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Chairman: Mr. Hans ENGEN (Norway).

AGENDA ITEM 49

Report of the Special Committee on Review of Administrative Tribunal Judgements (A/2909, A/2917 and Add.1 and 2, A/C.5/634, A/C.5/L.335 and Add.1)

1. The CHAIRMAN recalled the terms of General Assembly resolution 888 B (IX), which had established a Special Committee to consider all aspects of the question of the establishment of a procedure for the review of judgements of the United Nations Administrative Tribunal. The report of that Committee was now before the Fifth Committee as document A/2909. In part IV, the Special Committee recommended to the General Assembly for its consideration two new draft articles for incorporation in the Statute of the Administrative Tribunal. Other proposals which had been considered by the Committee, the written views of some Member States and the working papers submitted to the Committee by the Secretary-General were to be found in the annexes to the report. In addition to the views of the Staff Council, which were to be found in annex IV, the Secretary-General had, at the request of the Staff Council, transmitted its statement on the report of the Special Committee (A/C.5/634) for the information of members of the Fifth Committee.

2. The Committee also had before it a draft resolution (A/C.5/L.335) sponsored by eight Powers, Pakistan having asked for its name to be added to the list of sponsors appearing at the head of the document (A/C.5/L.335/Add.1).

3. The SECRETARY-GENERAL made some observations concerning the proposals for a review of Administrative Tribunal judgements which were contained in the Special Committee's report. [1]

4. Lord FAIRFAX (United Kingdom) wished to explain his Government's attitude to the recommendations appearing in part IV of the Special Committee's report and taken up in the joint draft resolution before the Committee. He would suggest, in passing, that the Committee should confine itself to a consideration of those recommendations and not reopen a discussion of other possible solutions, which had been fully examined by the Special Committee. His Government's primary concern was that the United Nations staff should be provided with a system of established and impartial justice. The opinion had been expressed that decisions of the Administrative Tribunal might sometimes call for review and it was true that there had been cases in the past where the Tribunal's judgements had caused grave dissatisfaction. The General Assembly had, at its ninth session, accepted judicial review in principle (resolution 888 B (IX)); his delegation had at that time agreed to co-operate in devising a review procedure provided that judicial impartiality was not impaired, the basic rights of the staff were respected and the status and efficacy of the Administrative Tribunal were maintained. Its sole anxiety now was to see a satisfactory procedure adopted and put into effect at the earliest possible date.

5. The Committee should bear in mind the fact that the International Labour Organisation had already found it desirable to establish a review procedure for judgements of its Administrative Tribunal, an organ with functions very similar to those of the United Nations Administrative Tribunal, and that the jurisdiction of the ILO Tribunal had been extended to five other specialized agencies of the United Nations, whose Executive Boards were empowered to seek a review of decisions of that Tribunal in cases affecting members of their staffs. Thus a precedent had already been established in the matter and accepted by the majority of Members of the United Nations.

6. The review procedure recommended by the Special Committee was admittedly a compromise, but the United Kingdom, which had been one of its sponsors, considered that it satisfied the essential requirements for a review procedure, namely, that it should be conducted by an impartial judicial body of the highest standing which should be prompt in its actions and conclusive in its decisions. The procedure recommended incorporated two of the basic features of that of the ILO: first, the use of the advisory opinion procedure of the International Court of Justice, and secondly, the provision that the opinion of the Court should be sought by an organ of the United Nations, in the present case a committee specially authorized for the purpose under paragraph 2 of Article 96 of the Charter.

7. Paragraph 1 of the proposed new article 11 of the Statute of the Tribunal provided that a Member State, the Secretary-General or the staff member concerned could apply to the committee to request an advisory opinion of the Court. The committee, essentially a screening committee for applications for review, would then decide, under paragraph 2 of the article, whether there was a substantial basis for the application and, if it found that to be so, would request the International Court to give an opinion.

8. The Special Committee had found that there were three basic issues before it in the matter of the establishment of a review procedure: the scope or grounds of review, the choice of a reviewing body, and the question of who should have the right to initiate a review.

[1] The complete text of the Secretary-General's statement will be found in document A/C.5/635.

9. With regard to the scope of review, it had been generally agreed that there should be no review on questions of fact and that, as the Secretary-General himself had suggested, review should be exceptional only and should not be applied to all cases as a matter of course. Opinion had been divided, however, on whether the scope of review should be confined to the two grounds set forth in article 12 of the Statute of the ILO Tribunal. The recommendation in the report was a compromise: it adopted the two grounds in the ILO Tribunal's Statute and added a third — alleged error on a question of law relating to the provisions of the Charter. It had been felt that the third ground was adequate to cover cases where the Tribunal, in interpreting and applying some of the Staff Regulations, did so in a manner which might be considered inconsistent with the provisions of the Charter, especially of Chapter XV.

10. On the second issue, the choice of a reviewing body, the Special Committee had agreed that the reviewing tribunal should be an independent, permanent judicial body of obviously higher authority and prestige than the Administrative Tribunal itself; the International Court of Justice, as the principal judicial organ of the United Nations, had presented itself as the obvious choice. Doubt had been expressed, however, whether the International Court was competent to undertake such a function. That was for the Court itself to decide, but his delegation felt that the provision for its advisory opinion procedure gave it the necessary competence. Another objection raised to the choice of the International Court had been that a staff member, unlike a Member State or the Secretary-General, could not appear before it. That was certainly a disability, but paragraph 2 of the proposed article 11 expressly provided that the written views of the person concerned should be transmitted to the Court by the Secretary-General. Equality of rights before the Court could be maintained if Member States and the Secretary-General were to refrain from presenting oral statements to it and the joint draft resolution before the Committee contained a recommendation on that point. A further objection had been that the prestige of the Court might be lowered if it were asked to deal with a great number of staff cases. That objection had been met by limiting review to exceptional cases.

11. In view of the objections raised to the use of the International Court, the Special Committee had considered the possibility of establishing a new review body but it had found that there would be serious practical and financial obstacles in the way of creating a new body of sufficient authority and prestige.

12. On the third issue — namely, who should have the right to initiate a review — it was obvious that the right should be accorded to the Secretary-General and to the staff member concerned. Nevertheless, Member States, too, had a real interest in the judgements of the Tribunal and the Special Committee had therefore recommended that review might be undertaken at the request of a Member State. The objection that that might lead to abuse of the procedure for political purposes had been met by a provision that the right might be exercised, not by individual Member States, but only by a group of States, constituting a majority of the screening committee set up under paragraph 4 of article 11.

13. Criticism of the screening committee had been voiced on the grounds that it would bring political influence to bear in what should be a purely judicial procedure; he would point out, however, that one of the main purposes of that committee was to reduce the possibility of political influence while allowing Member States the right to initiate review. Moreover, the function of the screening committee was very limited: its task was to decide only whether the application for review fulfilled the conditions laid down in paragraph 1 of the proposed article 11; thereafter it had no further discretion. The suggestion that the need for a screening committee might be eliminated by conferring upon the Secretary-General the right to ask the Court for an advisory opinion was, in his delegation's view, unacceptable, for it would subject the Secretary-General to undesirable political pressure. Furthermore, it had been intended that the screening committee should fill, in the case of the United Nations, the role filled in that of the specialized agencies by the Governing Body or Executive Board.

14. Paragraph 4 of the proposed article 11 provided that the screening committee should be composed of the Member States whose representatives had served on the General Committee at the most recent regular session of the General Assembly. The Special Committee had considered other methods of composition, in particular the suggestion that it should consist of individual experts and not of Member States. As experience had shown, however, committees of experts were difficult and expensive to convene and they could not be expected to deal with applications for review as promptly and expeditiously as was desirable. The Special Committee had consequently concluded that it would be better for the screening committee to consist of Member States, but States were naturally to be recommended to send qualified experts as their representatives on that committee.

15. Paragraph 3 of the proposed new article 11 dealt with the question of the finality of judgements. If no application for review were made within the time-limit laid down in paragraph 1 of the article, the judgement of the Administrative Tribunal became final. The Tribunal's judgement also became final if an application for review were made within the period specified but the screening committee decided not to request an advisory opinion or failed to reach a decision within 30 days of the application. If, however, the screening committee decided to request an advisory opinion of the Court, effect must be given to the Court's opinion, either immediately or, where necessary, through the reconvening of the Tribunal in order that it might confirm its original judgement or give a new judgement, in conformity with the opinion of the Court. The general intention of the provisions in that paragraph was to reduce to a minimum the inconvenience and hardship caused to staff members by the delay in reaching finality which was necessarily entailed by any review procedure.

16. Paragraph 5 of the proposed article 11 dealt with the problem of the status of judgements of the Administrative Tribunal. The practical question involved was whether or not compensation awarded by the Tribunal should be paid before the International Court of Justice had given its opinion. In order that the staff member concerned should not be handicapped in protecting his interests, paragraph 5 provided that he might, on certain conditions, be given an advance payment amounting to one-third of the total amount of compensation awarded him by the Tribunal.

17. The new article 12 recommended by the Special Committee for inclusion in the Statute of the Administrative Tribunal provided for the revision of judgements

and the correction of errors by the Tribunal itself in certain circumstances. It was based on Article 61 (1) of the Statute of the International Court and simply conferred, expressly, a power of revision which the Tribunal possessed inherently.

18. On the basis of those considerations, he would urge the Fifth Committee to adopt the Special Committee's proposals as a satisfactory solution of a difficult and intricate problem.

19. Mr. DONS (Norway) recalled that at the ninth session of the General Assembly his delegation had in the Fifth Committee (479th and 480th meetings) opposed the establishment of a procedure for review of judgements of the United Nations Administrative Tribunal but in the 515th plenary meeting had voted in favour of resolution 888 (IX). In regard to part B of that resolution, it had questioned the wisdom of accepting in principle judicial review before the question had been studied much more thoroughly than had seemed possible at the ninth session and had made it clear that it would not consider itself bound by such acceptance in any future discussion of the problem.

20. It was a matter of regret to the Norwegian delegation that the majority of the Special Committee set up under the resolution had shared the view expressed by the United States representative on that Committee that the question of the necessity or advisability of establishing a review procedure had been finally settled by the General Assembly and that the Special Committee was bound to limit its study to ways and means of applying the principle of judicial review. The Norwegian and a few other delegations on the Special Committee had been of the opinion that the General Assembly had not given it imperative terms of reference and that the possibility of its work resulting in a negative conclusion should not be ruled out. They had drawn attention to the fact that the Special Committee had been called upon to study the question in all its aspects and had expressed the view that the advisability of establishing a review procedure could be discussed in considering general principles. In point of fact, some members of the Special Committee had raised that question in their statements and several had opposed the establishment of any review procedure.

21. It would be noted from the Special Committee's report that no proposal regarding a review procedure had received more than half the votes cast and that the Special Committee's recommendations had been adopted by 9 votes to 4, with 4 abstentions, one member being unrepresented. That vote would seem to justify the proposal made by the Norwegian representative on the Special Committee that no vote should be taken on any of the proposals submitted but that all the texts should be annexed to the report, which should represent a complete, faithful and objective picture of the work done. The adoption of that proposal would have obviated the crytallization of the positions of delegations before they had had an opportunity of studying the matter fully and of acquainting themselves with the views of other Member States. As it was, the Fifth Committee had before it a controversial proposal, together with the comments of a small number of Member States (A/2917 and Add.1 and 2) not represented on the Special Committee. In the opinion of the Norwegian delegation, that situation called for extensive discussion of the whole matter in the Fifth Committee, including the question of the necessity or advisability of establishing any review procedure.

22. It was the considered view of the Norwegian Government that it was unnecessary and even unwise at the present time to establish any procedure for judicial review of judgements of the Administrative Tribunal, for the following reasons:

23. First, the establishment of such a procedure had not been requested either by the staff or by the Secretary-General, the two parties to any dispute coming before the Administrative Tribunal.

24. Second, the question of an appeals procedure had been discussed at the time of the establishment of the Administrative Tribunal, but no further action had been taken in the matter because the Advisory Committee had feared an adverse effect on staff morale if appeals beyond the Administrative Tribunal were to delay the final decision in cases already heard by organs set up for that purpose within the Secretariat.[2] It was relevant in that connexion that the judgements of the League of Nations Administrative Tribunal had been final and without appeal.

25. Third, a case affecting a staff member might already have gone through several stages of review even before reaching the Administrative Tribunal.

26. Fourth, the review procedure would involve additional expense for both the Organization and the staff member and would result, for the latter, in loss of time and uncertainty regarding the future.

27. Fifth, the Special Committee's studies had shown that the establishment of any review procedure would involve constitutional and practical difficulties entirely disproportionate to the benefits which might be derived.

28. Sixth, the establishment of a review procedure would have the effect of impairing the prestige of the Administrative Tribunal.

29. Seventh, the experience of other international organizations showed that little or no use was being made of review facilities and it therefore seemed superfluous to make elaborate provision to meet a contingency that would seldom or never arise.

30. Eighth, in the final analysis, the effect of a successful appeal against a judgement would be to deprive a staff member, in whole or in part, of the benefits of a compensation award in his favour, thus reducing the problem to the question of the sum to be paid from the United Nations budget, a relatively unimportant consideration, where the interests of the Organization or of some Member States were weighed against all the arguments militating against the establishment of a review procedure.

31. While the Norwegian delegation was opposed to the establishment of a review procedure in respect of judgements of the Administrative Tribunal and would therefore vote against the Special Committee's recommendations, it wished to make clear that it was not opposed to appeals procedures in principle, which it recognized had their rightful place in any system of law and justice. It could not, however, support a review procedure which did not comply with certain basic principles, namely, being truly judicial in character, giving both parties and both parties alone an equal opportunity to request a review, and safeguarding the principle of equality before the review body. Even a superficial examination of the Special Committee's recommendations indicated that the system proposed violated the principles on which the concept of judicial review was based.

[2] See *Official Records of the General Assembly, Second part of first session, Fifth Committee*, 25th meeting.

In its advisory opinion, [3] the International Court of Justice had indicated that a procedure for review of Administrative Tribunal judgements must be judicial and that principle had been accepted by the General Assembly in resolution 888 B (IX). The Norwegian delegation felt doubly justified in voting against the Special Committee's proposal for a new article 11 in the Statute of the Administrative Tribunal and was sure that many delegations which might be inclined to recognize the need for a review procedure would hesitate to approve the Special Committee's recommendations for the very reason that they were not in conformity with the wishes expressed by the General Assembly.

32. One of Norway's main objections to the Special Committee's recommendations was that they departed from the principle governing appeals by according to a third party, i.e., to any Member State, the right to request the review of a judgement. It had been argued that, since the final decision on acceptance of a Member State's application for a review was to be taken by a screening committee, it would not be the Member State which would be requesting a review but a committee of the Organization, and the Organization would be one of the parties to the original proceedings. It was clear, however, from paragraph 76 of the Special Committee's report that, although the proposed committee would in theory be a screening committee, it would in practice serve as a smoke-screen to conceal the fact that Member States had been given the right to request the review of judgements in contravention of the principles governing judicial review.

33. A further defect in the system recommended by the Special Committee was that it introduced a political element into what should be a strictly judicial procedure. The Norwegian delegation maintained that staff members could be relied upon to act in their own interests, and the Secretary-General to act in those of the Organization as a whole. Since a Member State could not act for the Organization as a whole, there was no interest in the proceedings before the Tribunal which would properly be represented by a Member State. Intervention by the latter would seem to imply a lack of confidence in the Secretary-General and would tend to impair his prestige. If a Member State considered that a particular case raised issues affecting the interests of the Organization as a whole, it could draw those issues to the attention of the Secretary-General, who could be relied upon to take whatever action he considered appropriate within the framework of a genuinely judicial review procedure. For that reason, Norway agreed with the view expressed in the Special Committee by the representatives of Brazil and Iraq that, if Member States were not considered interested parties, a review of judgements would be superfluous, since it had not been sought by the Secretary-General or the staff.

34. A political element had also been introduced into the review procedure by the Special Committee's recommendation regarding the composition of the screening committee. Since its composition would correspond to that of the General Committee of the General Assembly, which was primarily determined by political considerations, the screening committee would have a political rather than a judicial character, despite the fact that its functions would be essentially judicial. While it was possible that the representatives of the countries concerned might be appointed on the basis of their personal ability and legal competence, there was no guarantee that that would be so. A further objection to the proposed composition of the screening committee was that there would be no continuity of membership except in the case of the permanent members of the Security Council.

35. It should be pointed out, furthermore, that the terms of reference of the screening committee as set out in paragraph 2 of the new article 11 proposed by the Special Committee were ambiguous. According to that paragraph, the committee was to decide whether or not there was a substantial basis for the application for review. The United Kingdom representative in the Special Committee had said that, if the committee found there was a genuine application within the grounds specified, it would be under an obligation to request an advisory opinion. The Canadian representative, however, who had supported the proposal as a whole, had been unable to accept paragraph 2 because of the inclusion of the word "substantial", which, in the opinion of his Government, conferred a wider discretion upon the screening committee than was consistent with the exercise of its functions in a completely judicial manner.

36. Another serious defect of the system proposed by the Special Committee was its failure to ensure equality between the parties to the review procedure. The provision in paragraph 1 of the proposed new article 11 for review on the ground that the Tribunal had exceeded its jurisdiction was apparently based on article 12 of the Statute of the ILO Administrative Tribunal, which provided for review of a decision of the Tribunal confirming its jurisdiction. No exception could be taken to the inclusion of such a provision in the Statute of the ILO Administrative Tribunal, since only the Governing Body of that agency could initiate a review. Its introduction into the system in force in the United Nations, however, would create inequality between the parties, since in practice a staff member would mainly be interested in challenging a decision refusing to accept jurisdiction, while the other party would be mainly interested in challenging a decision which, in its view, wrongly confirmed the Tribunal's jurisdiction.

37. The screening committee procedure proposed would also make for inequality, since in practice it would be much more difficult for a staff member requesting a review to convince the committee that there was a substantial basis for his application than it would be for a Member State. The latter might even be represented on the committee, while no provision was made for the participation of staff members in its proceedings.

38. Even more serious was the fact that a staff member would not have the same rights of representation before the International Court of Justice as Member States or the Secretary-General. While the Special Committee's recommendations provided for the submission to the Court of a written statement of the views of staff members, they did not provide for the participation of the latter in oral proceedings. A member of the Special Committee had suggested that the General Assembly might consider the possibility of adopting a resolution expressing the hope that Member States and the Secretary-General would not exercise their rights before the Court in a manner that would take undue advantage of a staff member. In the opinion of the Norwegian delegation, however, a genuinely judicial review procedure could not be based on a hope expressed in a resolution

[3] See *Effect of awards of compensation made by the United Nations Administrative Tribunal, Advisory Opinion of July 13th, 1954*: I.C.J. Reports 1954, p. 47.

that the other party, whoever he might be, would behave in a proper manner.

39. Other defects of the Special Committee's recommendations were the imprecise drafting of paragraph 1 of article II dealing with the grounds for review, which had been given different interpretations in that Committee, and the broad scope of the review proposed which was seemingly at variance with the statement in paragraph 19 of its report that "the members of the Committee were in general agreement that review should be limited to exceptional cases".

40. The report left one fundamental question open: namely, whether the International Court of Justice would be able and willing to act in an advisory capacity under the procedure proposed in the joint draft resolution (A/C.5/L.335 and Add.1), which, in the view of the Norwegian and many other delegations, was at variance with the principles of a genuinely judicial review. Although the opinion of the Court and that of the majority of the Fifth Committee and of the General Assembly were not yet known, the Staff Council had stated, both in the Special Committee and again in document A/C.5/634, that the review procedure proposed in the Special Committee's recommendation could not properly be termed a "judicial review" within the meaning of General Assembly resolution 888 B (IX). The Norwegian delegation considered that full weight should be given to the views expressed by one of the parties concerned with regard to that point.

41. For the reasons he had given, the Norwegian delegation would vote against the Special Committee's proposal for a new article 11 in the Statute of the Administrative Tribunal of the United Nations and, consequently, against the main part of the joint draft resolution.

42. Mr. BLANCO (Cuba) said that, as his country's representative on the Special Committee, he wished to comment on that Committee's recommendations as embodied in the joint draft resolution, of which his delegation was a sponsor.

43. The principle of judicial review of Administrative Tribunal judgements had been accepted by the General Assembly in resolution 888 B (IX), which had provided the starting point for the Special Committee's work. The latter had therefore made a careful study of all the existing possibilities and of all the suggestions put forward. All schools of thought had been represented in it, from those opposed to review, and hence to the institution of a review procedure, to those in favour of setting up an entirely new appeals tribunal. Both the Secretary-General and the Staff Council had had an opportunity of presenting their views.

44. In accepting the principle of judicial review, the Assembly had implicitly asserted the need to establish a procedure designed to preclude any repetition of the difficulties experienced three years earlier in connexion with the implementation of certain Administrative Tribunal judgements. Such a procedure was not new; provision for it was made in article 12 of the Statute of the ILO Administrative Tribunal which had been accepted by five other specialized agencies. The action taken by the General Assembly at its ninth session was therefore in conformity with the practice adopted by the majority of the organizations in the United Nations family. The fact that so experienced an organization as the ILO had considered it necessary to provide for a review procedure suggested that the adoption of a similar procedure by the United Nations might be a means of avoiding a repetition of the difficulties previously experienced. It was a significant fact that the ILO procedure had never been used, an indication that it had had a salutary preventive effect.

45. In accordance with the recommendation made in the working paper the Secretary-General had submitted to it (A/AC.78/L.1), the Special Committee had considered the three following basic questions: the scope of the review, the reviewing body, and the initiation of the review.

46. Where the first of those questions was concerned, divergent views had been expressed on whether the scope of the review should be limited to the two grounds referred to in article 12 of the Statute of the ILO Administrative Tribunal or whether it should be extended to all important legal questions. The Special Committee had adopted a compromise solution, under which a review could be requested on three grounds only: that the Tribunal had exceeded its jurisdictional competence, had erred on questions of law relating to the Charter, or had committed a fundamental error in procedure. The second of those grounds did not figure in article 12 of the Statute of the ILO Administrative Tribunal, but its inclusion had been considered necessary in order to provide for cases in which the Tribunal's interpretation of the Charter might be challenged or in which it might be alleged to have interpreted the Staff Regulations in a manner inconsistent with Chapter XV of the Charter. In the opinion of the Cuban delegation, the introduction of that second ground represented an improvement on article 12 of the Statute of the ILO Administrative Tribunal.

47. Where the reviewing body was concerned, after considering various possibilities the majority of the Special Committee had agreed that the reviewing body should be the International Court of Justice, acting in its advisory capacity, as provided in article 12 of the Statute of the ILO Administrative Tribunal. In view of the fact that judicial review of judgements was intended to be an exceptional procedure, it seemed neither necessary nor economically justifiable to set up new machinery for appeals.

48. With regard to the third question, namely, who should have the right to initiate a review, it was obvious that the Secretary-General and the staff member concerned should have that right. The Special Committee had felt that it should belong also to Member States, which had legitimate interests to protect. Taking article 12 of the Statute of the ILO Administrative Tribunal as its example, the Special Committee had decided to recommend the setting up of a General Assembly committee which would screen applications for review. Judicial review would thus be reserved for exceptional cases only. Such a committee, with the composition suggested by the Special Committee, would, it was felt, be adequately representative, geographically and otherwise. Its functions would be strictly limited and it would itself have no power of review since, like the Governing Body or Executive Board in the case of the ILO procedure, it would simply be required to decide whether an application for review was admissible under the terms of paragraph 1 of article 11.

49. It had been objected that such a screening committee would be political and not technical in character and that that would detract from the judicial nature of the review. If, however, the committee were to consist of legal experts, then it would be virtually unnecessary

to seek the opinion of the International Court of Justice. The committee had been suggested precisely because, unlike the specialized agencies, the United Nations did not possess a governing body or an executive board. Its establishment could not in any way detract from the judicial nature of the review itself, which would be carried out by the International Court of Justice.

50. For those reasons, his delegation would support the recommendations of the Special Committee and the eight-Power draft resolution. The recommendations, in its view, represented the best compromise which could be reached on the matter and if adopted would constitute a definite step forward in the international administrative legislation of the United Nations. True, the procedure recommended was not strictly in accordance with the norms of domestic legislation, on which international law was generally founded, but that was not always possible in present-day conditions. In any case, the United Nations should follow the example set by the International Labour Organisation in the Statute of its Administrative Tribunal; the rights both of the Organization and of Member States would thereby be guaranteed.

51. Mr. GREZ (Chile) recalled that at the General Assembly's ninth session the Chilean representative in the Fifth Committee (477th meeting) had supported in principle the setting up of a procedure for reviewing the judgements of the United Nations Administrative Tribunal.

52. In accordance with General Assembly resolution 888 B (IX), the Chilean Government had, in a *note verbale* dated 3 June 1955 (A/2917), supported the opinion expressed by its representative at the General Assembly's ninth session that the review procedure envisaged should be of a strictly judicial nature.

53. While his delegation fully supported the Special Committee's recommendations, it felt that, as they concerned questions of an essentially juridical nature, they should be submitted to the Sixth Committee for its opinion, in accordance with General Assembly resolution 684 (VII) on methods and procedures of the General Assembly for dealing with legal and drafting questions.

54. Mr. McCANN (Canada) said that his delegation had supported General Assembly resolution 888 B (IX), which accepted in principle a judicial review of the judgements of the United Nations Administrative Tribunal.

55. After referring to the principal questions dealt with by the Special Committee, he briefly reviewed that Committee's recommendations and the new articles 11 and 12 which it had suggested for the Statute of the Administrative Tribunal and which had been supported by the Canadian member of the Special Committee.

56. A precedent for the review procedure suggested already existed in that provided by the Statute of the ILO Administrative Tribunal, which was applied also by several other specialized agencies.

57. The Canadian delegation considered that the International Court of Justice would be the most appropriate review organ, because of its unrivalled ability and prestige and because the procedure under which United Nations organs might request advisory opinions could be adapted to the review of judgements of the Administrative Tribunal of the United Nations, as had already been done in the case of the ILO Administrative Tribunal. His delegation was confident that a procedure could be devised which would ensure that a staff member who could not submit his arguments orally to the International Court would not be placed at a disadvantage.

58. Member States had a legitimate interest in the affairs of the United Nations Secretariat and they, the Secretary-General and the staff member, should be given the opportunity of initiating review procedure. His delegation considered, however, that provision should be made for the screening of requests for review by a competent body, so as to ensure that the International Court was not burdened with requests for advisory opinions which did not come within the scope of review.

59. The Canadian delegation agreed to the type of screening committee proposed in the Special Committee's report, on the understanding that the discretion of that body would be strictly limited to ascertaining whether the grounds on which the application was submitted were genuine and within the specified scope of review. Since such exercise of discretion would involve the application of judicial principles, his delegation hoped that the members of the committee would be jurists and that it would operate as a quasi-judicial organ and not as a political body. That was the manner in which his delegation hoped that the Special Committee's recommendations and the joint draft resolution before the Fifth Committee would be interpreted and put into effect.

60. His delegation was particularly pleased with the recommendation that Member States and the Secretary-General should not make oral statements before the International Court of Justice in proceedings under the proposed new article 11 of the Statute of the Administrative Tribunal. That measure had been suggested by the Canadian representative on the Special Committee in order to help to ensure that Member States and the Secretary-General would not be afforded an advantage over a staff member.

61. Mr. EL MESSIRI (Egypt) recalled that at the General Assembly's ninth session the Egyptian representative in the Fifth Committee (477th meeting) had stated that if the Statute of the Administrative Tribunal was to be amended any changes contemplated should be made in accordance with the predominant principles of law and in conformity with the provisions generally laid down in statutes of judicial bodies.

62. Paragraph 1 of the proposed new article 11 permitted a Member State to apply for review of a judgement. The advisory opinion given by the International Court of Justice on 13 July 1954 had, however, left no doubt that a Member State could not be a party to a dispute between the United Nations and a staff member. That was clear, inasmuch as disputes concerning contracts of employment in the United Nations Secretariat did not affect the interests of Member States.

63. The Secretary-General, in his legal capacity as representative of the United Nations, and the staff member concerned were the only parties to judge whether the Tribunal had exceeded its jurisdiction or competence, had erred on a question of law relating to the provisions of the Chater, or had committed a fundamental error in procedure. According to the procedure proposed by the Special Committee, however, a Member State could initiate review procedure, even if the Secretary-General had not objected to the Administrative Tribunal's judgement. That would be a direct intervention in the responsibilities of the Secretary-General as laid down in Article 100 of the Charter. That article was a clear expression of the long-established principle

of "separation and independence of authority"; the power of that principle, which restricted intervention by one authority in the jurisdiction of another, was the main safeguard and solid base on which national and international organs had been founded. In the interest, therefore, of the United Nations and of all its Members, it should be a guiding factor in the present debate.

64. The Special Committee's report mentioned that a Member State might intervene in respect of a judgement of the Administrative Tribunal on the basis of questions relating to the provisions of the Charter, such as standards of efficiency and integrity, or in questions involving the staff member's duty to refrain from any action which might reflect on his position as an international civil servant. There were, however, adequate administrative arrangements for dealing with such cases before they reached the Administrative Tribunal; there were, for instance, the Review Board, the Joint Disciplinary Committee, the Special Advisory Board and the Joint Appeals Board, all of which were calculated to ensure compliance with Article 101 of the Charter. Furthermore, the Administrative Tribunal itself, composed of members elected by the General Assembly, was able to ensure that the provisions of the Charter and other regulations relating to staff members of the United Nations were observed. Finally, Articles 97 and 100 of the Charter left no legal ground for intervention by a Member State, and any such intervention in connexion with Article 101 contravened Article 100. Paragraph 1 of the proposed new article 11 of the Administrative Tribunal's Statute obviously contravened Article 100.

65. Under paragraph 2 of the new article 11 the power to decide legal matters was given to a committee whose members were not required to be jurists. It was obvious that such a committee could not perform judicial functions. As the records of the General Assembly's ninth session would show, the majority of the members of the Fifth Committee had considered that any review procedure established should be truly judicial. The fact that the Administrative Tribunal itself, which had the elements of an independent judicial body, was not entrusted with the reviewing procedure was all the more reason why the proposed committee — a political body with no special judicial background — should not be entrusted with the power to override the Tribunal's decisions.

66. Under paragraph 3 of the new article 11, the Administrative Tribunal could be requested to convene specially in order to confirm its original judgement or give a new judgement in conformity with the opinion of the International Court of Justice. An organ which merely adopted decisions given by another body could not be regarded as a tribunal, especially a tribunal of the world Organization, bearing a grave responsibility towards staff members.

67. According to the general practice of review procedures, a reviewing court seized with a given case could itself pass final judgement or refer the case back to the lower court for a new judgement. It was not customary, nor was it legal, for review judgements to be issued after an advisory opinion had been given.

68. Paragraph 4 of the new article 11 established a committee to be composed of Member States whose representatives had served on the General Committee at the most recent session of the General Assembly. He would point out that a reviewing body should have stability if its decisions were to be consistent and that it should be completely free from political influence. The proposed committee would have to consider arguments and evidence and the case under consideration would have to be reopened before the 15 members of that body acting under instructions from their various Governments. That would make the proposed committee a sort of super-political-administrative tribunal which in view of its composition would not be competent to act in matters relating to contracts of employment of staff members. Moreover, being an organ of the United Nations, it could not take any decision in cases to which the United Nations was a party.

69. In its advisory opinion of 13 July 1954, the International Court of Justice had stated that the Administrative Tribunal of the United Nations was in itself of an essentially judicial character and had indicated that a procedure for the review of the Tribunal judgements should be equally judicial. Moreover, in its study of the matter before it the Fifth Committee was limited by the express terms of General Assembly resolution 888 B (IX), which was confined to the study of judicial review. The procedure proposed in the Special Committee's report could in no way be termed judicial and the Egyptian delegation would therefore be unable to vote in favour of the joint draft resolution in its present form.

70. Mr. MAURTUA (Peru) pointed out that General Assembly resolution 684 (VII) provided that when a Committee considered the legal aspects of a question important, the Committee should refer it for legal advice to the Sixth Committee or propose that the question should be considered by a joint Committee of itself and the Sixth Committee. As the recommendations in the proposed new articles 11 and 12 of the Statute of the United Nations Administrative Tribunal obviously raised important legal questions, he hoped that the Fifth Committee would support the Chilean representative's proposal that the new articles should be referred to the Sixth Committee for an opinion.

71. Mr. CARRIZOSA (Colombia) said that the various debates on the review of Administrative Tribunal judgements had drawn the General Assembly's attention to the gaps which existed in the procedure set up by the Statute of that Tribunal to settle disputes between the Secretary-General and members of the Secretariat. Discussions at the General Assembly's ninth session had shown clearly that the majority of Member States were in favour of the introduction of a review procedure and that until such a procedure had been set up the decisions of the Tribunal were without appeal.

72. The amendments the Special Committee had proposed to the Administrative Tribunal's Statute appeared to meet the purpose which the General Assembly had had in mind in setting up that Committee, though certain points might need slight modification. In the first place, General Assembly resolution 888 B (IX) provided that any review of the Administrative Tribunal's judgements would have to be of a judicial nature and in his delegation's opinion it was doubtful whether Member States could request such a review. Secondly, the scope of the judicial review proposed would have to be carefully considered. It was obvious that such a review would by its very nature take place in exceptional cases only; hence the screening procedure proposed in the Special Committee's recommendations would be of great significance. He wondered whether it was wise to enumerate the cases to which such a review might be applied; it might perhaps be advisable for the first sentence of the proposed new article 11 to be amended in that respect.

73. Subject to a detailed examination by the Fifth Committee of the question whether a Member State should have the right to request a review of the Administrative Tribunal's decision, and to complete freedom of action being left to the proposed screening committee, his delegation would vote in favour of the new draft articles. It would give careful consideration to any amendments that might be submitted with a view to removing from article 11 the defects to which he had drawn attention.

The meeting rose at 1 p.m.

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