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ESTABLISHMENT OF AN ADMINISTRATIVE TRIBUNAL

Report of the Fifth Committee

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1. Resolution 13 (I) adopted by the General Assembly on 13 February 1946 authorized the Secretary-General "to appoint a small advisory committee, possibly including representatives of the staff, to draft, for submission to the second part of the first session of the General Assembly, a statute for an administrative tribunal". Pursuant to this resolution, an Advisory Committee on a Statute for a United Nations Administrative Tribunal was appointed, which met at Lake Success from 16 to 26 September 1946. The report of this Committee (A/91), containing a draft of a statute, was presented to the General Assembly at the second part of its first regular session, but on the recommendation of the Fifth Committee the question was postponed until a later session. During discussions in the Fifth Committee at the first part of the third regular session of the General Assembly, the Secretary-General indicated that he would submit a full report on the subject to the fourth regular session.

2. In accordance with instructions given by the General Assembly at its 224th plenary meeting, the Fifth Committee considered the report and recommendations submitted by the Secretary-General on the question of the establishment of an administrative tribunal (A/986) at its 187th-190th, 214th-216th and 221st meetings held during the period 29 September to 18 November 1949.

3. Discussion during the 187th-190th meetings, held on 29 and 30 September and 4 and 5 October, was based on a draft resolution submitted by the Secretary-General in his report, incorporating a revised draft statute, and on a proposed revision of Staff Regulation 23. The Secretary-General had made these proposals in the light of an appraisal of the experience of the Appeals Board, which had been established on 3 April 1947 as an interim measure, and of further discussion in the meantime with the specialized agencies and with the United Nations Staff Committee. To the report was appended the report and draft statute proposed by the special Advisory

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Committee mentioned above (A/986, Annex 3), and a memorandum and supplementary memorandum from the United Nations Staff Committee stating its views on the draft statute as submitted by the Secretary-General (A/936, Annex 4 and A/986/Add.1). The Fifth Committee also had before it the observations and recommendations of the Advisory Committee on Administrative and Budgetary Questions with respect to the administrative and budgetary consequences of the proposals (fifth report of 1949, A/1003) as well as a communication from the President of the International Court of Justice to the Secretary-General (A/C.5/304) suggesting that applications from staff members of the Registry of the Court be not included in the competence of the Tribunal on the grounds that, under the Statute of the Court, the framing of rules in the matter lies with the Court and that, under the Staff Rules of the Court, this staff is already provided with adequate means of recourse against administrative decisions. Furthermore, it received in the course of the discussion a Note from the World Health Organization explaining a difficulty for that organization to make use of the Tribunal under the statute as proposed. The Committee took note of this communication.

4. Points raised by various delegations in the course of the general discussion which took place during the four initial meetings related principally to the following questions; whether or not the Tribunal should be competent to hear and pass judgment upon applications with respect to disciplinary measures and to give advisory opinions at the request of the Secretary-General or of the Staff Committee, and whether judgments should state the reasons on which they were based. Further points raised were the relation of the Tribunal to the present Appeals Board and the adequacy of the internal machinery which would replace the Appeals Board under the Secretary-General's proposed revision of Staff Regulation 23; the desirability of requiring that applicants deposit a sum of money at the time of filing an application with the Tribunal; the payment of compensation in lieu of the rescinding of a contested decision of the Secretary-General; the number and method of appointment of members of the Tribunal. Certain delegations expressed doubts as to the advisability of proceeding to the establishment of a Tribunal at the present stage of the Organization's administrative development. Considerable stress was laid by those delegations on the position of the Tribunal vis-a-vis the General Assembly and on the necessity of ensuring wide discretionary powers for the Secretary-General, in keeping with the important responsibilities which had been laid upon him by the Charter. It was therefore felt that the General Assembly should proceed cautiously and that the interests of the staff would be adequately protected in the meantime by retaining the existing machinery of the Appeals Board. On the other hand,

other hand, it was the view of many delegations that, subject to necessary safeguards with respect to the position both of the General Assembly and of the Secretary-General, it was essential in the interests of equity and of staff morale, as well as to the advantage of the Administration, that members of the Secretariat should have the right of appeal to an independent body whenever they considered that the terms of a contract had been violated. It was the view of these delegations that the knowledge that such a means of redress was at the disposal of the staff would in itself remove many of the present causes of discontent and exercise a good influence on the relations between the Administration and the staff. The establishment of a Tribunal should, therefore, not be further delayed. The Chairman of the Advisory Committee on Administrative and Budgetary Questions, speaking in his double capacity of Chairman of that Committee and of the Committee which had drawn up the original draft statute, explained the views of the two Committees.

5. Specific amendments submitted by various delegations to the draft statute and Staff Regulation 23 were incorporated in a single working document (A/C.5/L.4/Rev.1) which was made available to the Committee as a basis of further discussion at its 139th meeting.

6. At the end of the general discussion during its 190th meeting, the Fifth Committee heard a statement by the Chairman of the Staff Committee in explanation of the memoranda submitted by the Staff Committee to the Secretary General. The Committee then addressed itself to two proposals submitted respectively by the Polish delegation and by the representatives of Australia and the Union of South Africa. The Polish proposal, while approving in principle the establishment of an Administrative Tribunal during the present session of the General Assembly, referred the proposal of the Secretary-General to a sub-committee for further study and report to the Fifth Committee as soon as practicable. The joint Australian-South African proposal provided for postponement of further consideration of the matter until after the conclusion of the Fifth Committee's study of the 1950 budget in order that Governments might have a more adequate opportunity of formulating their views and instructing their representatives accordingly. After the authors of this proposal had accepted amendments presented by the representative of Belgium, the proposal was put to the vote and adopted by 22 votes to 11, with 10 abstentions. In consequence, the detailed examination of the draft statute and the proposed amendments thereto was postponed until after the conclusion of the first reading of the budget estimates.

7. When discussion was resumed at the 214th meeting, on 2 November 1949, the Committee had before it revised texts of the draft statute and Staff Regulation 23 (A/C.5/L.4/Rev.2) submitted by the Secretary-General after

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consideration of the views expressed by various delegations in the course of the earlier meetings and as a result of further consultations which had taken place in the meantime with representatives of the Staff Committee. It was explained by the representative of the Secretary-General that these revised texts incorporated many of the amendments that had been proposed by delegations and were entirely acceptable from the point of view of the staff. The document also contained the amendments submitted by delegations. On the basis of these new drafts, amendments pertaining to the authority of the General Assembly or of the Secretary-General acting on instructions of the General Assembly to alter at any time the rules and regulations of the Organization, the retention of the Appeals Board, the question of procedures and time limits for the filing of applications, the competence of the Tribunal to pass judgment on disciplinary cases and to give advisory opinions and the requirement of a deposit of money in connexion with the filing of applications, were withdrawn by the delegations which had submitted them. The Committee then proceeded with an article-by-article examination of the draft statute and the amendments proposed thereto on the basis of the texts contained in document A/C.5/L.4/Rev.2. The main decisions reached may be summarized as follows:

8. Article 1 was approved by 32 votes to none, with three abstentions after the rejection by 19 votes to 5, with 13 abstentions of a proposal of the delegation of the Union of Soviet Socialist Republics that the title should be changed to "Staff Claims Board" on the ground that the term "Administrative Tribunal" did not adequately or correctly reflect the character and competence of the proposed organ.

9. Article 2

- (i) A proposal, originating with the International Court of Justice and accepted by the Secretary-General, for the deletion of reference in this article to the Registry of the International Court of Justice was accepted by 29 votes to 4, with 4 abstentions.
- (ii) A Polish proposal for amendment of paragraph 4 to enable the Tribunal to deal with cases which had arisen prior to 1 January 1955 but which had not yet been disposed of by the Appeals Board was rejected by 15 votes to 9, with 15 abstentions. In connexion with this amendment, it was stated by the representative of the Secretary-General that the intention was to retain the Appeals Board until it had disposed of all matters before it.
- (iii) A Netherlands proposal for the deletion of paragraph 5 relating to the competence of the Tribunal to give advisory opinions was accepted by 30 votes to 3, with 7 abstentions.

/(iv) Article 2,

- (iv) Article 2, as amended, was then approved by 38 votes to none, with 1 abstention.

In connexion with Article 2, as amended, two points were made in the course of the discussion regarding the Tribunal's competence:

- (a) That the Tribunal would not have jurisdiction in disciplinary cases unless such cases came within the terms of paragraph 1 of Article 2; and
- (b) That the Tribunal would have to respect the authority of the General Assembly to make such alterations and adjustments in the Staff Regulations as circumstances might require. It was understood that the Tribunal would bear in mind the General Assembly's intent not to allow the creation of any such acquired rights as would frustrate measures which the Assembly considered necessary. It was understood also that the Secretary-General would retain freedom to adjust per diem rates as a result, for example, of currency devaluations or for other valid reasons.

There was no objection in the Committee to these interpretations.

10. Article 3

- (i) A Philippine proposal, as modified by a Chilean amendment (accepted by the representative of the Philippines), to provide for three members and three alternate members was rejected by 17 votes to 8, with 14 abstentions. The Committee then accepted by 19 votes to 15, with 4 abstentions, a Swedish proposal that the number of members of the Tribunal be reduced from seven to five.
- (ii) A Netherlands proposal that the word "member" should be replaced by the word "judge" was rejected by 22 votes to 9, with 7 abstentions.
- (iii) The recommendation of the Advisory Committee that members should be appointed by the General Assembly was approved by 33 votes to 4, with 2 abstentions. In view of this decision the representative of the United States of America agreed to withdraw the addition proposed by his delegation to paragraph 1 of Article 3 reading as follows: "In the choice of members of the Tribunal, administrative training and experience shall be recognized on a par with legal training and experience and judicial service", provided this text was included in the Committee's report. The Committee so agreed. The representative of Poland withdrew his amendment relating to the method of appointment of the members of the Tribunal assuming that the same procedure would be followed as in the case of the

Advisory Committee on Administrative and Budgetary Questions and the Committee on Contributions, that is to say, that they would be appointed by the General Assembly in plenary session on the basis of recommendations submitted by the Fifth Committee. The Committee concurred in this view. Paragraph 2 of article 3 was then adopted by 34 votes to none, with 7 abstentions.

- (iv) On the proposal of the Netherlands representative amending a proposal of the Philippine delegation, it was agreed that the Tribunal should elect one vice-president. Paragraph 3, as amended, was then adopted by 33 votes to none, with 6 abstentions.
- (v) A Netherlands proposal to replace the words "Executive Secretary" by the word "Registrar" in paragraph 4 was rejected by 17 votes to 9, with 8 abstentions.
- (vi) A United States amendment to provide that dismissal of a member of the Tribunal could take place only on a two-thirds majority vote of the General Assembly was accepted by 16 votes to 14 with 11 abstentions. A number of delegations expressed strong objection to this amendment on the grounds that it was a well-recognized principle that such decisions should be exclusively within the power of the judicial organ concerned. Moreover, the amendment might have the effect of giving the Tribunal a political character. The representative of Norway, being of the opinion that this amendment affected the entire structure of the Tribunal's statute, reserved the right to raise the question again at the plenary meeting of the General Assembly.
- (vii) Article 3, as amended, was approved by 34 votes to 1, with 7 abstentions.

11. Articles 4 and 5

The Committee approved the text of these articles unanimously.

12. Article 6

The text of article 6 was approved by 38 votes to none, with 1 abstention, after adoption of a Polish amendment deleting from paragraph 1 the words "and may amend them from time to time" on the ground that these were redundant because, if the Tribunal established its rules, it had obviously the right to amend those rules.

13. Article 7

- (i) A Polish proposal to provide for applications being filed in any of the five official languages of the United Nations was accepted by 33 votes to 3, with 5 abstentions.

/(ii) The Committee

- (ii) The Committee accepted, without objection, a drafting change proposed by the United States delegation to paragraph 3 for the purpose of making it quite clear that the admissibility of an application depended primarily on the decision of the Secretary-General to accept the recommendations of the joint body.
- (iii) A New Zealand proposal to delete the second sentence of paragraph 6 relating to the authority of the President of the Tribunal to order, in exceptional cases, suspension of a decision of the Secretary-General, was approved by 14 votes to 12, with 15 abstentions. This question gave rise to considerable discussion. Some delegations felt that cases were conceivable in which the execution of a decision should be suspended because of the grave, and perhaps irreparable, consequences it would entail. Other delegations were of the opinion that if the authority envisaged for the President of the Tribunal were granted this would constitute an encroachment upon the prerogatives of the Secretary-General under the Charter. Moreover, the case would already have been before the joint body within the Secretariat so that the Secretary-General would already be aware of the possibly irreparable nature of the damage involved.
- (iv) Article 7, as amended, was approved by 41 votes to 1, with 1 abstention.

14. Article 8

Subject to redrafting, Article 8, relating to the extent to which the oral proceedings of the Tribunal should be held in public or in private, was approved by 40 votes to none, with 1 abstention.

15. Article 9

A lengthy discussion took place concerning the text of article 9 of the draft statute following a proposal put forward initially by the representative of Colombia for the deletion of the provision in this article under which the Tribunal would be authorized to order the payment to the applicant of compensation for the injury sustained if, in the opinion of the Secretary-General, the rescinding of the decision contested or the specific performance of the obligation invoked was impossible or inadvisable. It was the view of certain delegations that such a provision was inconsistent with the principle of an independent tribunal since it would be tantamount to giving to the Secretary-General

authority to vary the Tribunal's decision and that, in any event, payment of monetary compensation would not give full justice to a staff member who had been improperly or unjustly dismissed or whose contractual rights had been in some way violated. Other delegations, however, were of the opinion that, in certain cases, payment of compensation would be the only possible solution which would safeguard the position of the Secretary-General and ensure proper functioning of the Organization. It was pointed out that the provision for payment of compensation was a normal one with respect to personal service contracts and that such a provision would be invoked only in exceptional circumstances. The alternative suggestion was also put forward that the phrase "in the opinion of the Secretary-General" should be deleted. Some delegations, however, felt that it would be inadvisable to make the Tribunal the sole judge as to whether specific performance of a decision was in fact practicable and that the Secretary-General was in the best position to decide this question. The Fifth Committee finally voted on the following proposals:

- (i) A Brazilian proposal that the original text of the article as contained in Annex 3 of document A/986 (article 10) should be adopted with the addition of the following words at the end of the article - "or as appropriate by the specialized agencies participating under article 12". This proposal was rejected by 22 votes to 11, with 10 abstentions.
- (ii) A Uruguayan proposal that the words "in the opinion of the Secretary-General" should be deleted. This proposal was rejected by 22 votes to 12, with 7 abstentions.
- (iii) A Polish proposal that the words "in exceptional circumstances" should be inserted after the words "but if" in the third line of the article was accepted by 29 votes to 4, with 3 abstentions.
- (iv) A further proposal submitted by the representative of Poland that the words "within a period of not more than 60 days" should be inserted after the words "the Tribunal shall" was accepted without objection.

The text of article 9, as amended, was then approved by 35 votes to 2, with 6 abstentions.

16. Article 10

Subject to an amendment to paragraph 4 of this article, proposed by the representative of Poland, to the effect that judgments should be drawn up in any of the five official languages of the United Nations, the article was approved by 32 votes to none, with 1 abstention.

17. Article 11

On the proposal of the representative of the Union of Soviet Socialist Republics, article 11 was amended, by 33 votes to 1, with 6 abstentions, to read "The present Statute may be amended by decisions of the General Assembly." There was some discussion in connexion with the majority by which such decisions should be taken, but the Committee recommended that that was a matter for the General Assembly to decide.

18. Article 12

The text of article 12 was approved, without change, by 34 votes to none, with 5 abstentions.

19. At its 221st meeting on 8 November 1949, the Committee approved the draft statute as a whole, subject to the amendments indicated above, by 39 votes to 2, with 2 abstentions. The representative of Norway stated that the discussion on paragraph 5 of article 3 not having been reopened, his delegation would bring the matter up at the plenary meeting of the General Assembly. The representative of Sweden supported that statement but voted, as announced, in favour of the statute as a whole. The representatives of Belgium and the Netherlands, although not agreeing with certain parts of the statute voted for the statute as a whole on account of their being in favour of the establishment of the Tribunal. They reserved, however, their right to reopen discussion on certain provisions at the plenary meeting of the General Assembly.

20. The Committee then agreed unanimously to accept the consequential revision of Staff Regulation 23 as proposed by the Secretary-General. In so agreeing, the Committee took note of the fact that the words "before disciplinary action is taken" as they appear in paragraph (a) would in no way affect the authority of the Secretary-General to order suspension of a staff member pending the hearing of his case by the joint disciplinary body, provided that such suspension would not be construed as prejudicing the rights of the staff member. The Committee was informed by the representative of the Secretary-General that it was intended that the joint administrative machinery to be set up by the Secretary-General would be paritative, in the sense used in the League of Nations, namely, that the Administration and the Staff would be equally represented.

21. In consequence of the decisions taken, the Fifth Committee decided to recommend to the General Assembly the adoption of the following resolutions:

I

ESTABLISHMENT OF A UNITED NATIONS ADMINISTRATIVE TRIBUNAL

The General Assembly

Resolves that the following Statute shall be adopted for the United Nations Administrative Tribunal to come into force on 1 January 1950:

STATUTE OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

Article 1

A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal.

Article 2

1. The Tribunal shall be competent to hear and pass judgment 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.

2. The Tribunal shall be open:

- (a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;
- (b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.

4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950.

Article 3

1. The Tribunal shall be composed of five members, no two of whom may be nationals of the same State. Only three shall sit in any particular case.

2. The members shall be appointed by the General Assembly for three years, and they may be re-appointed; provided, however, that of the members initially appointed, the terms of two members shall expire at the end of one year and the terms of two members shall expire at the end of two years. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

3. The Tribunal shall elect its President and Vice-President from among its members.

4. The Secretary-General shall provide the Tribunal with an Executive Secretary and such other staff as may be considered necessary.

/5. No member of

5. No member of the Tribunal can be dismissed unless by a two-thirds majority the General Assembly shall rule that he is unsuited for further service.

6. In case of a resignation of a member of the Tribunal, the resignation shall be addressed to the President of the Tribunal for transmission to the Secretary-General. This last notification makes the place vacant.

Article 4

The Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to there being cases on its list which, in the opinion of the President, justify holding the session. Extraordinary sessions may be convoked by the President when required by the cases on the list.

Article 5

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Tribunal.

2. The expenses of the Tribunal shall be borne by the United Nations.

Article 6

1. Subject to the provisions of the present Statute, the Tribunal shall establish its rules.

2. The rules shall include provisions concerning:

- (a) Election of the President and Vice-President;
- (b) Composition of the Tribunal for its sessions;
- (c) Presentation of applications and the procedure to be followed in respect to them;
- (d) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgment;
- (e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of article 2, even though they are not parties to the case; and generally
- (f) Other matters relating to the functioning of the Tribunal.

Article 7

1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the

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applicant have agreed to submit the application directly to the Administrative Tribunal.

2. In the event of the joint body's recommendations being favourable to the application submitted to it, and in so far as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:

- (a) Rejected the recommendations;
- (b) Failed to take any action within the thirty days following the communication of the opinion; or
- (c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.

3. In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous.

4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time limit of ninety days shall begin to run from that date. Nevertheless, the said time limit on his behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his own affairs, file the application in the name of the said staff member.

5. In any particular case the Tribunal may decide to suspend the provisions regarding time limits.

6. The filing of an application shall not have the effect of suspending the execution of the decision contested.

7. Applications may be filed in any of the five official languages of the United Nations.

Article 8

The oral proceedings of the Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that they be held in private.

Article 9

If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked; but if, in exceptional circumstances, such rescinding or specific performance is, in the opinion of the Secretary-General, impossible or inadvisable, the Tribunal shall within a period of not more than sixty days order the payment to the applicant of compensation for the injury sustained. The applicant shall be entitled to claim compensation in lieu of rescinding of the contested decision or specific performance. In any case involving compensation, the amount awarded shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the specialized agency participating under article 12.

Article 10

1. The Tribunal shall take all decisions by a majority vote.
2. The judgments shall be final and without appeal.
3. The judgments shall state the reasons on which they are based.
4. The judgments shall be drawn up, in any of the five official languages of the United Nations, in two originals which shall be deposited in the archives of the Secretariat of the United Nations.
5. A copy of the judgment shall be communicated to each of the parties in the case. Copies shall also be made available on request to interested persons.

Article 11

The present Statute may be amended by decisions of the General Assembly.

Article 12

The competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of articles 57 and 63 of the Charter upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Each such special agreement shall provide that the agency concerned shall be bound by the judgments of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that agency and shall include, inter alia, provisions concerning the agency's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

II

AMENDMENT TO THE UNITED NATIONS
PROVISIONAL STAFF REGULATIONS

The General Assembly,

Resolves that provisional staff regulation 23 shall be revised, as of 1 January 1950, to read as follows:

"(a) The Secretary-General shall establish joint administrative machinery with staff participation to advise him before disciplinary action is taken against any staff member.

"(b) The Secretary-General shall establish joint administrative machinery with staff participation to advise him in case of any appeal by staff members against any administrative decision alleging the non-observance of contracts of appointment or regarding the application of rules and regulations and established administrative practices or against disciplinary action.

"(c) An Administrative Tribunal shall be established to hear and pass judgment upon applications from staff members alleging non-observance of their contracts of employment or terms of appointment, including all pertinent regulations and rules."
