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Agenda item 57

STATUS OF CLAIMS FOR INJURIES INCURRED IN THE SERVICE OF THE UNITED NATIONS

Report of the Sixth Committee

Rapporteur: Mr. J. V. Rechendorff (Denmark)

1. The General Assembly, by resolution 365 (IV) of 1 December 1949, authorized the Secretary-General, in connexion with injuries incurred in the service of the United Nations, "to bring an international claim against the Government of a State, Member or non-Member of the United Nations, alleged to be responsible, with a view to obtaining the reparation due in respect of the damage caused to the United Nations and in respect of the damage caused to the victim or to persons entitled through him and, if necessary, to submit to arbitration, under appropriate procedures, such claims as cannot be settled by negotiation". It also requested the Secretary-General "to submit an annual report to subsequent sessions of the General Assembly on the status of claims for injuries incurred in the service of the United Nations, and proceedings in connexion with them".

2. In pursuance of the aforesaid resolution, the Secretary-General submitted a report to the seventh session of the General Assembly (A/2180). In his report the Secretary-General informed the General Assembly of the claims presented to certain governments in connexion with the death in Palestine of three United Nations military observers and one member of the Secretariat. With respect to the latter, the Secretary-General reported that a claim had been submitted to the Government of the Hashemite Kingdom of Jordan. Since the Jordan Government had disclaimed responsibility and had declined to accept the Secretary-General's proposal to arbitrate the matter, the Secretary-General sought guidance from the General Assembly.

3. The item "Status of claims for injuries incurred in the service of the United Nations: report of the Secretary-General" was included by the Secretary-General in the provisional agenda of the seventh session of the General Assembly. On the recommendation of the General Committee, the General Assembly, at its 380th plenary meeting on 16 October 1952, decided to include the item in the agenda and, at its 382nd plenary meeting on 17 October 1952, decided to allocate it to the Sixth Committee for consideration.

4. The Sixth Committee considered the item at its 357th meeting on 19 December 1952.

Proposals before the Sixth Committee

5. The Committee had before it a draft resolution submitted by Sweden (A/C.6/L.288) which, in its operative paragraph, provided that the General Assembly "Urges those governments to which claims have been presented to negotiate a settlement with the Secretary-General, or, if no settlement can be reached, to agree to arbitrate the questions at issue on the basis of a mutually acceptable procedure".

6. Iran introduced an amendment (A/C.6/L.290) to the Swedish draft resolution to (i) delete the third paragraph of the preamble; and (ii) replace the operative paragraph by the following: "Invites the Secretary-General to continue his efforts, in pursuance of resolution 365 (IV), to obtain reparation for injuries incurred".

7. In the course of the discussion, the representative of Sweden accepted the following amendments:

(a) An oral amendment by the representative of the United Kingdom to (i) delete the third paragraph of the preamble and (ii) replace the operative paragraph by the following: "Recommends that such claims be settled by the procedures envisaged in resolution 365 (IV)".

(b) An oral amendment by the representative of the Philippines to delete, in the second paragraph of the preamble, the words "alleged to be responsible".

In view of the acceptance by Sweden of the United Kingdom proposal to delete the third paragraph of the preamble it became unnecessary to vote on point 1 of the Iranian amendment.

Discussion in the Sixth Committee

8. Some representatives opposed the Swedish draft resolution (A/C.6/L.288) on the following main grounds: that the cases in question involved the United Nations directly, and the Organization should not be judge and party at the same time; that the claims presented by the Secretary-General were for damages under private law, and should be brought before national courts; that the General Assembly could not impose arbitration on States unwilling to agree to it, and could not even recommend to States to submit to arbitration their controversies with the Secretary-General; and that the submission to arbitration presupposed an admission of responsibility on the part of a State against which the Secretary-General had brought a claim.

9. In reply to the above views, other representatives stated that the United Nations had authority to do what any party to a controversy could do, i.e. ask the other party to arbitrate the matter at issue; that under the Swedish draft resolution the General Assembly would not force States to arbitrate against their will, but would simply recommend that they do so if no settlement could be reached by direct negotiations; that the acceptance of arbitration was not an admission of responsibility and did not prejudice the substance of the case; and that these were international claims, and could not be brought before national courts.

10. Some representatives, while generally agreeing with the Swedish draft resolution, thought that, in addition to negotiation and arbitration, there could be other modes of settling the claims. For this reason they favoured the United Kingdom amendment which would not necessarily restrict the settlement of the claims to these two alternatives.

Voting on proposals

11. The amendment submitted by Iran (A/C.6/L.290) was rejected by a roll-call vote of 22 to 15, with 5 abstentions. The voting was as follows:

In favour: Afghanistan, Argentina, China, Dominican Republic, Egypt,
El Salvador, India, Indonesia, Iran, Iraq, Pakistan,
Saudi Arabia, Syria, Yemen, Yugoslavia.

Against: Australia, Belgium, Brazil, Byelorussian Soviet Socialist Republic, Canada, Chile, Czechoslovakia, Denmark, France, Greece, Israel, Liberia, Netherlands, New Zealand, Poland, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Colombia, Mexico, Peru, Philippines, Turkey.

The Committee then proceeded to vote upon the Swedish draft resolution (A/C.6/L.288) as revised (see paragraph 7 above).

The preamble was adopted by 22 votes to 7, with 7 abstentions.

The operative paragraph was adopted by a roll-call vote of 22 to 10, with 10 abstentions.

In favour: Australia, Belgium, Brazil, Canada, Chile, China, Colombia, Denmark, France, Greece, Israel, Liberia, the Netherlands, New Zealand, the Philippines, Sweden, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

Against: Byelorussian Soviet Socialist Republic, Czechoslovakia, Egypt, Iraq, Mexico, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Argentina, Dominican Republic, El Salvador, India, Indonesia, Iran, Pakistan, Peru, Yemen, Afghanistan.

The revised draft resolution as a whole was adopted by 21 votes to 11, with 7 abstentions.

12. The Sixth Committee therefore recommends to the General Assembly the adoption of the following resolution:

STATUS OF CLAIMS FOR INJURIES INCURRED
IN THE SERVICE OF THE UNITED NATIONS

The General Assembly,

Having considered the report of the Secretary-General on the status of claims for injuries incurred in the service of the United Nations (A/2180),

Noting that the Secretary-General, pursuant to General Assembly resolution 365 (IV) of 1 December 1949 has presented international claims for reparation to governments in connexion with the death of agents of the United Nations,

Recommends that such claims be settled by the procedures envisaged in resolution 365 (IV).
