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**FIFTH COMMITTEE, 418th
MEETING**

**Wednesday, 2 December 1953,
at 10.30 a.m.**

New York

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Chairman: Mr. Awni KHALIDY (Iraq).

Personnel policy: reports of the Secretary-General and of the Advisory Committee on Administrative and Budgetary Questions (A/2533, A/2555, A/C.5/561, A/C.5/L.255, A/C.5/L.259) (*continued*)

[Item 51]*

First reading on the amendments and additions to the staff regulations and the Statute of the Administrative Tribunal (*continued*)

ARTICLE 9 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL

1. Mr. A. K. FAHMY (Egypt) said that in his statement at the Committee's 409th meeting he had made two observations on the draft amendment to article 9 of the Statute of the Administrative Tribunal proposed by the Secretary-General (A/2533, paragraph 87). First, the Egyptian delegation had hesitated to accept the Secretary-General's view that the payment of compensation should be the rule and not the exception. Secondly, it had feared that limitation of the amount of compensation that could be awarded by the Tribunal might prejudice the findings of the Tribunal in regard to compensation, particularly in exceptional cases when the Tribunal considered that the official concerned had sustained a serious injury for which a larger compensation than the maximum fixed should be paid.

2. As regards the first point, he had noted with satisfaction that, in his statement at the Committee's 412th meeting, the Secretary-General had accepted the recommendation of the Advisory Committee on Administrative and Budgetary Questions on the Administrative Tribunal's right to order the rescinding of a decision taken by the Secretary-General.

3. As regards the second point he noted with satisfaction the comments made at the 406th meeting by the Secretary-General who was unable to accept the Advisory Committee's recommendation that the maximum proposed by the Secretary-General (A/2555, paragraph 26) should be reduced. Such a reduction would substantially limit the Administrative Tribunal's

freedom of judgment. Further, the Secretary-General, showing a conciliatory spirit to which the Egyptian delegation paid tribute, had suggested at the 413th meeting that a provision corresponding to paragraph 84 of his report should be added to the amendment to article 9 of the Statute of the Tribunal, empowering the Tribunal to recommend, in exceptional cases, the payment of an indemnity higher than the maximum proposed by the Secretary-General.

4. The Egyptian delegation considered, however, that if the Administrative Tribunal were granted the privilege of making a recommendation—instead of the right it possessed of making an order—it would not be given greater authority in exceptional cases where the official concerned had sustained serious injury. A tribunal did not make recommendations; it passed judgment and took decisions. Further, if in such exceptional cases the Tribunal's recommendation was transmitted to the General Assembly, it was likely that the whole case would be laid before a committee of the General Assembly, composed of representatives whose decisions would be governed by the instructions of their respective Governments. Such cases should be decided only by suitably qualified persons adjudicating as members of a judicial body in accordance with their own judgment. It would be regrettable if the representatives of sixty States examined a decision or even a recommendation adopted by a Tribunal whose members did not receive instructions from anyone.

5. In order to meet the wish expressed by several delegations who were moved by considerations of economy, the Egyptian delegation reluctantly agreed that a limit should be placed on the amount of the compensation which the Administrative Tribunal might award. It thought, however, that the powers of the Administrative Tribunal should not be restricted and that it should have full freedom of judgment.

6. For all those reasons, the Egyptian delegation had, with seven other delegations, submitted an amendment to the Secretary-General's text contained in document A/C.5/L.255. The amendment had been slightly redrafted and now read as follows:

"The Tribunal may, however, in exceptional cases, when it considers it justified and by a properly motivated decision, order the payment of a higher indemnity."

7. Mr. STRAUCH (Brazil) speaking as one of the sponsors of the eight-Power text, pointed out that at the present time the Administrative Tribunal could order an official to be reinstated, and that, if the Secretary-General considered that reinstatement was impossible or inadvisable, the Tribunal awarded compensation to the applicant. The Secretary-General had first suggested that the Tribunal should merely fix the amount of compensation and that the Secretary-General should have the option of rescinding the

* Indicates the item number on the agenda of the General Assembly.

contested decision. In practice the change would have had the disadvantage of removing the possibility of reinstatement as a legal consequence of a decision by the Administrative Tribunal. The proposal would then have adversely affected the morale of the staff, a consideration which should not be overlooked. For that reason the Brazilian delegation preferred, in so far as the first part of the first paragraph of article 9 of the Statute of the Administrative Tribunal was concerned, the text recommended by the Advisory Committee which had been accepted by the Secretary-General (A/C.5/L.255). In regard to the second part of paragraph one, the text submitted jointly by the Brazilian and seven other delegations gave the Tribunal wider powers in the matter of compensation. The amount of the compensation awarded by the Tribunal should doubtless be limited, but the limit should not be so strict as to impair the Tribunal's authority.

8. Mr. WILSON (New Zealand) was not satisfied with the words "a properly motivated decision" in the eight-Power text.

9. Following an exchange of views in which the following took part: Mr. A. K. FAHMY (Egypt), Mr. BRENNAN (Australia), Mr. JUNG (India), Mr. LIVERAN (Israel), Mr. VAN ASCH VAN WIJCK (Netherlands) and Mr. COLLIARD (France), Sir Alec RANDALL (United Kingdom) suggested that the joint amendment should be redrafted to read:

"The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such decision."

10. Mr. STAVROPOULOS (Secretariat) pointed out that the Committee had adopted an amendment to staff regulation 9.3 at its 417th meeting. As a result of that amendment the compensation paid to the applicant might, in many cases, be more than one year's net base salary. The United Kingdom proposal that compensation should not exceed one year's net base salary appeared to be inconsistent with the amendment adopted by the Committee. The consequence would be that the Secretary-General would be empowered under the staff regulations to pay higher compensation than could be granted by the Administrative Tribunal. In so far as the awarding of compensation was concerned, action by the Tribunal would thus become superfluous.

11. Sir Alec RANDALL (United Kingdom) said that the two texts mentioned by the Secretary-General's representative might seem at first sight to be contradictory. The United Kingdom amendment was, however, intended to ensure some flexibility in the payment of compensation. In fixing a maximum, it was important to ensure that it did not become the practice for the Secretary-General to pay the maximum compensation in all cases.

12. Mr. BRENNAN (Australia) asked how soon compensation awarded by the Tribunal was paid to the applicant and what were the various types of indemnity to which an official was entitled upon termination. As he understood it under the Advisory Committee's text the compensation not exceeding one year's net base salary which could be granted by the Administrative Tribunal would be added to the termina-

tion indemnity. According to the United Kingdom proposal, the termination indemnity would be deducted from the compensation awarded by the Tribunal, which could not exceed the amount of one year's net base salary. According to the Secretary-General's proposal, the termination indemnity would be deducted from the compensation awarded by the Tribunal which could not exceed two year's net base salary. He wished to know whether, under the eight-Power proposal, the termination indemnity would be deducted from the compensation awarded by the Tribunal.

13. Mr. STAVROPOULOS (Secretariat) said that a staff member holding a permanent appointment received three month's notice of termination. On termination he received a termination indemnity, equivalent to one month's salary for each year of service, up to a maximum of nine months' salary; a repatriation grant and, lastly, a sum equivalent to the salary due to him for accrued annual leave. In many cases the Administrative Tribunal had deducted those payments from the compensation it had awarded. In submitting his proposal that the compensation awarded by the Tribunal should not exceed two years' net base salary, the Secretary-General had assumed that the Tribunal would deduct from such compensation the amount of indemnities already paid by the Secretary-General. In the case of the text recommended by the Advisory Committee, he thought that the compensation awarded by the Tribunal would be additional to the indemnities paid by the Secretary-General.

14. Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) agreed with the interpretation given by the Secretary-General's representative.

15. Mr. COLLIARD (France) explained that in their text, the eight delegations had wished to limit the amount of compensation that could be awarded by the Tribunal, while allowing for flexibility in exceptional cases. At the present time the Tribunal deducted from the compensation it awarded all sums already paid to the applicant under the staff regulations. The joint amendment would not change that practice in any way.

16. The CHAIRMAN invited the Committee to vote on the various texts of the amendments to article 9 of the Statute of the Administrative Tribunal as set forth in document A/C.5/L.255. He first put to the vote the text proposed by the Advisory Committee for the first paragraph.

The Advisory Committee's text was rejected by 27 votes to 22, with 4 abstentions.

17. Mr. RICHARDS (United States of America) requested a separate vote on the various parts of the eight-Power text.

18. The CHAIRMAN put to the vote the first part of the eight-Power text ending with the words "...without further action being taken in his case."

The first part of the eight-Power text was unanimously adopted.

19. The CHAIRMAN put to the vote the second part of the eight-Power text ending with the words "...two years' net base salary of the applicant."

The second part of the eight-Power text was adopted by 32 votes to 17, with 5 abstentions.

20. The CHAIRMAN put to the vote the third part of the eight-Power text as amended by the Egyptian and United Kingdom representatives.

The third part of the eight-Power text as amended was adopted by 33 votes to 17 with 4 abstentions.

Paragraph 1 of article 9 of the Statute of the Administrative Tribunal as amended, was adopted by 34 votes to 13 with 6 abstentions.

21. The CHAIRMAN put to the vote paragraphs 2 and 3 of article 9 of the Statute of the Administrative Tribunal as proposed by the Secretary-General and concurred in by the Advisory Committee.

Paragraph 2 was adopted by 54 votes to none with 1 abstention.

Paragraph 3 of article 9 was adopted unanimously.

STAFF REGULATION 1.2

22. The CHAIRMAN invited the Committee to consider the draft amendment to staff regulation 1.2 submitted by the Argentine and Chilean delegations (A/C.5/255).

23. Mr. STAVROPOULOS (Secretariat) said that the Secretary-General had announced that it was his intention to make more flexible use of the staff and to that end to encourage the reassignment of staff within departments and to other departments. He asked whether the amendments proposed by Argentina and Chile constituted a condemnation of the practice of reassignments.

24. Mr. ORTEGA MASSON (Chile) explained that the draft amendment he had submitted jointly with the Argentine representative was designed to prevent the contract concluded between a staff member and the Organization from becoming a dead letter. The present provisions of staff regulation 1.2 allowed the Secretary-General to assign a staff member to any activity. That practice was incompatible with the organization of a body of career civil servants. The draft amendment before the Committee did not preclude reassignment provided that the new activities to which staff members were assigned were of the same nature as those to which they had been assigned at the time of their appointment.

25. Mr. FENAUX (Belgium) felt the Chilean representative's misgivings were not justified. In any case, the proposed amendment would not provide an effective remedy, as it would always be possible for the Secretary-General to transfer a staff member to another office instead of assigning him to another activity. He believed that the Secretary-General should be trusted to make the best use of the qualifications of staff members.

26. Mr. STAVROPOULOS (Secretariat) said that the draft amendment submitted by the Argentine and Chilean delegations was based on the assumption that the Secretary-General might act in a completely irrational manner. He also pointed out that all letters of appointment contained a clause authorizing the Secretary-General to transfer the staff member to another post. That practice was, moreover, consonant with the interests of the staff, as it enabled the Secretary-General to reassign a staff member who would otherwise have been terminated.

27. Mr. BOKHARI (Pakistan) pointed out that if the contracts contained a clause to that effect the

provisions of staff regulation 1.2 were redundant if, on the other hand, staff regulation 1.2 was incompatible with the letters of appointment, the question arose of determining which text was authoritative.

28. Mr. VAN ASCH VAN WIJCK (Netherlands) stressed that staff members enjoyed certain safeguards, since if they felt that the terms of their letters of appointment, which, as provided for in annex 11 of the staff regulations, must state the nature of the appointment and the category and level, had not been observed, they could appeal to the Administrative Tribunal.

29. He also reminded representatives that when the General Assembly had discussed the staff regulations at its sixth session the Secretary-General had explained that it was essential also to specify "activities" in staff regulation 1.2, so that he could proceed with the staff assignments necessitated by certain Security Council decisions.

30. Mr. ORTEGA MASSON (Chile) explained that the sponsors of the amendment were interested only in ensuring greater security for staff members. Provided that the terms of letters of appointment gave staff members the necessary safeguards, as the Netherlands' representative had pointed out, and on the understanding that the contractual elements of the status of staff members gave rise to unalterable acquired rights, as followed from the statement made by the Secretary-General at the 412th meeting, his delegation was prepared to withdraw its proposed amendment subject to the agreement of the Argentine delegation.

31. Mr. CAFIERO (Argentina) was also willing to withdraw the draft amendment which he had submitted jointly with the Chilean delegation, and requested that the report should mention the reservations expressed by the Chilean representative.

It was so decided.

ARTICLE 7, PARAGRAPH 3, OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL

32. The CHAIRMAN drew the Committee's attention to the draft amendment proposed by Argentina and Chile to delete the words "unless the joint body unanimously considers that it is frivolous" at the end of article 7, paragraph 3, of the Statute of the Administrative Tribunal (A/C.5/255).

33. Mr. ORTEGA MASSON (Chile) emphasized that under the present wording a unanimous decision by the joint body that an application was frivolous deprived a staff member of any possibility of appealing to the Administrative Tribunal. In his opinion, that was a denial of justice. It should be stressed that the Joint Appeals Board body was not a judicial body, but an advisory body composed of members of the Secretariat. In equity, that provision of article 7, paragraph 3, of the Statute of the Administrative Tribunal should be deleted so that staff members who considered themselves to be the victims of an arbitrary action would be able to defend themselves.

34. Mr. STAVROPOULOS (Secretariat) said that the Secretary-General had no settled opinion on that matter. Because of its financial implications the proposal submitted by Argentina and Chile was of direct concern to the Committee. The provision had never

in fact been applied and the unanimity rule gave staff members very substantial safeguards as the joint body included a member elected by the staff. In addition, it should not be forgotten that the members of the Administrative Tribunal did not live in New York, and that if the provision were deleted the Administrative Tribunal might be convened to consider frivolous applications, which would entail considerable, unnecessary expense.

35. Sir Alec RANDALL (United Kingdom) explained that the word "frivolous" in article 7, paragraph 3, was very strong and described an application which was so absurd that it could not be taken seriously. He believed that the provision was valuable as it made it possible to save the Tribunal's time and the Member States' money.

36. The CHAIRMAN said that the Trusteeship Council had a similar provision to eliminate frivolous petitions.

37. Mr. ORTEGA MASSON (Chile) said a very important question of principle was involved. Any person who felt himself to be aggrieved should have the possibility of stating his case before a court. The amendment which his delegation had proposed jointly with the Argentine delegation was intended to accord that right to staff members, since it was the duty of the United Nations to set an example of justice.

38. The CHAIRMAN put to the vote the Argentine and Chilean draft amendment to article 7, paragraph 3, of the Statute of the Administrative Tribunal.

The draft amendment was rejected by 20 votes to 7, with 22 abstentions.

39. Mr. FENAUX (Belgium) said that he had voted against the amendment because the word "*futile*" in the present French text was very strong and had the same connotation as the English word "frivolous".

DEFINITION OF THE RESPECTIVE COMPETENCE OF THE SECRETARY-GENERAL AND THE ADMINISTRATIVE TRIBUNAL (*continued*)

40. Mr. A. K. FAHMY (Egypt) thought that despite the addition proposed by the French delegation at the 416th meeting, the text (A/C.5/L.259) of the drafting committee was still unsatisfactory because the reference to paragraph 35 might imply a restrictive interpretation of the competence of the Administrative Tribunal.

41. Mr. VAN ASCH VAN WIJCK (Netherlands) shared that view. He did not think he could approve the text, even with the proposed addition, because it might give rise to many difficulties.

42. Mr. RICHARDS (United States of America) said that his delegation approved the text, which the drafting committee recommended for inclusion in the Rapporteur's report and which referred to certain paragraphs of the Secretary-General's report on personnel policy (A/2533), particularly paragraph 35. He said that his delegation would vote for the inclusion of the text in the Rapporteur's report if it was understood that the adoption of the proposed text by the Committee implied that the Committee interpreted the respective competence of the Secretary-General and of the Administrative Tribunal to be as follows: The Administrative Tribunal would have authority to ascertain facts and interpret the relevant legal provisions, in order to determine whether a decision of the

Secretary-General rests upon required procedure, whether it is in accordance with the applicable law and whether it reflects bias, discrimination or arbitrariness.

43. Mr. JUNG (India) had three comments to make. First, he agreed with the Egyptian representative that any reference to paragraph 35 of document A/2533 would modify the Administrative Tribunal's competence and in some cases reduce it. The Tribunal's competence had to be considered in the light of the provisions of its Statute, and could not be governed by a text of the kind under consideration. Second, the word "especially" in the sixth line of the proposed text suggested that the first part of the text was less important than the second. He felt that the two parts were equally important and accordingly proposed that the word "especially" should be deleted. Third, his delegation considered that the paragraph should not be included in the report, and would vote against its inclusion. If, however, the Committee approved a text of that kind, his delegation hoped that an addition reproducing the last sentence in document A/C.5/L.259 would be inserted at the end of the text, as had been proposed by the French representative at the 416th meeting.

44. Mr. CAFIERO (Argentina) stated that his delegation would have some misgivings if the drafting committee's text in particular the second sentence, were incorporated in the report. Moreover, the text would be incomplete if it did not refer to the competence of the General Assembly. He therefore considered that the words "and the General Assembly" should be inserted between the words "Administrative Tribunal" and the words "in applying the staff regulations".

45. Mr. FRIIS (Denmark) agreed with the Indian representative's remarks regarding the two parts of the proposed text. The first part was of a general nature; by adopting the second part the Committee would be placing greater emphasis on certain paragraphs of the Secretary-General's report. It was both unnecessary and undesirable to refer to paragraph 35, which was concerned with a difficult problem. His delegation felt that the Committee should adopt only the first part of the proposed text.

46. Mr. BRENNAN (Australia) said that the text proposed by the drafting committee was completely satisfactory to him. Referring to the considerations which had led him at the 413th and 414th meetings to request the inclusion in the report of a paragraph of the kind proposed by the drafting committee, he said that if the Committee gave no precise ruling on that point, the Staff Council might think that its fears were justified and that the situation had in fact been changed. Some members of the Committee thought that any reference to paragraph 35 would have the effect of reducing the competence of the Administrative Tribunal. That was not the intention of the Secretary-General, whose opinion was confirmed by the present situation regarding the respective competence of the Secretary-General and of the Administrative Tribunal. Reviewing the five parts of paragraph 35, he said he could not see what objection could be raised against any of them. The words "assess certain facts" might be replaced by the words "ascertain the facts", but that was a question of detail. Moreover, the Administrative Tribunal was not in a position to evaluate what constituted a lack of integrity or political activity; any

decision of that kind rested with the Secretary-General. He was prepared to vote for the inclusion of the text in the Rapporteur's report.

47. Mr. AHSON (Pakistan), Rapporteur, said that in his opinion it would have been better to consider the text submitted by the drafting committee before considering the draft amendments. He continued to believe that if the Committee had adopted that procedure the discussion would have been simplified. Replying to the Indian representative's second observation, he said that the drafting committee had not intended to place greater stress on the second part of its proposed text.

48. Mr. FENAUX (Belgium) supported the comments of the Netherlands, Indian, Danish and Egyptian representatives. There was no need to say that the Fifth Committee had taken all the parts of the Secretary-General's report into account. In his view it was not desirable to make a distinction and to establish any order of precedence between the Secretary-General's statements and report as a whole and certain paragraphs of the report. Further, he did not see how the Fifth Committee could modify the Administrative Tribunal's competence or how it could make a recommendation to the General Assembly; he was therefore also opposed to the addition to the drafting committee's text. The Australian representative's argument that the Committee would, if it said nothing imply that the situation had changed, was specious. That argument was not accepted by his delegation. He asked that a statement of his delegation's views should be included in the report and said that he would vote against the inclusion of the drafting committee's text in the report.

49. Mr. RIZK (Lebanon) endorsed the Egyptian and Netherlands representative's statements. Paragraphs 35 and 43 of the Secretary-General's report should not be mentioned in the report. Article 2 of the Statute of the Administrative Tribunal clearly established that body's competence; the Committee could not change that competence by a reference to paragraph 35 of the report which stated the Secretary-General's purely personal opinion.

50. Mr. VIGNALE (Uruguay) said that he could not accept any proposal which might impair the competence of the Administrative Tribunal. He supported the Belgian and Lebanon representatives' observations.

51. Mr. IBÁÑEZ (Philippines) stated that the General Assembly should strengthen the authority of the Secretary-General as the chief administrative officer of the Organization with sole responsibility for staff administration. To strengthen the authority of the Administrative Tribunal, whose powers were not governed by the provisions of the Charter, against the Secretary-General would be to give authority to the Tribunal over an officer who derived his position and authority directly from the Charter. It would be contrary to the principles of sound administration if the whole burden of responsibility to ensure the competence and integrity of the Secretariat was made to rest on the Secretary-General while the supreme authority to retain or dismiss unworthy employees was reserved to the Administrative Tribunal. His

delegation approved the text proposed by the drafting committee.

52. After an exchange of views in which the CHAIRMAN, Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) and Mr. JUNG (India) took part, Mr. AGHNIDES (Chairman of the Advisory Committee on Administrative and Budgetary Questions) recommended that the addition to the drafting committee's text should read: "It was recognized that the competence of the Administrative Tribunal is defined by its Statute and that the Fifth Committee cannot change this competence short of modifying the Statute by recommending a legal text for adoption by the General Assembly".

53. Mr. RICHARDS (United States of America) supported the Australian representative's remarks and proposed that the addition recommended by the Chairman of the Advisory Committee should be replaced by "It was recognized that the competence of the Administrative Tribunal is defined by its Statute, which can be amended only by the General Assembly".

54. Mr. VAN ASCH VAN WIJCK (Netherlands) said that the addition proposed by the Chairman of the Advisory Committee corresponded more closely to the ideas of the original proposers of the addition.

55. Mr. GOMEZ ROBLEDO (Mexico) requested that the text recommended by the drafting committee, and the addition, should be voted upon separately.

56. Mr. ENGEN (Norway) supported the earlier remarks of the Danish representative and asked for a separate vote on the two sentences of the text proposed by the drafting committee.

57. The CHAIRMAN stated that he would put to the vote (i) the first sentence of the text in document (A/C.5/L.259) recommended by the drafting committee; (ii) the second sentence, as amended by the Indian proposal, to which no objection had been made; (iii) the addition recommended by the Chairman of the Advisory Committee; and if necessary (iv) the addition proposed by the United States representative.

The first sentence was adopted by 25 votes to 13, with 11 abstentions.

The second sentence as amended was rejected by 23 votes to 19, with 7 abstentions.

The addition recommended by the Chairman of the Advisory Committee was adopted by 32 votes to 6, with 14 abstentions.

The drafting committee's text, as amended, was adopted by 25 votes to 13, with 13 abstentions.

58. Mr. FENAUX (Belgium) and Sir Alec RANDALL (United Kingdom) said that they had abstained from voting on the additional sentence as it was in their opinion unnecessary to reproduce the terms of article 11 of the Statute of the Administrative Tribunal in the report.

59. Mr. LIVERAN (Israel) reserved the right to explain his vote at the beginning of the next meeting.

The meeting rose at 1.40 p.m.