.

The Court recognizes that the Administrative Tribunal is a Tribunal of limited jurisdiction. Accordingly, the Court has proceeded on the basis of the provision which confers upon the Tribunal jurisdiction in the matter of "complaints alleging non-observ-

ance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations". The Court has acted upon that provision and upon the other relevant provisions of the Staff Regulations. In doing so the Court has relied on the wording of the texts in question as well as on their spirit, namely, the purpose for which they were adopted. That purpose was to ensure to the Organization the services of a personnel possessing the necessary qualifications of competence and integrity and effectively protected by appropriate guarantees in the matter of observance of the terms of employment and of the provisions of the Staff Regulations. It is in that way that the Court arrived at what it considers to be the correct interpretation of Article II (5) of the Statute of the Administrative Tribunal and the proper application of that provision to the case submitted to it. It was not necessary for it, for that purpose, to have recourse to any principles of either restrictive or extensive interpretation.

* * *

The Court, having decided to give an affirmative answer to Question I, will now examine Question II as put to it in the Request for an Advisory Opinion. That question is as follows:

> "II.—In the case of an affirmative answer to question I:
>
> *(a)* Was the Administrative Tribunal competent to determine whether the power of the Director-General not to renew fixed-term appointments has been exercised for the good of the service and in the interest of the Organization?
>
> *(b)* Was the Administrative Tribunal competent to pronounce on the attitude which the Director-General, under the terms of the Constitution of the United Nations Educational, Scientific and Cultural Organization, ought to maintain in his relations with a Member State, particularly as regards the execution of the policy of the Government authorities of that Member State?"

Article XII of the Statute of the Administrative Tribunal provides for a Request for an Advisory Opinion of the Court in two clearly defined cases. The first is where the Executive Board challenges a decision of the Tribunal confirming its jurisdiction; the second is when the Executive Board considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed. The Request for an Advisory Opinion under Article XII is not in the nature of an appeal on the merits of the judgment. It is limited to a challenge of the decision of the Tribunal confirming its jurisdiction or to cases of fundamental fault of procedure. Apart from this, there is no remedy against the decisions of the Administrative Tribunal. A challenge of a decision confirming

jurisdiction cannot properly be transformed into a procedure against the manner in which jurisdiction has been exercised or against the substance of the decision.

There is no reference in Question II either to a fundamental fault of procedure or to the decision of the Tribunal confirming its jurisdiction. This is so although the two parts of that question are formulated in terms of "competence". For these are questions relating to the reasons given by the Tribunal for its decision on the merits of the question submitted to it. The reasons given by the Tribunal for its decision on the merits, after it confirmed its jurisdiction, cannot properly form the basis of a challenge to the jurisdiction of the Tribunal. Question I of the present Request for an Opinion is concerned only with a challenge of the decision confirming jurisdiction. It does not refer to the other ground of challenge provided for in Article XII, namely a fundamental fault in the procedure followed. The Statute of the Administrative Tribunal could have provided for other reasons for challenging the decision of the Tribunal than those referred to in Article XII. It has not done so. In view of this, the Court cannot answer Question II within the framework of Article XII of the Statute of the Tribunal—the only Article by reference to which the Opinion of the Court is invoked.

Undoubtedly, Unesco has the general power to ask for an Advisory Opinion of the Court on questions within the scope of its activity. But the question put to the Court has not been put in reliance upon the general power of Unesco to ask for an Advisory Opinion. It has been expressly linked with Article XII. In its terms and by virtue of the place which it occupies in the Resolution requesting the Advisory Opinion, Question II as put to the Court refers to the judgments which the Executive Board has challenged in relation to the jurisdiction of the Tribunal which rendered these judgments. It is on that basis that the question must be considered by the Court. The Court has found that the object of that Question is outside the matter which, in the judgments which have been challenged, is germane to the jurisdiction of the Tribunal. In the Request for an Advisory Opinion, Question II has been placed within the orbit of Article XII. Actually, it is outside that Article. Accordingly, it cannot be considered by the Court for the purpose of acting upon the request made to it.

* * *

As, for the reasons stated, the Court is not in the position to answer Question II, it need not be concerned with some of the wider issues argued at length before the Tribunal and in the written statements submitted to the Court. These issues include that of the law obtaining in various municipal systems as to the position of the employees of the State, the nature of their employment and the

principles of judicial review governing the tenure and the conditions of their service. These questions do not arise in the present case.

Similarly, the Court need not consider the allegation that the Tribunal, which was competent to hear the complaint, committed an excess of jurisdiction and acted *ultra vires* in the decision which it gave. Article XII of the Statute of the Tribunal only refers to a challenge of "a decision of the Tribunal confirming its jurisdiction". A Request for an Advisory Opinion based on that Article cannot, contrary to the contention of Unesco, extend to an allegation that the Tribunal "went beyond the bounds of its competence in its consideration of the disputes". Any such allegation, even if it were well-founded, could not lead to the conclusion that the Tribunal was not competent to hear the complaint.

In view of this the Court need not examine the allegation that the validity of the judgments of the Tribunal is vitiated by excess of jurisdiction on the ground that it awarded compensation *ex aequo et bono*. It will confine itself to stating that, in the reasons given by the Tribunal in support of its decision on the merits, the Tribunal said: "That redress will be ensured *ex aequo et bono* by the granting to the complainant of the sum set forth below." It does not appear from the context of the judgment that the Tribunal thereby intended to depart from principles of law. The apparent intention was to say that, as the precise determination of the actual amount to be awarded could not be based on any specific rule of law, the Tribunal fixed what the Court, in other circumstances, has described as the true measure of compensation and the reasonable figure of such compensation (*Corfu Channel case*, Judgment of December 15th, 1949, I.C.J. *Reports 1949*, p. 249).

* * *

Question III submitted to the Court is as follows:

> "III.—In any case, what is the validity of the decisions given by the Administrative Tribunal in its Judgments Nos. 17, 18, 19 and 21?"

Under Article VI of the Statute of the Administrative Tribunal, its judgments "shall be final and without appeal". However, Article XII authorizes the Executive Board to challenge those judgments, but only on the ground of lack of jurisdiction or of fundamental fault in the procedure followed. In case of such a challenge, it is for the Court to pass, by means of an Opinion having binding force, upon the challenge thus raised and, consequently, upon the validity of the judgment challenged. The four judgments have been challenged only in respect of the competence of the Administrative Tribunal which rendered them. If the Court had upheld this challenge it would have had to declare the judgments invalid. The Court, having rejected the contention relating to jurisdiction, the only contention

raised by the Executive Board, will consequently answer Question III by a finding in favour of the validity of the four judgments.

For these reasons,

THE COURT DECIDES,

by nine votes to four,

to comply with the Request for an Advisory Opinion ;

THE COURT IS OF OPINION,

With regard to Question I :

by ten votes to three,

that the Administrative Tribunal of the International Labour Organisation was competent, under Article II of its Statute, to hear the complaints introduced against the United Nations Educational, Scientific and Cultural Organization on February 5th, 1955, by Messrs. Duberg and Leff and Mrs. Wilcox, and on June 28th, 1955, by Mrs. Bernstein ;

With regard to Question II :

by nine votes to four,

that this question does not call for an answer by the Court ;

With regard to Question III :

by ten votes to three,

that the validity of the decisions given by the Administrative Tribunal in its Judgments Nos. 17, 18, 19 and 21 is no longer open to challenge.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-third day of October, one thousand nine hundred and fifty-six, in two copies, one of which will be placed in the Archives of the Court and the other transmitted to the Director-General of the United Nations Educational, Scientific and Cultural Organization.

(Signed) GREEN H. HACKWORTH,
President.

(Signed) J. LÓPEZ OLIVÁN,
Registrar.

Judge KOJEVNIKOV makes the following declaration :

Whilst voting in favour of the decision of the Court to comply with the Request for an Advisory Opinion submitted by Unesco, and of the final part of the Opinion itself with regard to Questions I and III, put by Unesco on November 25th, 1955—although I do not agree with certain aspects and data relating to the reasoning of that decision and of that Opinion—I am nevertheless unable to concur in the view of the Court on Question II.

In my opinion, the Court, having recognized the competence of the Administrative Tribunal, the validity and consequently the binding force of the Judgments given by it, it ought also to have dealt with Question II and given it an affirmative answer.

Indeed, the Administrative Tribunal had to decide whether the action of the Director-General was dictated by the interests of Unesco and whether his attitude corresponded to the provisions of the statute of that Organization.

Without a solution to those questions, the Administrative Tribunal was not in a position to give a decision on the merits of the case and to find that the dismissal of the officials concerned was due solely to their refusal to appear before the Loyalty Board of the United States.

Accordingly, the Administrative Tribunal was competent to hear the complaints introduced against Unesco by the officials

concerned and the decisions given by the Administrative Tribunal in its Judgments Nos. 17, 18, 19 and 21 are perfectly well-founded, valid and binding upon Unesco and effect must be given to them by the Organization.

Judges WINIARSKI, KLAESTAD and Sir Muhammad ZAFRULLA KHAN, availing themselves of the right conferred on them by Articles 57 and 68 of the Statute, append to the Opinion of the Court statements of their separate Opinions.

President HACKWORTH, Vice-President BADAWI and Judges READ and CÓRDOVA, availing themselves of the right conferred on them by Articles 57 and 68 of the Statute, append to the Opinion of the Court statements of their dissenting Opinions.

(Initialled) G. H. H.

(Initialled) J. L. O.