



SUMMARY RECORD OF THE 35th MEETING

Chairman: Mr. FONTAINE-ORTIZ (Cuba)

Chairman of the Advisory Committee on Administrative
and Budgetary Questions: Mr. MSELLE

CONTENTS

AGENDA ITEMS 117 AND 110: PERSONNEL QUESTIONS AND PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987 (continued)

Job classification of the General Service and related categories

AGENDA ITEM 120: FINANCING OF THE UNITED NATIONS PEACE-KEEPING FORCES IN THE MIDDLE EAST

(b) UNITED NATIONS INTERIM FORCE IN LEBANON: REPORT OF THE SECRETARY-GENERAL

AGENDA ITEM 110: PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987 (continued)

Judgement No. 370 of the United Nations Administrative Tribunal related to the suspension of class 12 post adjustment in New York

*This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned within one week of the date of publication to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate fascicle for each Committee.

Distr. GENERAL
A/C.5/41/SR.35
4 December 1986
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 10 a.m.

AGENDA ITEMS 117 AND 110: PERSONNEL QUESTIONS AND PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987 (continued)

Job classification of the General Service and related categories (A/C.5/40/84 and Corr.1, A/C.5/41/30 and 34, A/41/7/Add.8)

1. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing document A/41/7/Add.8, said that paragraphs 2 to 9 of the report contained general information on the job classification exercise in New York and that the views and recommendations of the Committee were set forth in paragraphs 10 to 20. The Advisory Committee endorsed the Secretary-General's proposals on job classification in Geneva (paras. 21-24).

2. However, on the basis of information provided to it both verbally and in writing, the Advisory Committee considered that the job classification exercise in New York gave cause for serious concern. One of the most serious shortcomings was the way in which job classification standards had been applied. As a classification specialist had stated, the standards comprised several elements; grade level definitions, factor level definitions, a glossary, guidelines and 16 benchmark jobs. Those elements, which were used to evaluate each job from several different angles, needed to be interpreted. It was therefore clear that job classification was not a scientific procedure but a method for making value judgements in a relatively coherent and reliable manner.

3. It seemed, however, that the ICSC standards had been neither interpreted nor applied in a coherent manner. As a result, the reasons for classifying a given post at a given level were often debatable. Moreover, the lack of co-ordination had resulted in an apparent conflict between the position of classification specialists and that of the representatives of management and staff. The Advisory Committee found it especially regrettable that programme managers had not been closely involved in the classification process; in many cases, they had not been consulted as part of a process to verify the job descriptions they had certified or authorized, nor had their views been sought as to the requirements of their offices or units. The Advisory Committee was of the view that the lack of systematic control of the job descriptions might have led in many cases to exaggerations and unwarranted classifications. It wished to emphasize that verification of the accuracy of information on the nature of a job should be an integral part of the classification process.

4. The Advisory Committee was fully aware of the difficult situation of the General Service staff and the sacrifices they had to make in the current crisis. Nevertheless, it believed that it would be an exaggeration to say that now that the job classification exercise was over, all staff members were satisfied with the results. Indeed, many had been left confused and demoralized. For its part, the Advisory Committee felt that there was justification for rejecting the whole exercise, but it had concluded that such a course would make the situation worse.

(Mr. Mselle)

The Advisory Committee's recommendations were contained in paragraphs 15 to 17 of the report. He wished simply to underscore the fact that if reclassification to the G-7 level was postponed for the time being, the staff members concerned would nevertheless benefit immediately from upgrading to a higher level, since their posts would be reclassified at the G-6 level with retroactive effect.

5. Mr. NEGRE (Assistant Secretary-General for Personnel Services) recalled that document A/C.5/40/84 contained background information on the job classification exercise. It was proposed that G-7, the highest level of the new structure, should be the Principal level, as was the case at Geneva and Vienna. The Secretary-General continued to believe that only the job classification at that level should be subject to the approval of the Assembly, while posts at the G-6 level and below should be classified exclusively on the basis of the standards approved by ICSC.

6. Document A/C.5/41/30 contained the results of the two additional reviews undertaken to complete the job classification exercise and of the appeals process. It also showed the resulting financial implications. The final classification results (para. 18) were: 51 per cent of the classified posts had numerical grades higher than those of the incumbents; 42 per cent remained at the same level; and 7 per cent had lower grades. It was interesting to note that the corresponding results for UNDP and UNICEF respectively were: 74 per cent and 56 per cent of the posts had higher numerical grades; 21 per cent and 41 per cent had the same grades; and 5 per cent and 3 per cent had lower grades.

7. It should be emphasized that the job classification exercise represented a major policy change, with personnel administration moving away from a system based on rank-in-person towards one based on rank-in-post. A new scheme for vacancy announcements would be introduced and career development committees established to review all candidates and recommend those best qualified for each post. Those committees would replace the appointment and promotion panels for the General Service and related categories. The new system, which would be introduced at the same time as the results of the classification exercise were implemented, would encourage more movement between different departments' and offices.

8. With regard to the financial implications of the changes required in staffing tables, paragraph 23 of the report stated that the revised estimates for 1985 were \$236,000 more than the amount approved by the General Assembly. For the biennium 1986-1987, as indicated in paragraph 25, there was a need for an additional provision of \$538,000. No additional appropriations were being requested at the current stage, but the Secretary-General would closely monitor actual expenditure upon implementation of the job classification and the additional requirements would be reflected in the second performance report for the biennium 1986-1987.

9. The results of the job classification exercise in Geneva were given in document A/C.5/41/34. Their implementation would require some modifications to the staffing tables for the programme budget for the biennium 1986-1987. The financial implications were set out in paragraph 8 of the report but, as indicated in paragraph 9, the costs would be absorbed and consequently no additional appropriation was being requested.

/...

(Mr. Negre)

10. In conclusion, he wished to emphasize once again the importance attached by the Secretary-General to the results of the job classification exercise. Any delay in their implementation would seriously affect the morale of the staff in the General Service and related categories.

11. Mr. MUDHO (Kenya) said that, with regard to personnel matters, the areas where differences persisted were many. Most of the items being discussed in the context of the report of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations would have an important effect on the future of the Organization. His delegation therefore urged the most faithful and timely implementation of such recommendations as the General Assembly might approve in that respect.

12. Recruitment policy and the principle of equitable geographical distribution were two particularly sensitive questions. In that regard, his delegation welcomed the Secretary-General's statement that persons with the highest qualities required by the Organization existed in each and every Member State, which belied the notion that increased participation by nationals of developing countries would compromise the efficiency of the Organization.

13. The principle of equitable geographical distribution should be strictly enforced. Objective criteria already existed for the establishment and maintenance of desirable ranges for posts subject to that principle. While a measure of flexibility was desirable, it was nevertheless necessary to develop objective guidelines so as to avoid abuse or arbitrariness. In that connection, the application of the population factor to each Member State rather than to each region, as suggested in document A/C.5/41/6, merited further consideration.

14. The geographical distribution of posts at the higher levels (D-2 and above) was a closely related question. The distribution of such posts among Member States, and particularly among the developing countries, left a great deal to be desired. Thus, it appeared from document A/41/627 that all 143 posts at the D-2 level and above were held by nationals of only 53 countries, or 35 per cent of Member States. A few of those 53 countries monopolized the most senior posts. Of the 26 such posts held by nationals of a certain group of developing countries, 22 (or 85 per cent) were held by nationals of only four countries. In another group of developing countries, the nationals of four countries held 13 (or 62 per cent) of the 21 posts occupied by nationals of the region as a whole.

15. Owing to the pyramidal structure of the Secretariat, it was clear that not all Member States could be equally represented at the decision-making level. His delegation was nevertheless persuaded that it was essential to correct the most blatant disparities, especially since the Secretary-General had at his disposal enough qualified and experienced candidates from most countries currently unrepresented at that level. The ongoing reorganization also presented an opportunity to increase the number of women holding senior posts.

16. The General Service staff represented 70 per cent of the Secretariat staff as a whole. Of the 350 Kenyan nationals employed by the Secretariat (virtually all of

(Mr. Mudho, Kenya)

them locally recruited in Nairobi by UNEP and Habitat), 332 (or 95 per cent) belonged to that category. For Kenyan nationals, the ratio of General Service posts to Professional posts was much higher than that for nationals of other countries which hosted Secretariat offices, for example the United States, Switzerland and Austria. His delegation was confident that the Secretary-General would take timely action to correct that situation. There was a need to establish and maintain mutual confidence and a careful balance of the legitimate interests of the international organizations and host countries concerned.

17. His delegation therefore supported the recommendations concerning the job classification for the General Services staff. It asked the Secretary-General to take due account not only of the pertinent comments of the Advisory Committee on Administrative and Budgetary Questions but also of the need to streamline that classification for all duty stations without exception.

18. As for the establishment of an office of ombudsman in the Secretariat, the General Assembly should be able to take a decision at the current session on the basis of the report of the Secretary-General (A/C.5/41/14). The entire system of administration of justice should be completely overhauled with a view to simplifying it and making it independent of the executive branch. Whatever the solution adopted, the current situation, in which the Secretary-General had delegated almost complete authority to the executive heads of agencies situated away from New York, should be reversed forthwith.

19. In respect of the ratio between fixed-term and permanent contracts, the Secretary-General should be guided solely by the need to ensure efficient functioning of the Organization. He noted nevertheless that a disproportionately high percentage of nationals of certain developing countries - in the case of Kenya 53 per cent - were employed on fixed-term contracts, thereby depriving them of security of tenure, a situation which should be rectified. As to the privileges and immunities of the staff, the Secretary-General had referred to the reciprocal rights and duties of staff members and Member States. Any consideration of that matter must therefore entail an objective examination and a careful balancing with a view to a reconciliation of competing interests.

20. Lastly, his delegation fully supported implementation by the Secretary-General of the main thrust of the recommendations in the report in document A/C.5/41/8 concerning the improvement of the status of women in the Secretariat.

21. Mr. SEFIANI (Morocco) said that the perfectly understandable concerns of ACABQ notwithstanding, his delegation supported the Secretary-General's recommendations. One could not support the Secretary-General and at the same time override his powers and prerogatives in the area of personnel management. Moreover, at its fortieth session, the General Assembly had decided to ensure that social justice was done in the matter, and the Fifth Committee could not very well turn around and disavow its decision now. The job classification exercise had been going on for some five years or so and a decision could not be deferred indefinitely without undermining the stability of the General Service category.

AGENDA ITEM 120: FINANCING OF THE UNITED NATIONS PEACE-KEEPING FORCES IN THE MIDDLE EAST

(b) UNITED NATIONS INTERIM FORCE IN LEBANON: REPORT OF THE SECRETARY-GENERAL (A/41/783 and Corr.1, A/41/820; A/C.5/41/L.7)

22. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Advisory Committee recommended the approval of the estimates prepared by the Secretary-General for the period beginning on 19 January 1987. It should be noted that according to paragraph 23 of document A/41/820, the Secretary-General was no longer required to obtain the prior concurrence of ACABQ to commit funds for UNIFIL up to the limit approved by the General Assembly. On that basis, the Advisory Committee recommended that the Secretary-General should be authorized to commit funds up to the level of \$12,125,000 gross (\$11,922,000 net) per month for the 12-month period beginning on 19 January 1987.

23. Ms. BYRNE (Ireland), introducing draft resolution A/C.5/41/L.7, said that her country had consistently supported the peace-keeping role of the United Nations, which it regarded as fundamental to the effective implementation of the purposes and principles of the Charter. Those operations must rest on a sound financial basis, and that had not always been the case. Under the Charter, the responsibility for maintaining peace was shared collectively by all Members of the Organization, and the operations required should be financed collectively in a fair way.

24. Ireland therefore considered the withholding of mandatory contributions for peace-keeping operations as a breach of obligations under the Charter. Certain countries had changed their policy towards UNIFIL and she hoped that they would extend that new attitude to other United Nations peace-keeping operations. Ireland appealed to those Member States that had withheld their assessed contributions to UNIFIL seriously and immediately to review that regrettable practice. As the Secretary-General had pointed out in his report (A/41/783), the UNIFIL special account had a shortfall of approximately \$242.6 million, a situation which posed a very serious problem for the financial management of the Force. There were also continuing difficulties in meeting short-term obligations, particularly those due to the troop-contributing countries, payments to which were falling behind.

25. The draft resolution contained the same main features as resolutions adopted by the General Assembly in previous years. A new preambular paragraph, the fourth, had been added to part B to highlight the fact that in consequence of the shortfall of financial contributions, troop-contributing States were not being fully reimbursed and were therefore assuming a far higher proportion of the costs for the participation of their troops in the United Nations peace-keeping forces than those indicated by the Secretary-General in his report. That situation jeopardized the peace-keeping operations and further hindered efforts to ensure a wide geographical representation in the composition of the forces.

26. As for part B of the draft resolution, the suspension of the provisions of regulations 5.2 (b), 5.2 (d), 4.3 and 4.4 of the Financial Regulations of the United Nations in respect of the surplus balance of \$4,763,620 in the UNIFIL

(Ms. Byrne, Ireland)

Special Account would prevent that amount, calculated on the basis of assessed contributions irrespective of collectibility, an amount which had in fact been used fully to meet the expenses of the Force, from reducing the assessments of Member States, including those that were withholding their contribution.

27. Mr. BITAR (Lebanon) said that that the shortfall in the UNIFIL Special Account was due to non-payment by certain Member States of their assessed contributions. The shortfall now constituted approximately 19 per cent of the amount apportioned among Member States since the inception of UNIFIL up to 18 December 1986. It was thus increasingly difficult for the United Nations to meet its obligations towards the troop-contributing countries, which, as a result, had to assume the financial burden as well.

28. Recent events in southern Lebanon had demonstrated once more the difficulties encountered by UNIFIL and the sacrifices demanded of its personnel. Lebanon paid tribute to the memory of the soldiers of the battalions of Fiji, France and Ireland who had lost their lives in operations in Lebanon.

29. His delegation had long been concerned that the refusal by some countries to participate in the financing of UNIFIL eroded its moral and political support. Happily, the number of such States was diminishing. His delegation particularly welcomed the decision taken in April 1986 by the Soviet Union and Bulgaria to participate in the financing of UNIFIL, undoubtedly in response to appeals from his Government. That had enabled the Security Council, for the first time, to vote unanimously for the renewal of UNIFIL's mandate.

30. The Secretary-General had stated in one of his reports to the Security Council that for UNIFIL to be effective, it was essential for it to have the confidence and backing of the Council at all times. The Council's unanimity seemed to indicate that it was now willing to shoulder its responsibilities and implement fully and speedily the provisions of its resolution 425 (1978), despite the refusal of Israel to withdraw unconditionally from Lebanese territory.

31. Lebanon had never considered the establishment of UNIFIL and the extension of its mandate as ends in themselves. UNIFIL was only a means of implementing the will of the international community, as expressed in Security Council resolution 425 (1978). An extension of its mandate without progress on the ground fell short of the real objective.

32. His Government wished to thank those countries which, in an expression of international solidarity, participated in UNIFIL operations and provided units, in particular Sweden and France.

33. His delegation had joined the sponsors of draft resolution A/C.5/41/L.7, and appealed to all delegations to support it.

34. The CHAIRMAN said that the Union of Soviet Socialist Republics had requested a separate vote on parts A and B of draft resolution A/C.5/41/L.7.

/...

35. Mr. BARABANOV (Union of Soviet Socialist Republics) explained his delegation's position on part A of the draft resolution before the Committee. That position was in fact comparable to that of the Lebanese Government itself: the presence of the United Nations Interim Force in Lebanon served to block Israel's aggressive designs on the southern part of the country. All those who wished to maintain the sovereignty of Lebanon must unite and help it to rid itself of the occupying troops.

36. The USSR had twice voted in the Security Council to extend UNIFIL's mandate, and on 12 April 1986 had stated its willingness to participate in its financing. While his Government was thus prepared to support the draft resolution, it should be understood that the provisions would have no retroactive effect and would result in no obligation in respect of previous years.

37. Further, the draft resolution had major financial implications, and the Secretariat's attention should be drawn to section VI, which requested the Secretary-General to administer UNIFIL operations "with a maximum of efficiency and economy". The magnitude of the budget allocation, and the comments of the Advisory Committee, fully justified that paragraph.

38. With regard to part B of draft resolution A/C.5/41/L.7, the Soviet Union felt that, however laudable the intent, it was never wise from the financial point of view to suspend the Regulations. For that reason alone, his delegation would abstain in the vote on that part.

39. Mr. MELTKE (German Democratic Republic) said that the full implementation of all the resolutions adopted by the Security Council on the question of the Middle East would facilitate a definitive settlement of the situation in the region. The German Democratic Republic cared only for peace, and the sovereignty and territorial integrity of Lebanon. Those responsible for the aggression should bear the cost. Nevertheless, the German Democratic Republic had decided to contribute to the financing of UNIFIL in the hope of a return to normality, which would necessarily involve the withdrawal of Israeli troops. His delegation would vote in favour of part A of the draft resolution, and would abstain in the vote on part B.

40. Mr. AL-MASRI (Syrian Arab Republic) said that the question of the UNIFIL budget was under consideration only because Israel was occupying southern Lebanon. Accordingly, Israel should assume full responsibility for the costs in question. For that reason of principle, the Syrian Arab Republic would vote against the draft resolution before the Committee.

41. Mr. HAMED (Iraq) said that it was for the aggressor, in the event the Zionist entity, to bear the cost of its own expansionism. His delegation would abstain in the vote on the two parts of the draft resolution.

42. Mr. SPAHO (Albania) said that his delegation would vote against the two parts of the draft resolution.

43. Mr. SALARIAN (Islamic Republic of Iran) said that UNIFIL's expenses should be charged to the perpetrator of the aggression that was responsible for its presence in Lebanon. Accordingly, his delegation would not participate in the vote.

44. At the request of the representative of the Soviet Union, a recorded vote was taken on part A of draft resolution A/C.5/41/L.7.

In favour: Afghanistan, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, Rwanda, Samoa, Saudi Arabia, Singapore, Spain, Sri Lanka, Swaziland, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, Yugoslavia, Zaire, Zambia.

Against: Albania, Syrian Arab Republic.

Abstaining: Angola, Bhutan, Cuba, Iraq, Malawi, Maldives, Poland, Yemen.

45. Part A of draft resolution A/C.5/41/L.7 was adopted by 94 votes to 2, with 8 absentions.*

46. Mr. HARAN (Israel), speaking in explanation of vote, said that it was regrettable that some delegations had chosen to introduce political considerations into a strictly financial debate. He reminded those who seemed also to want to rewrite history that UNIFIL had not been set up until 1978, when the civil war had already been raging in Lebanon for some years. Lebanon had no longer been able to exercise its sovereignty within the country or on its borders, which had been the starting-point for acts of aggression against Israel.

47. It had been said that Israel had "aggressive designs". Nothing could be further from the truth, and those who wished to blame Israel for the situation in Lebanon were denying the historical reality. The delegation of the German Democratic Republic had no right to lecture anyone, least of all Israel, in view of what had happened in its own country.

48. The Syrian Arab Republic had set itself up as Lebanon's protector. The Committee should remember that the Syrian Arab Republic had not yet recognized the independence of Lebanon, and had not established diplomatic relations with it. The

* See para. 55 below.

(Mr. Haran, Israel)

Syrian Arab Republic maintained armed forces on Lebanese territory, and yet it still dared to lecture Israel. Finally, neither the Islamic Republic of Iran nor Iraq could give anyone lessons in pacifism.

49. The CHAIRMAN asked delegations to keep to the point during their explanations of vote.

50. Mr. HAMED (Iraq) said that the representative of the Zionist entity had referred to his country by name and that he was obliged to reply. Israel had been founded at the expense of an entire people, and its history was written in their blood. That people had been sacrificed to the great Zionist dream, whose shadow extended from the Nile to the Euphrates.

51. The CHAIRMAN invited the Committee to consider part B of draft resolution A/C.5/41/L.7.

52. Mr. AL-MASRI (Syrian Arab Republic) said that his delegation would vote against the draft resolution. He objected to the fact that the representative of the Israeli settlers occupied the place at the United Nations which belonged to Palestine. The Zionist entity had imposed itself against the will of the Palestinians and to the detriment of their fundamental rights. There was nothing to choose between the Zionist entity and the racist settlers of Pretoria. It was following an expansionist policy in order to realize its aspirations in the Middle East. If history was to be respected, as the representative of the Zionist entity seemed to want, he should be barred from the Fifth Committee and prevented from lecturing its members on issues unconnected with the debate.

53. At the request of the representative of the USSR, a recorded vote was taken on part B of draft resolution A/C.5/41/L.7.

In favour: Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burma, Burundi, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Denmark, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Gabon, Germany, Federal Republic of, Ghana, Greece, Guatemala, Honduras, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, Samoa, Saudi Arabia, Singapore, Spain, Sri Lanka, Swaziland, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela, Yugoslavia, Zaire, Zambia.

Against: Albania, Syrian Arab Republic.

Abstaining: Afghanistan, Angola, Bhutan, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Iraq, Maldives, Mongolia, Poland, Rwanda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

54. Part B of draft resolution A/C.5/41/L.7 was adopted by 88 votes to 2, with 16 abstentions.*

55. Mr. SAITY (Libyan Arab Jamahiriya), referring to the results of the two votes just taken by the Committee, said that his delegation's votes in favour of the draft resolutions had been a mistake. The Libyan Arab Jamahiriya opposed both parts of the draft resolution just adopted.

56. Mr. FERNANDEZ DE COSSIO (Cuba), speaking in explanation of vote after the vote, said that his delegation had abstained in the votes on the two parts of the draft resolution because his Government had always considered that the Zionist aggressor should meet the cost of its own actions. In addition, the fact that Israel did not acknowledge the authority of the United Nations peace-keeping force made UNIFIL's activities useless. Cuba could not, therefore, join other Member States in supporting an enterprise of dubious military value.

57. Mr. HARAN (Israel) noted that his country had been called a "Zionist entity". The Committee should know that the Israelis were proud to form a Zionist entity. He wished that certain Member States would spare the Committee their protestations of pacifism when, at that very meeting, they were displaying unrestrained aggressiveness towards Israel. As for Iraq, it should consider its own situation before it talked to Israel about "expansionism".

58. The CHAIRMAN said that it was unfortunate, from the point of view of clarity, that delegations had not explained their votes separately on the two parts of the draft resolution. That might give the mistaken impression that some delegations had spoken twice in explanation of their position.

59. Mr. BITAR (Lebanon) said that, although UNIFIL had not been established until 1978, it owed its existence to the occupation of Lebanese territory by Israeli forces. Lebanon considered that UNIFIL was helping the Government to restore its authority in southern Lebanon.

* See para. 55 above.

AGENDA ITEM 110: PROGRAMME BUDGET FOR THE BIENNIUM 1986-1987 (continued)

Judgement No. 370 of the United Nations Administrative Tribunal related to the suspension of class 12 post adjustment in New York as at 1 December 1984
(A/C.5/41/35; A/C.5/41/L.6)

60. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions) reported orally on the Advisory Committee's consideration of the financial implications of Administrative Tribunal Judgement No. 370. As the Secretary-General had indicated in his report, implementation of the judgement would require the payment of damages totalling \$2,126,900, of which \$1,524,300 related to the regular budget and \$602,600 to other sources of funding. In paragraph 9 of his report, the Secretary-General proposed to charge the amount of \$1,524,300 under the regular budget against the balance of appropriations for the biennium 1984-1985 to be retained as a result of the suspension of financial regulations 4.3, 4.4 and 5.2 (d).

61. Mr. VISLYCH (Union of Soviet Socialist Republics), introducing draft resolution A/C.5/41/L.6 submitted by his delegation, said that the issue under consideration raised various legal, financial, administrative and practical problems.

62. Although the Fifth Committee did not have to deal with the legal aspects of the problem, he must point out that the judgement was contestable from the legal point of view on at least two grounds: the Tribunal had exceeded its competence and had committed a grave error on a question of law relating to the provisions of the Charter. From the strictly financial viewpoint, Judgement No. 370 went against all common sense. At the thirty-ninth session, the International Civil Service Commission (ICSC) had informed the General Assembly of its decision to increase the post adjustment in New York, which would have increased the margin between net remunerations to more than 24 per cent according to ICSC, and to more than 30 per cent according to United States experts. In the opinion of many Governments, that decision had been taken in violation of the statute of ICSC. It had been rejected by the General Assembly which, considering such a margin excessive, had refused to authorize the necessary appropriations. At the Assembly's request, ICSC had therefore decided to suspend the implementation of its decision.

63. Considering that Member States in that case had not complied with procedures, the Administrative Tribunal had subsequently ordered the General Assembly to pay staff members damages of \$1.5 million for the United Nations (\$2 million for the entire system). Such an attitude was incomprehensible on the part of a subsidiary body, because the Assembly was sovereign, inter alia in budgetary matters. The Soviet Union had therefore drawn up draft resolution A/C.5/41/L.6, whose operative part requested the Secretary-General to defer the implementation of the judgement.

64. In the light of the situation, additional measures were necessary. Among other things, the statute of ICSC should be reviewed as indeed had been recommended by the Group of 18. The statute of the Administrative Tribunal should also be

(Mr. Vislych, USSR)

amended so as to limit the financial implications of its decisions. Otherwise, when they involved millions of dollars, as in the case at issue, the General Assembly might find itself without resources. His delegation intended to submit a draft resolution to that effect, when it had completed the necessary consultations. It hoped that draft resolution A/C.5/41/L.6 would be adopted by consensus, as resolution 39/27 had been.

65. Mr. SEGUIS (Philippines) requested the Controller to clarify the implications of the judgement for the regular budget of the United Nations.

66. Mr. MUDHO (Kenya) said that he had participated in the work of the Committee on Applications for Review of Administrative Tribunal Judgements and supported some of the comments of the representative of the Soviet Union. He could not, however, agree to Member States amending the statute of the Tribunal instead of implementing a judgement pronounced by it in accordance with the authority which they themselves had conferred on it. His delegation would abstain in the vote on the draft resolution.

67. Mr. MURRAY (United Kingdom) agreed with the representative of the Soviet Union that the judgement of the Administrative Tribunal had effects which ran counter to the intentions of the General Assembly when it had adopted resolution 39/27. It would be useful if the representative of the Office of Legal Affairs could confirm that the legal machinery had functioned properly, and indicate what measures the General Assembly might take under the circumstances.

68. Mr. MAJOLI (Italy) observed that in paragraph 7 of his report, the Secretary-General said that, in the light of the current financial situation of the Organization, he would delay payment of the damages until sometime in 1987. Furthermore, the Soviet draft resolution requested the Secretary-General to defer the implementation of the judgement, without specifying a time-limit. There was a convergence of views on that point in the two documents. It would be useful to know whether there was a statutory time-limit in the event that a decision was to defer the implementation of a judgement.

69. Mr. VAN DEN HOUT (Netherlands) said that he could not take a decision on the draft resolution without knowing whether the Fifth Committee could legally overrule a judgement of the Administrative Tribunal.

70. Mr. KASTOFT (Denmark) noted that, to the extent that the judgement of the Administrative Tribunal was applicable to all staff members within the common system, any Fifth Committee decision to the contrary would further weaken the coherence of that system.

71. Mr. FORAN (Controller), replying to the representative of the Philippines, said that the Organization should normally pay out \$1,524,300, as indicated in document A/C.5/41/35. As that obligation had arisen during the biennium 1984-1985, and no appropriation had been made for that item in the current budget, it seemed logical to charge that sum against the unused balance of appropriations for

(Mr. Foran)

1984-1985, which was largely sufficient. Nevertheless, because of current cash flow problems, the Secretary-General suggested waiting until 1987 before making the actual payment.

72. Mr. SZASZ (Office of Legal Affairs) said that the basic provision on the subject was in article 10, paragraph 2, of the statute of the Administrative Tribunal; subject to the provisions of articles 11 and 12, the judgements of the Tribunal were final and without appeal.

73. The same problem had arisen a few years after the establishment of the Tribunal. The Secretary-General had requested the Assembly to approve supplementary estimates of approximately \$175,000 to finance the compensation fixed by the Tribunal in a series of judgements. At that time, the Assembly had considered disregarding the decisions of the Tribunal. The International Court of Justice, to which the matter had been referred, had stated in a 1954 opinion that the General Assembly had not had any grounds for rejecting a judgement of the Administrative Tribunal, even if the Tribunal had been set up by the Assembly. The Court had added that the Assembly could, on the other hand, amend the statute of the Tribunal so as to provide for a review procedure. In 1955 therefore, the Assembly had set up the Committee on Applications for Review of Administrative Tribunal Judgements.

74. That Committee could be seized by the applicant or Member State contesting a judgement of the Tribunal on the grounds that the Tribunal had exceeded its jurisdiction or competence, had failed to exercise its jurisdiction, had erred on a question of law relating to the provisions of the Charter or, lastly, had committed a fundamental error in procedure occasioning a failure of justice. The Committee then decided whether the judgement should be referred to the International Court of Justice for its opinion.

75. In 20 years, about 30 cases had been referred to the Committee. In only three cases, it had decided to refer the matter to the Court. It had declined to do so in the case at issue although an application for review had been submitted to it by one of the applicants. Under article 10 of the statute of the Tribunal, the judgement of the Tribunal was therefore final and without appeal.

76. The two grounds just cited by the Soviet delegation were, indeed, among those which might be invoked before the Committee on Applications for Review. On the other hand, the General Assembly could take refuge behind the arguments set forth in the preamble to the draft resolution, which were of a political nature, when the problem was a legal one.

77. With regard to the implementation of the judgement, it could without doubt be agreed that the lack of funds made it impossible for the Organization to perform. With regard to the common system, the judgement affected almost exclusively staff members of the United Nations stationed in New York, so that the other agencies in the system were not really affected. As always in similar cases, so as not to be submerged by thousands of applications, the Tribunal had decided that its judgement would apply not only to the applicants, but to all staff members in the same situation.

(Mr. Szasz)

78. With regard to limiting the amount of the damages, as desired by the Soviet delegation, he noted that article 9 of the statute of the Tribunal already contained provisions to that effect. The Secretary-General had himself formulated proposals for reforming the Administrative Tribunal aimed inter alia at simplifying the appeals procedure. The adoption of those proposals, which remained before the General Assembly, would have made things considerably easier in the case under consideration.

79. Mr. MAJOLI (Italy) said that, if a time-limit was not set for implementing the judgement of the Administrative Tribunal, the draft resolution seemed acceptable to him.

80. Mr. CHUA (Singapore) asked whether it was too late for Member States to file an appeal with the Committee on Applications for Review of Administrative Tribunal Judgements.

81. Mr. SZASZ (Office of Legal Affairs) replied that, according to the rules, the judgement of the Administrative Tribunal was applicable immediately. If impossibility to perform or force majeure - a situation which seemed to prevail currently - made it necessary to defer implementation, the obligation incumbent on the United Nations nevertheless remained valid and permanent.

82. With regard to the point raised by the representative of Singapore, article 11, paragraphs 1, 2 and 3, of the statute of the Administrative Tribunal were very clear and very strict. They provided for a series of 30-day time-limits. Those time-limits had run out. In any case, the judgement of the Administrative Tribunal was final and without appeal.

The meeting rose at 1.20 p.m.