

General Assembly, for such a procedure would place them in a dependent position that would greatly detract from their prestige.

121. Mr. TARN (Poland) asked whether Mr. Aghnides could not accept the drafting of the Polish amendment. He did not think that the members of one United Nations organ had ever been elected by another.

122. Mr. FRENCH (United States of America) said that his delegation had been somewhat hesitant in submitting its amendment because it was afraid its intentions might be misunderstood. There was no question of casting doubt on the competence of jurists as candidates. But membership of the Administrative Tribunal should be open to persons with administrative experience. It should not be thought that only jurists were capable of performing those duties. Mr. French therefore considered that his text should be included in the statute itself.

123. Mr. ROSCHIN (Union of Soviet Socialist Republics) would vote against the election of members by the International Court of Justice. His first reason was that the functions of the Court in no way included the election of the members of any organ; that was not within its competence. Secondly, there was no doubt that the General Assembly was a more representative organ, since it had delegations from all Member States; there was no reason why the General Assembly should not elect the members of an auxiliary organ that was set up by the Assembly itself. Thirdly, the Polish proposal and the Advisory Committee's proposal were basically identical, the only difference being that the Polish proposal added the words "after nominations have been acted upon in the Fifth Committee". Mr. Roschin thought that the Polish representative would, however, have no objection to the idea expressed in his amendment being included in the report rather than in the statute.

124. The USSR delegation did not think it necessary for the United States amendment to be incorporated in the statute. The General Assembly would not fail to take into account all the qualifications of candidates when it was electing the members of the Administrative Tribunal.

125. Mr. TARN (Poland) agreed to the text of his amendment being incorporated in the report rather than in the statute.

126. Mr. ANDREN (Sweden) acknowledged that the International Court of Justice did not at the moment elect the members of any organ. But the Administrative Tribunal would be a special kind of organ and it was natural that it should be elected in a special manner. The Swedish delegation was of the opinion that the International Court should elect the members of the Administrative Tribunal.

127. In regard to the Polish amendment, Mr. Andren pointed out that there was a Committee of the General Assembly, the Sixth Committee, which was perfectly competent to consider nominations.

128. Mr. LEBEAU (Belgium) agreed with the representatives of the Netherlands and Sweden that the Court should elect the members of the Tribunal. But he was ready to accept a compromise and would agree to their election by the General Assembly on the proposal of the Court or from a list of candidates drawn up by the Court.

129. Mrs. BASTID (France), referring to the USSR representative's statement that it was beyond the competence of the International Court to elect the members of a tribunal, pointed out that many treaties made provision for the International Court of Justice or its President to appoint the members of arbitration tribunals.

130. In any case, if the General Assembly was to make the designations, there was no reason to establish abnormal procedures of so doing. If it was decided that the General Assembly should perform that function, election should be by secret ballot without the submission of nominations. In conclusion, Mrs. Bastid recommended the representatives to give careful thought to the compromise proposal submitted by the Belgian representative.

131. Mr. TARN (Poland) said that the Administrative Tribunal was an administrative organ which should not become a subsidiary organ of the International Court. Nor was the Sixth Committee competent to appoint the members and for the same reason, namely, that the Tribunal would be an administrative and not a judicial organ.

132. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) expressed the Advisory Committee's preference for election of members by the General Assembly.

The meeting rose at 6.10 p.m.

TWO HUNDRED AND FIFTEENTH MEETING

Held at Lake Success, New York, on Thursday, 3 November 1949, at 3 p.m.

Chairman: Mr. A. KYROU (Greece).

Programme of Work

1. The CHAIRMAN reported on the stage reached in the Committee's proceedings and announced the number of items which still remained to be considered during the current session.

2. Mr. LEBEAU (Belgium) hoped that the Secretary-General was not preparing estimates on the

budgetary implications which might result from a decision of the Fifth Committee regarding the report of the Committee of Experts on Salary, Allowance and Leave Systems. If it were to do so, it would be prejudging the conclusions which the Fifth Committee might reach after consideration of the report, assuming it were to reach conclusions on it during the current session.

Establishment of an Administrative Tribunal (A/986, A/968/Add. 1 and A/1003) (continued)

3. The CHAIRMAN asked the Committee to take note of the memorandum of the World Health Organization concerning the establishment of an administrative tribunal (A/C.5/L.21).

4. In reply to a question from Mr. LEBEAU (Belgium), the CHAIRMAN said that the Committee did not have to discuss the substance of the memorandum and that the World Health Organization would be free to apply to the Administrative Tribunal even though it had its own arbitration tribunal.

5. Mr. FELLER (Secretariat) pointed out that the memorandum (A/C.5/L.21) referred to the interpretation given by the Legal Department of the United Nations. While the Department had in fact given such an interpretation, it had not brought it before the Fifth Committee.

It was decided to take note of the memorandum from the World Health Organization (A/C.5/L.21).

ARTICLE 3 OF THE DRAFT STATUTE OF A UNITED NATIONS ADMINISTRATIVE TRIBUNAL (continued)

Paragraph 2

6. Mr. TARN (Poland) said his delegation would withdraw its amendment to paragraph 2. He suggested that the election of the members of the tribunal should be in accordance with the provisions of rules 144 and 147 of the rules of procedure of the General Assembly.

7. Mr. LEBEAU (Belgium) said he would prefer it if the members of the Tribunal were elected by the General Assembly upon the nomination of the International Court of Justice.

8. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that he could not agree to that suggestion. If the Advisory Committee's amendment was adopted, the method for appointing the members of the Tribunal would, as the representative of Poland had suggested, be that which governed the appointment of members of the Advisory Committee and of the Committee on Contributions. He added that the word "elected" in the Advisory Committee's amendment should be replaced by the word "appointed".

The Advisory Committee's amendment was adopted by 33 votes to 4, with 2 abstentions.

9. Sir William MATTHEWS (United Kingdom) said that in view of the decision just taken, the text of the United States amendment should be included in the Committee's report.

10. Mr. FRENCH (United States of America) withdrew his amendment and supported the suggestion of the representative of the United Kingdom.

Paragraph 2 of article 3 was adopted by 34 votes to none, with 7 abstentions.

Paragraph 3

11. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that as it had been decided at the preceding meeting that the Tribunal should be

composed of five members, it was not possible to apply the provision, in paragraph 3, under which the Tribunal was to elect two vice-presidents.

12. Mr. VAN ASCH VAN WIJCK (Netherlands) suggested that the Tribunal should elect a president and at least one vice-president.

13. Mr. CRISTÓBAL (Philippines) withdrew his amendment to paragraph 3 as well as his amendment to paragraph 2 (a) of article 6, and supported the proposal of the Netherlands representative.

The Netherlands proposal was adopted.

Paragraph 3, as amended, was adopted by 33 votes to none, with 6 abstentions.

Paragraph 4

The Netherlands amendment to replace the words "Executive Secretary" by the word "Registrar" in paragraph 4 was rejected by 17 votes to 9, with 8 abstentions.

14. Mr. TARN (Poland) thought that the words "... such other staff as may be considered necessary" should be replaced by the phrase "... such other staff as he may find necessary". The question of staff was a matter for the Secretary-General.

15. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Secretary-General was not to interfere with the actual operation of the Administrative Tribunal. The Tribunal was to be completely independent of the Secretary-General. Accordingly, it would be preferable to retain the text of paragraph 4 as it stood.

16. Mr. HAMBRO (Norway), Mr. LEBEAU (Belgium) and Mr. ANDREN (Sweden) agreed with Mr. Agnides.

17. Mr. FELLER (Secretariat) pointed out that the question was the Secretary-General's responsibility. He took his decisions in the light of the Administrative Tribunal's opinion. Without in any way interfering with the operation of the Tribunal, the Secretary-General would furnish the necessary staff as he did for the various organs of the United Nations with the exception of the International Court of Justice.

Paragraph 4 was adopted by 37 votes to none, with one abstention.

Paragraph 5

18. Mr. FRENCH (United States of America) said that the General Assembly had the exclusive right to decide whether a member of the Tribunal was to be relieved of his duties. That was why the United States delegation had submitted an amendment to paragraph 5.

19. Mr. LEBEAU (Belgium) said that, when once it was established, the Administrative Tribunal became independent of the General Assembly. It was a well-recognized principle, at least in European countries, that the members of a tribunal could not be dismissed. If one of them was no longer suited for his post, the tribunal itself should remove him from office. The United States amendment would have the effect of giving the Administrative Tribunal a political character.

20. Mrs. BASTID (France) agreed with the representative of Belgium and added that as the General Assembly met in regular session only once a

year, it would be difficult to apply the provisions of the United States amendment. Conceivably, also, the attitude of a member of the Tribunal might be looked upon with disfavour by a delegation. If that delegation were to propose to the General Assembly to dismiss him, the member concerned would find himself in an awkward position even if the General Assembly could not muster a two-thirds majority to take a decision.

21. Mr. SHAHI (Pakistan) supported the United States amendment and suggested that paragraphs 5 and 6 should be merged.

22. Mr. HAMBRO (Norway) agreed with the representative of Belgium. It was not the business of the General Assembly to decide whether or not a member of the Tribunal should be dismissed from office. It was perfectly normal for that decision to be within the power of the judicial organ concerned. In that connexion, he referred to the provisions of Article 18 of the Statute of the International Court of Justice.

23. Mr. SHANN (Australia) supported the United States amendment because he thought that questions of personality might arise in the Tribunal itself and that the General Assembly would exercise greater objectivity in the matter.

24. Mr. SHAHI (Pakistan) withdrew his proposal.

The United States admendment was adopted by 16 votes to 14, with 11 abstentions.

Paragraph 5, as amended, was adopted.

Paragraph 6

Paragraph 6 was adopted by 39 votes to none, with one abstention.

Article 3 as a whole was adopted as amended by 34 votes to one, with 7 abstentions.

25. Mr. HAMBRO (Norway) said he had voted against article 3 as a whole, because he felt that the adoption of the United States amendment to paragraph 5 affected the entire structure of the Tribunal's statute. Moreover, that amendment had been adopted by a very small majority, a circumstance which did not give the provisions of paragraph 5 sufficient authority. He reserved the right to raise the question again at a plenary meeting of the General Assembly.

ARTICLE 4

Article 4 was adopted unanimously.

ARTICLE 5

Article 5 was adopted unanimously.

ARTICLE 6

26. Mr. FOURIE (Union of South Africa) felt that it should be understood that the Tribunal would decide where it would meet. Actually it should meet in the place where applications were received.

27. Mr. VAN ASCH VAN WIJCK (Netherlands) said the Tribunal should be able to meet not only in New York and Geneva but also in Paris or Washington in case the United Nations Educational, Scientific and Cultural Organization or the Food and Agriculture Organization applied to it.

28. Mr. FOURIE (Union of South Africa) agreed.

29. In reply to a question by Mr. TRANOS (Greece), Mr. AGHNIDES (Chairman of the Ad-

visory Committee on Administrative and Budgetary Questions) said the Tribunal would establish its rules without having to submit them for approval to any organ of the United Nations.

30. Mr. HAMBRO (Norway) entered a reservation. The representatives of the Union of South Africa and the Netherlands had said the Tribunal might meet wherever it saw fit. But surely it was not for the Tribunal to proceed to the place where an application had been submitted, but rather for the applicant to present himself before the Tribunal.

31. Mrs. BASTID (France) said it would be preferable if article 6 were couched in terms similar to those of Article 30 of the Statute of the International Court of Justice.

32. Mr. KHOSROVANI (Iran), speaking on paragraph 2 (e), said it might be useful for the Tribunal to hear persons, such as experts, to whom the Tribunal was not open.

33. Mr. FELLER (Secretariat) said that in drafting paragraph 2 (d) the Advisory Committee on a statute for a United Nations Administrative Tribunal had sought to provide for intervention before the establishment of the rules of the Tribunal by persons whose rights might be affected even if those persons had not originally been parties to a case.

34. In paragraph 2 (e) the Committee had sought to enable members of the Secretariat to appear before the Tribunal before the establishment of the rules, even if they were not parties to a case. In drafting those two paragraphs the Special Advisory Committee had wished to draw the Tribunal's attention to those two important aspects of procedure. That was why the text of paragraph 2 should stand as drafted.

35. Mr. KHOSROVANI (Iran) and Mrs. BASTID (France) said Mr. Feller's explanation gave them entire satisfaction.

36. Mr. TARN (Poland) said that the words "from time to time" in paragraph 1 were meaningless. If the Tribunal established its rules it obviously had the right to amend those rules. Accordingly he proposed that paragraph 1 should be drafted as follows: "Subject to the provisions of the present statute, the Tribunal shall establish its rules."

The Polish proposal was adopted.

Article 6 as amended was adopted by 38 votes to none, with one abstention.

ARTICLE 7

37. Mr. CRISTÓBAL (Philippines), Mr. LEBEAU (Belgium), Mr. WEBSTER (New Zealand) and Mr. VAN ASCH VAN WIJCK (Netherlands) withdrew their amendments.

38. Sir William MATTHEWS (United Kingdom) pointed out that all the members of the Secretariat knew at least one of the working languages and that it was therefore unnecessary to make provision for the use of the five official languages by the Tribunal.

39. Mr. TARN (Poland) said his amendment to article 7 was justified by his amendment to article 11. A member of the Tribunal might prefer to draft an opinion in an official language which was

not a working language but which he knew perfectly.

40. Mr. ROSCHIN (Union of Soviet Socialist Republics) considered that a question of principle was involved. He supported the Polish amendment because the official languages were all on the same footing and a precedent would be created if the Administrative Tribunal were limited to the working languages.

41. Mr. MACHADO (Brazil) also supported the Polish amendment. The members of the Tribunal would be elected by the General Assembly and would consider applications submitted by Secretariat staff members. He conceded that the minutes of the Tribunal would presumably be written in only the two working languages but he saw no reason for requiring the members of the Tribunal to express themselves in no language other than English or French.

42. Mr. FOURIE (Union of South Africa) asked what additional expense would be involved if the Polish proposal were adopted.

43. Mr. PRICE (Assistant Secretary-General in charge of the Department of Administrative and Financial Services) was unable to give an exact figure but indicated that the cost would necessarily be increased if five languages were used instead of two.

44. Mr. ROSCHIN (Union of Soviet Socialist Republics) said all the subsidiary organs of the United Nations used the five official languages; it was strange, to say the least of it, that budgetary objections had been raised to the Polish proposal.

45. Mr. WITHERSPOON (Liberia) expressed support of the Polish amendment.

46. The CHAIRMAN pointed out that, in view of the relatively small number of cases which would be brought before the Tribunal, the additional expense involved in the use of the five official languages would certainly never be very high.

47. Mr. VOYNA (Ukrainian Soviet Socialist Republic) said more than a budgetary question was involved. Rejection of the Polish amendment might be regarded as discrimination against the official languages which were not working languages.

The Polish amendment was adopted by 33 votes to 3, with 5 abstentions.

Paragraph 1

48. Mrs. BASTID (France) enquired if intentionally no particulars had been given about the circumstances in which a case might be submitted to the joint appeals body.

49. Mr. FELLER (Secretariat) explained that the status of the joint appeals body would be settled later by the Secretary-General.

Paragraph 1 was adopted.

Paragraph 2

50. Mrs. BASTID (France) felt the French text was not clear. The recommendations "conformed" to the subject of the application, whether they were favourable to the applicant or not.

51. Mr. LEBEAU (Belgium) said that formula referred directly to the practice of the Appeals Board. A recommendation might give a greater

or lesser degree of satisfaction without necessarily being favourable to the application.

52. The CHAIRMAN stated that the Secretariat was in the process of revising the French text of the statute. He proposed that the representatives of France and Belgium should co-operate in the revision.

Paragraph 2 was adopted.

Paragraph 3

53. Mr. FRENCH (United States of America) asked if the paragraph meant that the official concerned appealed only against the recommendations of the joint body or against their acceptance by the Secretary-General.

54. Mr. FELLER (Secretariat) said that the changes made in the paragraph on the suggestion of the Secretary-General and of the Staff Committee did not necessarily tie down the Administrative Tribunal to purely appellate functions. There was obviously no case for appeal when the recommendations of the joint body were favourable to the applicant and when they were accepted by the Secretary-General. The Tribunal could only intervene when recommendations were unfavourable to the applicant.

55. Mr. FRENCH (United States of America) proposed the following wording to make it quite clear that the admissibility of an application hinged primarily on the Secretary-General's decision:

"In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable . . ."

56. Mr. FELLER (Secretariat) agreed to that wording.

Paragraph 3 as amended was adopted.

Paragraph 4

57. Mr. FELLER (Secretariat) drew attention to a printing error in paragraph 4: the first sentence of the English text should be identical with the first sentence of the English text of the same paragraph in the Belgian amendment, except that the word "Board's" should be replaced by the words "joint body's".

Paragraph 4 as corrected was adopted.

Paragraph 5

Paragraph 5 was adopted.

Paragraph 6

58. Mr. FELLER (Secretariat) pointed out that the word "Chairman" should be replaced by the word "President" in the English text.

59. Mr. FOURIE (Union of South Africa) said that the adoption of the last sentence of that paragraph might have very serious consequences. He had not thought that the statute would contain a provision empowering the President of the Tribunal to order the Secretary-General to suspend the execution of a decision. If any decision of the Secretary-General resulted in unjustified injury to an official, that official should receive compensation. He therefore proposed that the sentence should be deleted.

60. Mr. MACHADO (Brazil) asked what was meant by compensation: was it simply an indemnity or moral vindication?

61. Mr. FOURIE (Union of South Africa) said that payment of an indemnity would not be enough if the reputation of an official had suffered; an unambiguous decision of the Administrative Tribunal rehabilitating the official concerned could, however, be regarded as reparation for damage sustained.

62. Mr. FELLER (Secretariat) said that the Secretary-General had accepted that proposal of the Staff Committee and of several delegations with certain misgivings. The text of the paragraph itself made it clear that the provision in question would be invoked only in very exceptional cases. For instance, some staff members could reside only in certain countries in their capacity as officials of the United Nations. Consequently, any termination which they regarded as unjustified might force them to leave the country of their residence almost immediately. That was why the Staff Committee had asked for the exceptional protection.

63. Mrs. BASTID (France) asked at what point the President of the Administrative Tribunal could order the execution of a decision by the Secretary-General to be suspended: during the discussion in the joint body or only when the case had been referred to the Tribunal itself? As officials ceased to work immediately upon dismissal, she wanted to know whether the President of the Tribunal could take the measures referred to in paragraph 6 even before the joint body had submitted its recommendations.

64. Mr. FELLER (Secretariat) said the President of the Tribunal could not exercise the exceptional powers provided for in paragraph 6 unless and until the application had been referred to the Tribunal.

65. Mr. LEBEAU (Belgium) remarked that cases were conceivable in which the execution of a decision should be suspended because of the irreparable consequences it would entail. For instance when the contract of an official was terminated, he received a certain pension even though he would have been entitled to a much higher pension had he stayed in employment another few months. It would be only fair if the President of the Tribunal could order the execution of such a decision to be suspended. Settlement of pension rights in anticipation might give rise to damage, which it was difficult to assess.

66. Mr. LEVONTIN (Israel) said that before the Tribunal could order the execution of any contested decision to be suspended its President would have to be certain that such execution would involve irreparable injury; for that reason, he proposed that the words "grave and unjustified" should be replaced by the word "irreparable".

67. Mr. ROSCHIN (Union of Soviet Socialist Republics) recalled that according to Article 97 of the Charter the Secretary-General was "the chief administrative officer of the Organization". That was a fundamental provision, and the statute of the Administrative Tribunal must not infringe the provisions of the Charter. The text proposed for article 7, paragraph 6, of the statute did infringe the Charter in that it empowered the Administrative Tribunal to suspend the execution of the decisions of the Secretary-General. His delegation agreed that the last sentence of that paragraph should be omitted.

68. Mr. FELLER (Secretariat) said in reply to the representative of Israel that the substitution of the word "irreparable" for the words "grave and unjustified" would weaken the text for there were several kinds of prejudice, and it might be argued that no injury to the reputation of a staff member could ever be "repaired" by the payment of monetary damages. The original text, therefore, was to be preferred.

69. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) agreed with the USSR representative. The prerogatives of the principal organ should not be encroached upon by the creation of new organs. There were legal grounds for such an opinion for it was inconceivable that the President, by taking such a decision, should prejudice the outcome of a case which had not yet been examined by the Tribunal.

70. Mr. LEVONTIN (Israel) said that if the Committee did not delete the whole of the sentence it should at least delete the words "and unjustified" and only retain the word "grave". Indeed, any decision made by the President on the grounds that the injury would be unjustified might be extremely embarrassing to the other members of the tribunal as it would tend to prejudge ultimate decisions precisely upon the question at issue.

71. Sir William MATTHEWS (United Kingdom) agreed with the amendment proposed by the representative of Israel, and suggested that the word "order" should be replaced by the word "recommend".

72. Mr. BADANO (Uruguay) agreed with the Belgian representative's opinion. As the USSR representative had pointed out, the Charter undoubtedly made the Secretary-General the highest official in the Organization. But the Secretary-General was not infallible and if a staff member succeeded in an action before the Administrative Tribunal against a decision of the Secretary-General, it was the United Nations which would have to bear the charge. But that did not cover the case of irreparable injury. His delegation would vote for the text as it stood.

73. Mr. WITHERSPOON (Liberia) proposed the omission of the word "not" in the first sentence of paragraph 6, which would then read: "the filing of an application shall have the effect of suspending the execution of the decision contested". The injury sustained might well be irreparable; accordingly it was only fair to decide that any appeal would suspend the execution of the decision contested.

74. Mr. LEVONTIN (Israel) did not agree with the Liberian representative, for the wording he had proposed would make automatic the suspension of the decision contested.

75. Mr. Levontin did, however, share the United Kingdom representative's opinion that the word "order" should be replaced by "recommend". In any case, the words "and unjustified" should be omitted.

76. Mr. FOURIE (Union of South Africa) recalled that there were joint bodies in existence whose function it was to advise the Secretary-General before an application was filed with the Administrative Tribunal, and the Secretary-General's attention would therefore have been drawn

previously to the possibly irreparable nature of the damage involved. The Secretary-General was responsible for the proper functioning of the Organization, and the Administrative Tribunal should not be empowered to interfere in questions which the Charter reserved to the Secretary-General.

77. Mr. TARN (Poland) stated that in his opinion there was an inconsistency between article 7, paragraph 6 and article 10. Article 10 provided that if the Administrative Tribunal found that the application was well-founded, it "shall order the rescinding of the decision contested or the specific performance of the obligation invoked". It also provided that if in the opinion of the Secretary-General "such rescinding or specific performance is . . . impossible", the Tribunal would order the payment of compensation to the applicant. It followed that the Administrative Tribunal was not empowered to suspend the execution of the decision contested. He thought it would not be possible to vote on article 7, paragraph 6 until after a vote had been taken on article 10.

78. Mr. LEBEAU (Belgium) said that the Administrative Tribunal was a judicial organ which might have to rectify certain decisions of the Secretary-General, who was not infallible. As it offered, in certain contingencies, a remedy for erroneous decisions it followed that it was empowered to order measures of conservation.

79. Mr. ROSCHIN (Union of Soviet Socialist Republics) said he would like the Committee to consider the Polish proposal relating to article 10. If article 10 was adopted, it would be possible either to remove the last sentence of paragraph 6 or to replace the word "order" by the word "recommend".

80. Mr. FELLER (Secretariat) did not think it was advisable to adopt the Liberian representative's proposal because all questions would first be dealt with by the joint bodies.

81. The United Kingdom proposal to replace the word "order" by the word "recommend" met with the approval of the Staff Committee and of the Secretary-General.

82. Lastly, the representative of Israel was perfectly right to ask for the removal of the words "and unjustified".

83. Mr. TARN (Poland) urged that the vote on article 7, paragraph 6 should be postponed until the Committee had reached a decision on article 10. He did not understand how the Tribunal could have power to rescind but not to suspend decisions. He pointed out that if both articles were adopted by the Committee they would be inconsistent with each other.

84. Following an exchange of views between the representatives of Poland and the United Kingdom, Mr. SHANN (Australia) said in his opinion there was no close connexion between article 7, paragraph 6 and article 10, for those two articles referred to different stages in the proceedings.

85. Mr. FELLER (Secretariat) pointed out that there was no factual connexion between the two texts but only a psychological relation. Besides, the question of principle would be settled if the Committee adopted the amendment suggesting that the word "order" should be replaced by the word "recommend".

86. In answer to a question by the Chairman, Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said he was not in favour of allowing the second sentence of paragraph 6 to stand. The Secretary-General should be trusted and no provisions should be adopted that enabled the President of the Tribunal to prejudice the Tribunal's own decision.

87. Mr. WEBSTER (New Zealand), seconded by Mr. ANDREN (Sweden), formally moved that the second sentence of paragraph 6 should be omitted.

88. Mr. LEVONTIN (Israel) said he thought the Chairman of the Advisory Committee had sought to prove too much. It was an admitted fact that a court of appeal could always order measures of conservation.

The New Zealand motion to omit the second sentence of article 7, paragraph 6 was adopted by 14 votes to 12, with 15 abstentions.

89. Mr. WITHERSPOON (Liberia) withdrew his amendment.

90. The CHAIRMAN put the first sentence of article 7, paragraph 6 to the vote.

The sentence was adopted by 32 votes to 2, with 10 abstentions.

91. The CHAIRMAN then put to the vote the whole of article 7 as amended by the rewording of paragraph 3, the correction of the misprint in paragraph 4 and the omission of the second sentence in paragraph 6.

The whole of article 7 as amended was adopted by 41 votes to 1, with 1 abstention.

ARTICLE 8

92. The CHAIRMAN mentioned that the New Zealand and Philippine delegations proposed that article 8 should be omitted and that the Secretary-General supported that proposal.

93. Mr. FRENCH (United States of America) said he would withdraw his delegation's amendment since it was no longer applicable.

94. The CHAIRMAN ruled that there was no need to vote on article 8, but he pointed out that the succeeding articles would have to be remembered as a result of article 8 being omitted.

NEW ARTICLE 8 (former article 9)

95. Mr. FOURIE (Union of South Africa) said that the proceedings of the Tribunal ought to be held in public. He proposed that the words "or in private" should be omitted.

96. Mr. FELLER (Secretariat) pointed out that the article was taken from the draft prepared by the Special Advisory Committee. It was intended to cover cases where the publicity of proceedings would prejudice the applicant. Decisions to hold the proceedings in private would probably be rare. The Tribunal should, however, always have the right to declare them so.

97. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said the same article occurred in the statute of the Administrative Tribunal of the League of Nations and of the International Labour Office. The Tribunal should be left to exercise its discretion in each case.

98. Mr. LEBEAU (Belgium) said a tribunal was at all times entitled to decide whether its proceedings should be public or private. The Appeals Board had been faced with the same problem and had decided to hold its meetings in private; it had been right to do so.

99. Mr. CHHATARI (Pakistan) felt the text should allow for some discretion; it should prescribe that as a general rule discussions would be public, without prejudice to the Tribunal's right to declare them private.

100. Mr. FELLER (Secretariat) asked the Pakistan representative if he would agree to a wording which followed rule 55 of the General Assembly's rules of procedure: the text would then read as follows: "Meetings of the Administrative Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that the meeting be held in private".

101. After an exchange of views, in which the representatives of Norway, the Union of South Africa, Liberia and Sweden supported the Secretary-General's opinion, Mr. LEVONTIN (Israel) suggested that it might be advisable, when meetings were held in private, for the Administrative Tribunal to issue a *communiqué* on the matter.

102. The CHAIRMAN observed that that was normal practice.

103. He then put to the vote the new text of article 8 (former article 9): "The oral proceedings of the Tribunal shall be held in public, unless the Tribunal decides that exceptional circumstances require that the meeting be held in private".

The new text of article 8 (former article 9) was adopted by 40 votes to none, with 1 abstention.

ARTICLE 9 (former article 10)

104. The CHAIRMAN announced that the United States amendment (A/C.5/L.4/Rev.2) had been withdrawn.

105. Mr. JUTRAS (Canada) was glad to note that the difference between the Staff Committee and the Secretary-General regarding the compensation payable to a successful applicant had been reconciled. Presumably the compensation would depend on the contractual obligations and on the clauses in the contract of employment of the staff member in question. He felt that it should be clearly stated that the amount of compensation would be decided by reference to the injury actually sustained. Damages should not be awarded for injury to reputation, since such injury was automatically repaired by the tribunal giving a judgment in favour of the staff member concerned. In order to make that clear, the words "Compensation shall not be awarded for alleged loss of reputation in cases under consideration" should be added to the text.

106. Mr. FELLER (Secretariat) pointed out that the article dealt with compensation for injury sustained. There could be not question of damages. The injury it was intended to cover was that due to breach of the staff member's contract but the Tribunal might perhaps go even further.

107. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary

Questions) thought no other word should be used save "compensation". Nor did he consider it advisable to add the words proposed by the Canadian representative.

108. Mr. TARN (Poland) said it ought to be made clear at what time the formalities referred to in article 9 should be carried out—the formalities relative to the Secretary-General's decision that it was impossible to rescind a contested decision, the award of compensation by the Tribunal and the payment of such compensation. He feared that if no time-limit was fixed, proceedings might drag on for years, and asked the representative of the Legal Department to propose a new wording.

109. Mr. LEBEAU (Belgium) said the Fifth Committee could not decide in what circumstances the Tribunal was to pass judgment; since the action would be concerned with a contract, the Tribunal would obviously take into consideration that contract and the injury sustained, bearing in mind possible aggravating or extenuating circumstances.

110. The answer to the Polish representative was that under article 9 the Administrative Tribunal would presumably fix the amount of the compensation when it gave its judgment.

111. Mr. TARN (Poland) said he could not agree to that interpretation. The Tribunal could award compensation for injury sustained if the Secretary-General thought that it was impossible to rescind the decision contested. In such a case, the compensation would probably be very high. If the amount were fixed in advance, the staff member concerned would be given the choice between returning to his post and accepting the compensation.

112. Mr. MACHADO (Brazil) thought that a time-limit should be fixed, since the Secretary-General might consider it impossible to comply with the Tribunal's first decision that the staff member should be reinstated. Thereafter the Tribunal would have to give a second judgment in which it fixed the amount of compensation to be awarded.

113. Mr. FELLER (Secretariat) said the intention of the article was to leave the question to the Tribunal's discretion. It would be preferable if the Tribunal fixed the time-limits in each case.

114. Mr. AGHNIDES (Chairman of the Advisory Council on Administrative and Budgetary Questions) agreed with Mr. Feller.

115. Mr. CHHATARI (Pakistan) agreed that it was difficult to fix time-limits, but the compensation should be paid promptly. Perhaps it might be stipulated that, until the Tribunal fixed the amount of compensation, the applicant would continue to receive the salary which was being paid him before the decision contested was taken.

116. Mr. CARRIZOSA (Colombia) had the impression that the article was setting up a tribunal which was in reality no tribunal. The proposed tribunal was not really concerned with redressing injustice; it simply paid compensation. He formally moved that the second part of the first sentence of article 9 should be omitted.

The meeting rose at 6.10 p.m.