

# Advisory Opinion of ICJ on the Effects of the Awards of Compensation Made by the UN Administrative Tribunal

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## Abstract

This is in relation to a decision which had already been made by the United Nations Administrative tribunal with regard to a staff member of UN and the compensation to be given as the contract of service was terminated without the assent of the staff member and the decision of the UNAT included to provide the compensation to the staff member.

As the decision of the UNAT is binding the Secretary General of UN had requested for the approval of supplementary appropriation (additional funds) of 179,420 dollars from the United Nations General Assembly. The major issue was if the United Nations General Assembly could legally refuse to comply with the decision of UNAT.

Later this was submitted to the International Court of Justice to address the queries along with its advisory opinion.

## Abbreviations

ICJ	International Court of Justice
UNGA	United Nations General Assembly
UNAT	United Nations Administrative Tribunal

## Introduction

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## Facts

- The Secretary General of the United Nations had requested for the approval of supplementary appropriation (additional funds) of 179,420 dollars from the United Nations General Assembly.

- The funds were requested because the United Nations Administrative tribunal stated that the former staff member /Members of the UN was/were entitled to receive compensation.
- The United Nations General Assembly had discussions and debates in the 5<sup>th</sup> committee (which is responsible for administrative and budgetary matters)<sup>1</sup> regarding whether to approve the request of funds and if they can refuse such request.
- This afterwards was submitted to the International Court of Justice to address these queries and also for the advisory opinion of the International Court of Justice.
- Members of the United Nations and International Labour Organisation were given the opportunity to submit written explanations with regard to the issue.<sup>2</sup>

### Issues

1. Whether even after the United Nations Administrative Tribunal Declared that compensation shall be given, can the United Nations General Assembly refuse to comply with the decision of UNAT with regard to compensation for the benefit of staff member of the United Nations due to his contract of service being terminated without his assent.
2. Whether if UNGA can refuse then in what grounds can they legally refuse to comply with the decision of UNAT?

### Analysis

Elaboration to the issue number 1 which states that even after the United Nations Administrative Tribunal Declared that compensation shall be given, can the United Nations General Assembly refuse to comply with the decision of UNAT with regard to compensation for the benefit of staff member of the United Nations due to his contract of service being terminated without his assent.

The scope of United Nations Administrative Tribunal is limited as the only role of the UNAT is to hear about the cases which involve non observance of employment contracts and the disagreements and issues regarding the same especially with regard to terms under when someone is hired by the United Nations, in this scenario the United Nations Administrative Tribunal has acted within its authority and Article 2 of the Statute of the Administrative Tribunal of the United Nations <sup>3</sup> states that “the Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words “contracts” and “terms of appointment” include all pertinent regulations and rules in force at the time of alleged non observance, including the staff pension regulations.”

That means that UNAT had full authority to take up the issue with regard to ‘termination of a contract of service of the staff member without his assent’ as this matter can either fall under ‘non observance of contract of employment’ or the ‘staff member’s terms of employment.’

The scope of this issue is only related to the compensation to be granted to the staff member of UN whose contract was terminated without his assent and can the UNGA have the “right” (It is emphasised that the term right has to denote legal right) to legally refuse to agree to the decision made by the UNAT when United Nations Administrative tribunal acted within its limits and authority.

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<sup>1</sup>United Nations, "Fifth Committee," United Nations Press Release.

<sup>2</sup>International Court of Justice, Effect of Awards of Compensation Made by United Nations Administrative Tribunal, Advisory opinion, 1954 I.C.J.47 (July 13,1954)

<sup>3</sup>Statute of the Administrative Tribunal of the United Nations. art 2.

It is worth noting that Article 10 of the Statute of the Administrative Tribunal of the United Nations<sup>4</sup> states that “the judgements shall be final and without appeal”. It emphasises upon the judicial nature of the tribunal and can be used as evidence for the same when ICJ has to consider whether UNAT falls under a judicial body or a mere subordinate committee or an advisory organ.

It is important to consider that the UNAT is not a mere subordinate committee or an advisory organ but is an Independent Judicial Body which declares final decisions and judgements and the judgement also has a binding force between the parties. When the judgement has already been given by the UNAT it will automatically follow the principle of Res Judicata. The parties were the UN staff member and the United Nations Organisation. When UNAT gave the decision that compensation should be given to the Staff member as his contract of service was terminated without his approval then it is binding and then the compensation must be given, there is no review for the same, accordingly United Nations General Assembly has to be bound by it.

Elaboration to the Issue number 2 which states Whether if UNGA can refuse then in what grounds can they legally refuse to comply with the decision UNAT. The UNGA can only legally refuse to comply with the decision of UNAT when UNAT exceeds its authority which it did not in this scenario.

It is also stated that if United Nations General Assembly did not create any provisions with regard to review the decisions made by the UNAT then UNGA cannot legally review the decisions as there should be a specific provision which has to be made for review.

There are certain arguments by one specific group which states that United Nations General Assembly does not have the authority to create tribunals as it is not mentioned in the United Nations Charter along with limiting the role of General assembly. The other specific group argues that the ICJ itself stated that it is implied that UNGA has the power to establish tribunals and UNAT was created for resolving the disputes in relation to the contracts of employment so that there is a dispute resolution system and whatever the decision is given by these tribunals would be binding between the parties to the dispute.

### **Advisory Opinion Of ICJ**

The International Court of Justice stated that the United Nations General Assembly cannot refuse to Comply with the decision of UNAT with regard to compensation for the benefit of staff member of the United Nations due to his contract of service being terminated without his approval.

### **Conclusion**

It is important to note that whenever the UNAT acts within its limits and within its authority and makes decisions to resolve the dispute in relation to the contracts of employment then the decision would be binding on the parties to the dispute and also the principle of Res Judicata would be followed.

The United Nations General Assembly has full authority to create tribunals but in my opinion should keep in mind that if there was no provision made to review a particular judgement then it had to be understood that the judgement of UNAT will be binding and no review of this judgement can be done.

The critics state that it is problematic because it limits the scope of UNGA to review the judgements of its own tribunal.

In my opinion not including a provision with regard to review can save time and also resolve disputes in a smooth manner without any hassles.

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<sup>4</sup>Statute of the Administrative Tribunal of the United Nations. art 10.

## **Bibliography**

1. United Nations, "Fifth Committee," United Nations Press Release.
2. International Court of Justice, Effect of Awards of Compensation Made by United Nations Administrative Tribunal, Advisory opinion, 1954 I.C.J.47 (July 13,1954)
3. Statute of the Administrative Tribunal of the United Nations. art 2.
4. Statute of the Administrative Tribunal of the United Nations. art 10.