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ADMINISTRATIVE AND BUDGETARY CO-ORDINATION OF THE UNITED NATIONS WITH THE SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

Feasibility of establishing a single administrative tribunal

Report of the Secretary-General

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ABBREVIATIONS

ACC	Administrative Committee on Co-ordination
CCISUA	Co-ordinating Committee of Independent Staff Unions and Associations of the United Nations System
FAO	Food and Agriculture Organization of the United Nations
FICSA	Federation of International Civil Servants Associations
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ILO	International Labour Organization/Office
ILOAT	International Labour Organisation Administrative Tribunal
IMF	International Monetary Fund
IMO	International Maritime Organization
JAB	Joint Appeals Board
JDC	Joint Disciplinary Committee
JIU	Joint Inspection Unit
LNAT	League of Nations Administrative Tribunal
SMCC	Staff-Management Co-ordination Committee
UNAT	United Nations Administrative Tribunal
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WBAT	World Bank Administrative Tribunal

I. INTRODUCTION

1. The present report constitutes a substantially unchanged resubmission of reports previously submitted to the General Assembly at its thirty-ninth and fortieth sessions (A/C.5/39/7 and Corr.1 and A/40/471, respectively), taking into account developments reported to the forty-first session (A/C.5/41/8) and those that have occurred since then. Although those successive reports, to which the General Assembly has not yet had an opportunity to give substantive consideration (see paras. 7 and 8 below), were submitted at its explicit request and in response to its concern about possible divergencies in the jurisprudence or practices of the two common system administrative tribunals, they may also be considered relevant to the more recent concern about the functioning of the system of recourse procedures within the Organization. 1/ Finally, it might be noted that a declaration given by a member of the International Court of Justice in connection with the Yakimetz case explicitly recommended that the Assembly proceed to examine the Secretary-General's report on the present subject, while the Court and certain Judges addressed other matters (in particular the review procedure for Tribunal judgements) dealt with in the present report. 2/

2. At its thirty-third session, in 1978, in the course of its consideration of the item relating to the report of the International Civil Service Commission (ICSC), the General Assembly requested the Secretary-General and his colleagues on the Administrative Committee on Co-ordination (ACC) to study the feasibility of establishing a single administrative tribunal for the entire common system and to report thereon to the Assembly at its thirty-fourth session (see sect. I of Assembly resolution 33/117 of 19 December 1978).

3. At its thirty-fourth session, the General Assembly, after having considered a report prepared by ACC advising against taking immediate steps to merge the two existing common system tribunals (that of the International Labour Organisation (ILO) and that of the United Nations) but suggesting the purposeful harmonization and further development of the statutes, rules and practices of these tribunals (A/C.5/34/31, para. 13), requested the Secretary-General and ACC to pursue such measures with a view to strengthening the common system with the aim of establishing a single tribunal and further requested the Secretary-General to report to the Assembly at its thirty-sixth session (see decision 34/438 of 17 December 1979).

4. At the thirty-sixth and thirty-seventh sessions, the Secretary-General reported on certain relevant steps that had been taken by the United Nations Secretariat and by the International Labour Office consequent on the adoption of the General Assembly's decision (A/C.5/36/23 and A/C.5/37/23). At the thirty-sixth session he explained that the consultations required before any definitive proposals could be submitted to the Assembly had not yet been completed and that consideration of the review procedure for Administrative Tribunal judgements seemed inappropriate since such a proceeding was pending before the International Court of Justice. 3/ At the thirty-seventh session he presented a detailed outline of a study that had been undertaken by the Secretariat of those elements of the statutes, rules and practices of the ILO and United Nations administrative

tribunals for which progressive harmonization or further development should be considered. As he was then not yet in a position to make a substantive set of integrated proposals to the Assembly, he suggested, and the latter agreed, that he continue the consultations necessary for a progressive harmonization and further development of the statutes, rules and practices of the two tribunals, with a view to strengthening the common system and to reducing, to the extent possible, the associated administrative costs, and that he report to the Assembly on the completion of these consultations with interim progress reports to intervening sessions of the Assembly (see Assembly resolution 37/129 of 17 December 1982).

5. During 1983, the Secretariat presented a revised version of the study described at the thirty-seventh session to a meeting of the legal advisers of the organizations of the United Nations system. That meeting, which was held in New York from 14 to 16 September 1983, also received a discussion paper on the same subject prepared by the International Labour Office. After discussions inspired by those two papers, the legal advisers achieved a considerable measure of agreement on a number of proposed reforms designed to improve and/or to harmonize the proceedings of the two common system administrative tribunals. Upon receiving the Secretary-General's interim report on these developments (A/C.5/38/26), the General Assembly, at its thirty-eighth session, requested that the Secretary-General accelerate the necessary consultations and report thereon to it at its thirty-ninth session (see decision 38/409 of 25 November 1983).

6. On the basis of the conclusions of the legal advisers, the Secretariat prepared a set of proposals relating primarily to the instruments governing the United Nations Administrative Tribunal (UNAT) and its practices. Those proposals were then distributed for comments to the executive heads of ILO, of the two specialized agencies subject to the jurisdiction of UNAT and of the other common system organizations the staff of which are authorized to present appeals to UNAT in respect of Pension Fund cases, as well as to the Tribunal itself, the Registrar of the International Court of Justice, the Secretary to the United Nations Joint Staff Pension Board, the Federation of International Civil Servants Associations (FICSA) and the Co-ordinating Committee of Independent Staff Unions and Associations of the United Nations System (CCISUA). After these proposals had been co-ordinated with those being prepared by ILO in relation to the ILO Administrative Tribunal (ILOAT) and account had been taken of comments received from five of the agencies (the Food and Agriculture Organization of the United Nations (FAO), the International Atomic Energy Agency (IAEA), the International Civil Aviation Organization (ICAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO)), from the Tribunal itself, 4/ from the President and the Registrar of the International Court of Justice, from the Secretary to the Pension Board, from FICSA and CCISUA, as well as from a working group established by the Staff Management Co-ordination Committee (SMCC) of the United Nations, a revised set of proposals was distributed to the same recipients. Comments on these proposals were received from ILO, the International Telecommunication Union (ITU) and FICSA and they were considered by the Pension Board at its thirty-third session.

7. The proposals thus developed were submitted to the General Assembly at its thirty-ninth session (A/C.5/39/7 and Corr.1), which referred them to the Fifth

Committee. After preliminary consideration by that Committee, consultations took place between its Chairman and the Chairman of the Sixth Committee concerning how that Committee might contribute to the consideration of the Secretary-General's proposals. 5/ On the recommendation of the Fifth Committee (A/39/842, para. 12), the General Assembly decided to defer consideration of the report of the Secretary-General to its fortieth session and to consider at that session how to proceed with the examination of the matter (decision 39/450 of 18 December 1984).

8. During the following year, the Secretariat held further consultations with ILO, which had placed corresponding proposals before its Governing Body. 6/ As a result of those consultations, further advances were made in harmonizing the respective proposals relating to the statutes of the two Tribunals which were incorporated into the report submitted to the General Assembly at its fortieth session (A/40/471). On the recommendation of the Fifth Committee, the Assembly again decided to defer consideration of the Secretary-General's report to the forty-first session (decision 40/465 of 18 December 1985), at which time the Secretary-General submitted a brief update (A/C.5/41/8). On the recommendation of the Fifth Committee, the Assembly decided to defer consideration of the entire item on administrative and budgetary co-ordination until its forty-second session (decision 41/447 of 5 December 1986).

9. Since the Secretary-General's 1985 report on this item, ILO has given further consideration to matters relating to its Administrative Tribunal and especially to the further development of its statutes and rules and their harmonization with those of UNAT. In particular, on the basis of a proposal by the Director-General addressed to the Programme, Financial and Administrative Committee of the ILO Governing Body at its 231st session in November 1985, 7/ the Committee established a small tripartite working party that met in February and November 1986 to consider, with the assistance of the International Labour Office, the significance and extent of the proposed amendments to the statutes of the two Tribunals. The Working Party made several changes to the ILO proposals, although largely merely of a drafting nature. 8/ Pending substantive consideration by the General Assembly of the proposals submitted to it, the Governing Body has taken no action on the report of the Working Party or on the parallel proposals of the Director-General. At its 234th session in November 1986, the Governing Body did, however, agree that the preliminary position taken by the Working Party, in principle in favour of the amendments as proposed in the ILO paper, should be brought to the notice of the General Assembly. 9/ This is being done by means of the present report.

10. The proposals discussed in the commentary below are set out in annexes I A to C hereto, as follows:

(a) Annex I A sets out, in its left column, the text of the statute of the United Nations Administrative Tribunal as now in force (adopted in 1949 and amended in 1953 and 1955), together with proposed changes therein, with proposed additions underscored and proposed deletions bracketed; certain tentatively advanced additions are indicated by both underscoring and bracketing of the text in question; each change (except for editorial adjustments) is supplied with a footnote that generally refers to the appropriate portion of the commentary in the present paper. The right column contains the corresponding provisions of the ILOAT

statute, similarly indicating both the existing text and the modified text which, subject to consultations and final editing, the Director-General of ILO intends to submit for consideration to the ILO Governing Body and the International Labour Conference;

(b) Annex I B sets out the text of certain of the rules of UNAT, with proposed changes therein indicated and explained in the same way as in respect of the UNAT statute and similarly compared with corresponding provisions of the ILOAT rules;

(c) Annex I C sets out the draft text of a resolution by which the General Assembly could adopt the proposed changes in the statute and accomplish certain other reforms referred to in the commentary.

II. COMMENTARY ON THE PROPOSED REFORMS RELATING TO THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

A. Composition of the tribunals

1. Qualification of the members

11. Although no specific qualifications are stated for either ILOAT judges or UNAT members, except that all on each Tribunal must have different nationalities, in practice UNAT members include persons of a wide variety of backgrounds, many having had some years of service as representatives to the General Assembly (especially its Fifth Committee), while ILOAT is staffed by professional judges from the highest levels of national court systems. Most of the common system organizations, as well as certain staff representative organs, have expressed a distinct preference for the ILO practice, which ILO is now proposing to codify in the ILOAT statute and which is already reflected in the statute of the recently established World Bank Administrative Tribunal (WBAT). On the other hand, UNAT itself has expressed its disagreement with proposals along that line (see annex II, para. 2), and FICSA has cautioned against composing the tribunals exclusively of national judges.

12. Taking into account these differing reactions, it is suggested that the General Assembly might wish to make appointments to UNAT so that most members will have both judicial experience and some familiarity with international administrative or labour law. 10/ It is therefore proposed that a provision to that effect be included in the UNAT statute itself (see, in annex I A, the proposed addition to the first sentence of art. 3, para. 1). Alternatively, the Assembly might prefer to merely include a corresponding instruction in its resolution (see, in annex I C, the bracketed portion of draft para. 6). In addition, it is suggested that the impartial nature and judicial status of UNAT would be enhanced if the Assembly were to transfer the task of selecting the members of UNAT from the Fifth to the Sixth Committee, and this proposal is also reflected in annex I C, draft paragraph 6. Although not included in that draft, it would be also possible to include in the resolution, as some organizations have suggested, some criteria relating to the age of Tribunal judges.

2. Selection of the members

13. UNAT members are appointed by the General Assembly (UNAT statute, art. 3, para. 2) and ILOAT judges by the ILO Conference (ILOAT statute, art. III, para. 2). The actual practice is, however, quite different in respect of the two tribunals. UNAT members are nominated by Governments and there is an "election" (conducted in the Fifth Committee and confirmed by the Assembly) which generally reflects geographical considerations on which neither the Secretary-General, nor the staff, nor other organizations subject to UNAT can exert any overt influence. ILOAT judges, on the other hand, are actually nominated by the ILO Director-General, after consultations with the ILO Staff Union and with the other organizations subject to ILOAT; these nominations are submitted to the Governing Body, which endorses them for submission to the ILO Conference, which approves them without discussion. Because they see that procedure as resulting in the selection of more objective judges, the staff prefer it to the United Nations one; at staff insistence, an ILO-like procedure was explicitly incorporated into the WBAT statute (art. IV, para. 2).

14. Since the establishment of UNAT, several inter-organizational organs have been established within the United Nations system whose statutes explicitly require specified consultations for the appointment of the members of these bodies (e.g., the ICSC statute, General Assembly resolution 3357 (XXIX), annex, art. 4; the JIU statute, Assembly resolution 31/192, annex, art. 3). It is therefore proposed, and is indicated in annex I A, that a new paragraph 2A be added to article 3 of the UNAT statute (following existing para. 2) in which a similar consultation procedure would be set out. Since, as UNAT has pointed out (annex II, para. 3), the Secretary-General is the nominal respondent to most cases before that Tribunal, it is proposed that the consultations be conducted by the President of the General Assembly, as he does in respect of JIU members. The proposed language would permit, and it is so intended, that the President present more candidates to the Assembly than there are places to be filled; however, it is understood that the Assembly would not appoint any member who is not on the list of candidates without conducting the prescribed consultations.

3. Structure of the tribunals

15. UNAT is composed of seven co-equal members, although the Tribunal itself elects one of its members as President, one as First Vice-President and one as Second Vice-President; its administrative decisions are taken by the plenary Tribunal (rules, art. 5, para. 1), but cases are heard by panels of three members (plus any alternates designated by the President), of whom at least one must be an officer (statute, art. 3, para. 1; rules, arts. 3, para. 3, and 6, para. 1); in practice the panels are constituted to make use of all members available at a session, although there is a tendency for the three officers to be assigned to the more difficult and important cases. ILOAT had been composed of three judges and three deputy judges, but at the request of the Tribunal, motivated by its growing case-load and as proposed by the Director-General, the Governing Body, at its 233rd session in May 1986, recommended to the ILO General Conference an amendment of article III, paragraph 1 of the ILOAT statute, to increase the number of deputy

judges from three to four 11/; as that recommendation was accepted by the Conference, 12/ ILOAT now has the same number of judges plus deputy judges as UNAT and the World Bank Administrative Tribunal, namely seven. The Tribunal itself elects a President and Vice-President from among its titular judges. Cases are heard by panels of three judges, of whom at least one must be a titular judge; for years, only the three titular judges sat, unless one happened to be unavailable, but lately, deputies have participated more frequently.

16. The statute and rules of the two tribunals differ considerably concerning their respective structures. However, as indicated, the actual practice does not differ markedly, except for a somewhat wider dispersal of routine UNAT cases among all members of that Tribunal. Short of actually unifying the two tribunals, there does not seem to be any reason for striving for greater uniformity in the structure of the two bodies, and to obtain such uniformity would require complicated changes in one or both statutes.

B. Extension of jurisdiction

17. Except for its jurisdiction in respect of appeals against decisions of UNJSPB, the jurisdiction of UNAT is restricted to "appeals" by United Nations staff members (or persons with derivative rights) against the Organization, 13/ alleging non-observance of their contracts of employment; the same is true in respect of the specialized agencies (ICAO and IMO) to which jurisdiction of UNAT has been extended pursuant to article 14 of its statute. Thus UNAT is now unavailable for any dispute brought by a person other than a staff member, 14/ even if employed by the United Nations, or for disputes not relating to contracts of employment, or to a claim by the Organization against a staff member, or to disputes between staff members, or between an entity closely related to the Organization (such as a staff union or staff enterprise) and an employee of that entity, or to a dispute between the United Nations and a staff representative organ (i.e., a staff association or union). Generally speaking, ILOAT is similarly restricted, although its statute does have a provision (art. II, para. 4) granting it competence over any contractual disputes to which ILO is a party, as long as the contract so provides - a special provision which ILO is proposing to amend in order to extend it so as to make it available solely for employment-related disputes, to other organizations to which ILOAT jurisdiction is extended pursuant to the annex to its statute. Thus there are a number of disputes, of an employment or a non-employment nature, which either cannot be, or as a matter of policy generally are not, submitted to any domestic court because of the immunity (whether absolute or merely functional) of one or both parties, but which still cannot be referred to either of the existing administrative tribunals. In this connection it should be noted that even though section 29 of the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I)) and section 31 of the Convention on the Privileges and Immunities of the Specialized Agencies (Assembly resolution 179 (II)), as well as some headquarters agreements, require the organization concerned to make provision for appropriate modes of settlement of private law disputes to which it is a party, or to which an official who enjoys immunity is a party, and the tribunals were set up in partial fulfilment of those treaty obligations, neither the United Nations nor ILO is required to make its tribunal,

or indeed any standing tribunal, available for the resolution of all types of disputes; however, in view of its obligation to provide some appropriate modes of settlement, it may find it convenient to utilize the tribunals for certain other types of cases other than the restricted categories for which they are now competent.

18. Any extension of UNAT jurisdiction to different types of parties and cases should take into account the special expertise of the Tribunal, the undesirability of changing its character by burdening it with numerous cases of a nature different from those submitted under its basic jurisdiction, and the frequency, importance and difficulty of resolving other types of disputes for which the Tribunal is not now competent. Account should also be taken of the views of other related international organizations that might wish to utilize the Tribunal by submitting to its jurisdiction. The following proposals are based on a weighing of such considerations.

1. Special categories of "officials"

19. Over the years, the General Assembly has established a small but growing number of categories of persons whom it appoints, on a full- or a part-time basis, to perform functions for which they are remunerated, in several specialized organs of the United Nations or of the United Nations system. These include ICSC, the Advisory Committee on Administrative and Budgetary Questions and the Joint Inspection Unit (JIU). While the number of such functionaries, who are clearly not members of the staff within the meaning of Article 101, paragraph 1, of the Charter, is relatively small, experience shows that a number of questions concerning their emoluments or other terms of services do arise and up to now have had to be resolved by unilateral decisions of the Secretary-General. It is therefore proposed that article 2 of the statute of the Tribunal be amended by adding a new subparagraph (temporarily numbered 2A(a) in annex I A), under which such persons would automatically have access to UNAT on the same basis as staff members, except that, pursuant to article 7, paragraph 1, they would not be required to submit their dispute first to the Secretariat's Joint Appeals Board (JAB).

20. Under a proposed amendment to the last sentence of article 14, any other organization that submits to UNAT could, but need not, provide that persons employed by it on a corresponding basis (i.e., appointed by a governing organ) could also have access to the Tribunal. Similar arrangements would be possible in respect of the extensions proposed in paragraphs 21 to 23 below.

2. Consultants and other holders of special service agreements

21. The United Nations employs a great number of persons for longer or shorter periods on special service agreements (SSAs) or on similar contractual instruments that do not constitute letters of appointment. As they are not staff members, they do not now have access to UNAT, and if disputes arise concerning the terms of their employment, these must be settled on an ad hoc basis i.e., by negotiations and, if

these do not succeed, generally by arbitration. Incidentally, ILO is not similarly handicapped, for its SSAs and similar contracts provide for submission to ILOAT under article II, paragraph 4, of its statute (see para. 17 above). To make UNAT available to such United Nations consultants, it is proposed in annex I A that article 2 be amended by adding another subparagraph (tentatively numbered 2A(b)). As formulated, under that provision access would depend on the inclusion of an appropriate provision in the contract of employment; however, it would be expected that, in the absence of any other specifically agreed method of settling disputes, the Secretary-General would provide in SSAs for submission to the Tribunal.

3. Employees of staff representative organs and staff enterprises

22. The employees of staff representative organs and of certain staff enterprises not established under national law may not be able to sue their employers in national courts, for such employers may be considered to be mere emanations of the international organizations with which the staff in question are associated; however, if the employees in question are not employed directly by the organizations themselves, they cannot at present submit their employment disputes to an administrative tribunal. Whether or not the organizations' obligation to provide a forum for the settlement of those disputes that are shielded from national courts by international immunities extends to this type of employee, it nevertheless seems desirable to offer them access to the existing tribunals if that can be arranged, unless it is considered preferable to treat such employment relationships as fully subject to local law and not to assert any immunities.

23. It is therefore proposed in annex I A that a new subparagraph 2A(c) be added to article 2 to allow the employees of any entity not established under national law and covered by United Nations immunity (e.g., staff representative organs and staff enterprises) to submit applications to UNAT against their employer; a similar proposal is being made in respect of ILOAT. Unlike under the other extensions proposed in paragraphs 19 to 21 above, the United Nations would not be the responding employer or even a party to such a proceeding. Consequently, the Secretary-General would have to arrange, as he no doubt can do through appropriate administrative measures, for the employing entity to defend itself against such an application and to abide by any judgements.

4. Other contractual disputes

24. Aside from employment contracts, the United Nations enters into many other types of basically private law agreements, with consulting firms, suppliers, providers of services, etc. As it generally does not wish to litigate any resulting disputes in national courts, which would require a waiver of its immunity if the Organization is the defendant, many such contracts provide for arbitration, either by a standing arbitral body such as the International Chamber of Commerce or by an *ad hoc* body. In some instances, the United Nations might find it convenient to provide for settlement by UNAT, which would be analogous to the facility that was enjoyed by ILO under article II, paragraph 4, of the unamended version of the ILOAT statute (see para. 15 above). On the other hand, the fact that ILO, which

for years has enjoyed the possibility of relying on this ILOAT facility, is now considering extending it to other organizations but only in respect to employment-related disputes (which for UNAT would be covered by the proposed new paras. 2A(a)-(c) discussed in paras. 19 to 23 above) suggests that an extension of UNAT jurisdiction to other types of cases would, on balance, not be desirable. In this connection it should be noted that the Tribunal itself has expressed its unease about such a proposal (see annex II, para. 4).

5. Staff representative organs

25. Certain staff representative organs, and in particular FICSA, have suggested that they themselves should be admitted as parties to proceedings (other than as respondents pursuant to the proposal discussed in paras. 22-23 above) in situations such as the following, in some of which such participation has been allowed in respect of certain non-United Nations-system international administrative tribunals:

(a) In support of either party to a normal proceeding (i.e., one brought by an official against the executive head of his employing organization), assuming that such party so requests or at least does not object;

(b) In support of an applicant official who is basing his claim on rights derived from an agreement between a staff representative organ and the executive head;

(c) In effect to initiate or at least to support class actions on behalf of a substantial number or an entire category of officials;

(d) In defence of their own rights as staff representative organs against actions by an executive head.

26. After earnestly considering these various bases for possibly admitting staff representative organs as parties to proceedings before the administrative tribunals of the common system, it was concluded that none had sufficient merit. If the purpose was merely to support one or another of the parties (arguments (a), (b) and (c)), then "intervention" as a party was unnecessary and inappropriate for the reasons discussed in paragraphs 40 to 42 below, while participation as an "amicus", as discussed in paragraphs 43 and 44 below, should suffice. Moreover, with respect to argument (b), it should be pointed out that at present there is neither any provision for nor any practice in the common system of concluding "collective bargaining agreements" and thus of deriving rights, therefrom. With respect to argument (c), reference is also made to paragraphs 45 to 47 below on "class actions and test cases". Finally, with respect to argument (d) (which is urged with particular vigour by FICSA), while it is recognized that tribunals, and in particular ILOAT, have already been faced with applications the object of which was, in effect, to claim non-observance of the rights of a staff representative organ, the Tribunal seemed to have no difficulty in dealing with such applications when submitted in the name of officers or members of the staff association or union and when alleging that their own rights of free and meaningful association had been diminished. 15/ Consequently, no proposal is made herein for any change in the statute, rules or practices of UNAT.

6. Advisory opinions

27. At present, neither UNAT nor ILOAT has the competence to render advisory opinions. 16/ The principal argument for granting them this facility is that instances arise, and are likely to arise more frequently, as adjustments are made to the structure of the emolument and pension benefits of whole categories of international officials, in which it might be useful to test the legality of proposed legislative or administrative measures before they are instituted, so as to avoid the often long period of uncertainty while a disputed provision is first promulgated, then applied to one or more or all staff members, some of whom then institute a legal challenge, first in JAB or, with permission, immediately in a Tribunal, which may then render a narrow decision (i.e., one applicable solely to the immediate applicant) requiring the filing of further "test cases".

28. The negative arguments centre first of all on the question as to who is to have the right to request advisory opinions: the executive head of the organization only or also the policy-making organ and perhaps staff representative organs. Obviously, the wider this authority is spread, the more likely it is that unsuitable or otherwise undesirable questions will be asked that might interfere in pending negotiations and possibly draw the Tribunal into contentious political or labour disputes. Furthermore, in responding to an abstract question, the Tribunal may, even if not actually, but in the eyes of potential parties to later litigation on the same issue, compromise its ideally impartial position.

29. In an attempt to balance these various considerations and concerns, an extremely restricted authorization for the rendering of advisory opinions has tentatively been included in annex I A, as a proposed new article 2 quatro (and the related art. 6, para. 2 (i)), to illustrate how such a provision might be formulated. As set out therein, authorization would be granted to the proposed UNAT/ILOAT joint panel the establishment of which, for a quite different purpose, is suggested in paragraphs 86 to 89 below (and the composition of which would reflect its proposed function of ensuring the continued soundness and unity of the jurisprudence of the two common system tribunals). The questions on which advice could be requested would be restricted to ones of general legal interest to the organizations applying the common system (of course including those relating to the Pension Fund). To this end, questions are only to be submitted by the Secretary-General, after consultation with the other members of ACC. Such a restriction of the power to request advisory opinions is consonant with both international practice, such as that relating to the International Court of Justice, as well as that relating to national courts, where the right to address such requests is generally extremely restricted, even if normal access to such courts is not; account should also be taken of the fact that the present jurisdiction of the administrative tribunals is in any event asymmetrical (since all proceedings must be initiated by staff members). Naturally, the Secretary-General would be likely to comply with a recommendation from a senior legislative body, such as the Fifth Committee, that he make a particular request, and he would also treat with due respect any such suggestion from an appropriate technical body (such as ICSC, the Pension Board or the Advisory Committee on Administrative and Budgetary Questions); he could also respond to such a request from a staff representative organ, in particular one functioning on a system-wide

basis (such as FICSA or CCISUA). If the power to make requests is thus restricted, genuine abuses (whether intended or not) of the advisory process are unlikely. Incidentally, the organ requested to render an opinion (i.e., the joint panel) would not itself be without defences, for it can always refuse to give an opinion if the nature or circumstances of the request seem inappropriate to it or likely to cause some prejudice to its principal function.

30. In view of the proposed restrictions of the scope of the questions to be submitted and of the sole organ to be authorized to do so (i.e., the Secretary-General in consultation with members of ACC), it seems appropriate that ILO is not making any proposal to insert a corresponding provision into the ILOAT statute.

7. Claims by employing organizations against staff members

31. Neither tribunal is at present competent to consider claims of employing organizations against staff members. In those situations in which such claims arise (e.g., for excessive compensation paid, by reason of error or fraud; for an injury done to the organization, its property or another member of its staff; or perhaps for an injury done to a State or another third party, for which the organization is liable), the organization normally in the first instance settles the matter unilaterally - in appropriate cases after conducting a proceeding in a Property Survey Board or a Joint Disciplinary Committee - by making deductions from any emoluments due to the staff member, leaving it to the latter to challenge such decision in a proceeding he himself might institute in the JAB or the competent tribunal (in which all aspects of the legitimacy of the organization's claim can be litigated). This procedure generally operates satisfactorily, except when the claims against a staff member are so substantial that they cannot be recovered from emoluments due or to become due to him, especially if the staff member has meanwhile been separated, since Pension Fund benefits are fully shielded even from claims by the employing organization (Pension Fund Regulations, art. 45).

32. Although, in principle, the employing organization might bring a suit in a national court against a staff member or former staff member to recover funds that it cannot withhold from him, international organizations have been reluctant to involve such courts in the settlement of disputes that might relate to the internal affairs of the organizations. It would, therefore, appear preferable to conduct such litigation through the competent administrative tribunal, with the objective of receiving recognition of any resulting judgement of that tribunal by national courts having jurisdiction over assets of the defendant. It is therefore tentatively proposed that a new article 2 bis be added to the UNAT statute, with consequent additions of a new subparagraph 2(g) to article 6 and paragraph 4A to article 7; corresponding proposals are being made in respect of the ILOAT statute. In addition, as the national recognition and enforcement of the judgements of international administrative tribunals will probably require a further development of the principles and practices under which national courts recognize foreign judgement or national and sometimes international arbitral awards, it is proposed that the Secretary-General be requested to study this question (annex I C, para. 10).

C. Formal prerequisites for proceedings

1. Time-limits for submitting applications

33. Except as suggested in paragraphs 45 to 47 below and for the proposed addition of a special time-limit in respect of a tentatively proposed new jurisdiction of the Tribunal discussed in paragraphs 31 and 32, there appears to be no reason to change the several provisions relating to time-limits in article 7 of the UNAT statute. However, ILO is considering the introduction, in respect of ILOAT, of a more liberal provision based on those of UNAT, i.e., the extension of the normal 90-day limit to one year if the application is filed by the heir of a deceased or by the trustees for an incapacitated staff member (cf. UNAT statute, art. 7, para. 4), although it still does not propose to grant ILOAT the general power to suspend time-limits (cf. UNAT statute, art. 7, para. 5).

2. Applications manifestly devoid of any chance of success

34. The UNAT statute provides that an application is not receivable if JAB "unanimously considers that it is frivolous" (art. 7, para. 3). However, although administration representatives in JAB proceedings occasionally call the attention of a Board panel to that provision, they very rarely decide to block a further appeal by formally declaring a particular application to be frivolous. 17/ Nevertheless, perhaps because of the very existence of this provision, UNAT has been less plagued than ILOAT with long series of suits clearly lacking any merit.

35. The ILOAT statute contains no provision corresponding to the above-cited one of UNAT. Several times, unstable or merely mischievous applicants have taken advantage of this hiatus (and of the absence of any requirement to pay costs) to file over a dozen different, though usually vaguely related, suits over a period of several years. The Tribunal has sought to protect itself (and the respondents) from such inundation by adopting and utilizing a summary procedure in its rules (art. 8, para. 3), whereby apparently frivolous applications can, by decision of the President, be set aside without further action until the next session of the Tribunal, which can then dismiss them without further proceedings.

36. In addition to the above methods used in respect of UNAT and by ILOAT to avoid burdening these bodies with the substantive consideration of plainly meritless complaints, two other methods come to mind, both depending on potential financial penalties:

(a) A requirement, such as had been imposed by article VIII of the statute of the League of Nations Administrative Tribunal (LNAT), for the applicant to deposit a certain sum (one fiftieth of his annual net salary for LNAT) upon filing an application, which sum is refunded by order of the Tribunal in so far as it considers that there were sufficient grounds for presenting the application;

(b) The imposition, by the Tribunal, of appropriate costs on an applicant, if it considers the application to have been manifestly without merit; in establishing the amount, the Tribunal can take into account both the financial resources of the

applicant and the extent to which it considers that the particular filing should be penalized.

37. The filing of applications that are plainly without merit constitutes an imposition not only on the tribunals but even more on the respondent organizations. Therefore, having considered the four different methods described in paragraphs 34 to 36 above, it is proposed in respect of UNAT that:

(a) The present method of primary control through JAB be maintained but that, as suggested in annex I A, the word "frivolous" in UNAT statute article 7, paragraph 3, be replaced by "clearly devoid of any chance of success", thus substituting an objective for an arguably subjective standard (as in ILOAT rules, art. 8, para. 3);

(b) The Tribunal be authorized to impose costs, limited to no more than one month's net emoluments (as proposed to be defined in a new para. 4 of art. 9), if it considers such a step appropriate (annex I A, new para. 2B of art. 9); 18/ a similar proposal is being made in respect of ILOAT.

D. Procedures

1. Oral proceedings

38. Except for psychological reasons, there would appear to be no objective grounds for oral proceedings in most Tribunal cases, which almost exclusively involve basically legal questions, as any factual elements have usually already been established at the JAB level. While both tribunals can hold oral proceedings, in both of them this practice has declined over the years, so that recently UNAT has only granted such hearings infrequently (an average of 1 or 2 cases a year, out of a total of about 20), while ILOAT for many years did not grant any, and more recently has done so in only a few cases. This trend presumably reflects the fact that oral proceedings impose a substantial additional burden on the tribunals and are expensive for the defendant organizations (because of the need to transport the parties, counsel and witnesses and in UNAT, also to provide for verbatim records). Balancing these practical factors is the need for "justice to be seen to be done" and the repeatedly expressed desire of staff representatives for more oral proceedings. Therefore at present, while counsel for the United Nations may indicate when it is believed that no useful purpose would be served by oral proceedings, requests by applicants for them are normally not opposed.

39. It does not appear that any change in the statutes or rules of the tribunals need be proposed with respect to oral proceedings. However, the two tribunals might consider granting them more liberally in important cases - in particular those that are likely, directly or indirectly, to affect many staff members - and in any in which the hearing of witnesses may be necessary to establish relevant facts.

2. Intervention

40. Anyone permitted to "intervene" in a Tribunal proceeding in effect becomes a party thereto, usually but not necessarily aligned with one of the original parties (the applicant or the respondent organization); an intervenor is therefore generally allowed to participate fully in the proceeding through written or oral submissions, because in turn, the intervenor becomes fully bound by any parts of the judgement applicable to him. By contrast, mere participants in a proceeding, sometimes called amicus curiae (which are dealt with in paras. 43-44 below), do not become parties, are not bound by the judgement and consequently are given at best limited opportunities to offer their views.

41. The rules of both tribunals (UNAT, chap. VII; ILOAT, art. 17) permit "interventions" by persons and by employing organizations or their Pension Funds, whose interests may be affected by a judgement, usually, but not always, to become in effect parallel parties to the applicant. These rules, though differently formulated, do not appear to have given rise to any particular difficulties or significant differences in practice.

42. From time to time, staff representative organs have indicated an interest in being permitted to "intervene" in pending cases. Quite likely what they had in mind was really only the right to participate in proceedings, i.e., as amici (see paras. 43-44 below). Indeed, intervention in the formal sense, i.e., becoming parties to proceedings, would require that these organs be bound, whether as winners or losers, by Tribunal judgements; this could only apply in those rare situations in which a judgement is directly relevant to the rights or obligations of a staff representative organ. Furthermore, such an intervention could be admitted only if staff organs could formally become parties to Tribunal proceedings, which is not possible under either the present or proposed statutory framework (except, perhaps as respondents against applications brought by their own staff; see paras. 22-23 and 25-26 above).

3. Participation by amici

43. Under UNAT rule 23, paragraph 1, the Tribunal may grant a "hearing" to any person to whom the Tribunal is open under statute article 2, paragraph 2 (i.e., staff members, ex-staff members, their successors in interest, etc.), and under rule 23, paragraph 2, it may "in its discretion" grant a hearing to staff representatives. Although neither provision nor any other covers persons or entities in general, UNAT did permit the United States to participate in both the written and oral proceedings in the Powell case (Judgement No. 237). By contrast, ILOAT has no rule permitting persons or entities aside from the parties (including intervening parties) to participate in proceedings, and the Tribunal has interpreted this hiatus as preventing it from allowing such participation, even by representatives of staff associations. This somewhat harsh attitude has been criticized, even though to an extent this ban can be circumvented when an applicant's position is similar to that of a staff association, by having him include in his pleadings statements expressing the position of the association or by having his pleadings prepared by a lawyer engaged by the association. These

provisions and practice of the two tribunals have proven to be generally satisfactory, even though they diverge somewhat; it might, however, be noted that there have been relatively few instances in which staff associations have sought to participate in proceedings, even when they were sufficiently interested therein to help finance the applicant's presentation.

44. In annex I B, it is proposed that UNAT give consideration to improving its rule 23 and also to bringing it more in line with practice by revising it to provide, on the one hand, that the Tribunal may permit representatives of staff representative organs to make written submissions and to participate in oral proceedings (which, however, would still fall short of the demand of FICSA for an automatic right to appear, or one conditioned solely on the request or approval of either of the parties) and, on the other hand, that any other person or entity may be given similar rights at the discretion of the Tribunal. In annex I A a minor consequential amendment is proposed to paragraph 2 (e) of article 6, similar to a change being proposed in respect of the ILOAT statute.

4. Class actions and test cases

45. It has been suggested that one improvement that could be made in the provisions governing the tribunals, and particularly those of UNAT, is to introduce the possibility of numerous applicants filing a "class action" when all of them wish to litigate a matter of common concern. 19/ Such actions are sometimes foreseen in national courts for one or more of the following purposes: to permit the plaintiffs to meet jurisdictional requirements as to the minimum amount that may be litigated in certain courts where each individual claim would fall below that amount; to create a mechanism whereby plaintiffs who are complete strangers to each other can share the costs of law suits that would not be justified by the amount of any individual claim; or to avoid the litigation of disputes that have a common element, particularly a factual one, in a number of different courts. Practically none of these considerations is applicable in respect of the international administrative tribunals: there are no minimum jurisdictional amounts; the cost of litigation is usually minimal for the applicant or, if not, arrangements for sharing it in respect of a "test case" (see below) can be made through a staff representative organ or otherwise; and there is no multiplicity of courts, but only one possibility in respect of any given respondent.

46. Furthermore, it has been understood that once a particular legal issue has been definitively settled in respect of a particular respondent by the appropriate Tribunal (e.g., by defining the meaning or deciding the validity of a particular regulation, rule or instruction), then the respondent will automatically apply that decision in respect of all officials who can rely on the same legal principle, without forcing them to relitigate it. To do so would be pointless, for although strict *stare decisis* in the common law sense is not a principle of international administrative law, each Tribunal can be expected to dispose of clear-cut legal issues consistently with its own previous jurisprudence. Consequently, when in the past legal issues have arisen that are of interest to large numbers of officials, arrangements have been made for one or a few of them to file a test case or a limited number of test cases to resolve such issues; 20/ respondents have

co-operated with these arrangements, for it is not in their interest to multiply or complicate litigation unnecessarily, for example by requiring all potential applicants to intervene formally in a test case.

47. In respect of test cases, however, there is perhaps one aspect that might benefit from a minor amendment of the provisions governing the tribunals. When a test case is brought, the respondent can undertake to apply the results to all officials whose legal situation is the same. However, even with the best will on both sides, a case picked as a "test" may be decided by the Tribunal on a basis peculiar to the situation of the applicant, which is not applicable to any others or to all others who hoped to be covered by the principle of the judgement. Or, even if the test case is decided on general grounds, as to certain other potential applicants they themselves or the respondent may consider that a different outcome would be justified. However, by the time that determination can be made, the time-limits for filing an application may have passed, and even though the respondent might be willing to waive these limits (or may indeed have undertaken in advance to do so), the Tribunal would not be bound to accept the case. Consequently it is proposed, in annex I B, that article 24 of the UNAT rules be expanded to require the Tribunal to accept such a waiver by the respondent in the narrowly defined circumstances here discussed. Such a provision would preclude the necessity of a protective filing of an application merely to insure applicants against missing a compulsory time-limit while a test case is proceeding.

E. Remedies

1. Remand for correction of procedure

48. Article 9, paragraph 2, of the UNAT statute explicitly enables the Tribunal to remand a case, with the agreement of the Secretary-General, for the correction of earlier procedures (e.g., in JDC or JAB); the Tribunal may even award the applicant up to three months' net base salary as compensation for the delay. ILOAT has no similar provision, but it can achieve practically the same result (except the award of compensation for delay) by quashing the defective decision and thus leaving it for the defendant administration to take any remedial action it desires, including a correction of previous procedures. Thus, even though there is an apparent discrepancy between the statutes of the two tribunals in respect of the possibility of a remand, no significant practical difference appears to have arisen; nevertheless, ILO proposes to amend the ILOAT statute to align it with the UNAT provision cited.

49. At present, article 9, paragraph 2, of the UNAT statute limits the monetary compensation that the Tribunal may grant for a delay to "three months' net base salary". This limit does not seem related in any way to the nature and amount of damage that an applicant might have suffered because of a procedural delay, and consequently in annex I A, it is proposed that this limitation be deleted; ILO does not propose to include such a limitation in its new provision. Should it, however, be decided to retain some limitation in the UNAT statute (whether as currently stated or in a different amount), then the expression of the limit should be altered along the lines discussed in paragraph 63 below.

2. Specific performance

50. One of the most controversial differences between the two tribunals relates to their respective powers to order specific performance. Both tribunals are obliged, if they find a complaint well founded, to order the rescission of the impugned decision or the performance of the obligation relied upon (ILOAT statute, art. VIII; UNAT statute, art. 9, para. 1). However, the two statutes contain substantially different provisions for the contingency that rescission or performance might not be considered feasible or desirable:

(a) In respect of ILOAT, it is the Tribunal itself that decides whether rescission or performance "is not possible or desirable", in which cases it awards the applicant monetary compensation (not subject to any specific limit; see paras. 57-63 below); however, in respect of the most sensitive situation, the reinstatement of a staff member, ILOAT has, in practice, only very rarely and in respect of lower-level officials, required such performance without giving the respondent organization the choice of paying compensation;

(b) In respect of UNAT, the Tribunal must automatically fix, as part of its original judgement, an amount of compensation to be paid to the applicant (subject to a conditional limit; see paras. 57-63), leaving it to the Secretary-General to decide, whether "in the interest of the United Nations" he prefers to comply with the order for rescission or performance, or to pay the amount indicated by the Tribunal; in practice and especially in cases involving separation from service, he almost always chooses to pay the compensation rather than to grant reinstatement.

51. While in end effect there is thus no great difference between the practices relating to the two tribunals, the psychological impact is markedly different. In particular, the UNAT provisions are widely misunderstood or misinterpreted (both within the staff and by outside observers), so that either the Secretary-General is accused of disregarding Tribunal judgements or UNAT is characterized as merely having the power to advise the Secretary-General (i.e., that it is no more than a super JAB) and is thus not a truly judicial organ. One of the most pressing staff demands is therefore that UNAT be granted the same powers as ILOAT with respect to specific performance.

52. The main argument for compliance with this strong desire of the staff is that the practical effect of doing so would, if UNAT follows the ILOAT example, be minimal: the very infrequent obligation to reinstate a lower-level official even though the Secretary-General would prefer him separated and paid off. But although the Secretariat is now considerably larger than it was when UNAT was established and thus accommodating an official imposed by the Tribunal on the Secretary-General would be correspondingly easier, the highly political nature of many of the Secretariat's activities still makes it undesirable to transfer this type of discretion from the Secretary-General to the Tribunal, except perhaps in cases other than those involving reinstatement or assignments.

53. After deliberating extensively on this issue, the World Bank, in establishing its new Tribunal as recently as 1980, opted for a UNAT-like solution, with the sole

difference that the limit of alternative compensation that WBAT may fix without a special explanation is three years' compensation rather than the two for UNAT (WBAT statute, art. XII, para. 1).

54. It should, incidentally, be noted that considerable amelioration can be achieved, even within the framework of the UNAT provision, if the Tribunal would fix alternative compensation more nearly commensurate to the damage actually suffered by a staff member it considers to have been unjustly terminated. On the one hand, such compensation would make it more of a matter of indifference to the applicant which corrective alternative is chosen; on the other, specific performance might more seriously be considered if the cost of not doing so would be substantial. While part of the reason for the meagre alternative compensation usually fixed by the Tribunal undoubtedly lies in the conditional limit discussed in paragraphs 57-63 below, another part would seem to lie in the perhaps inadequate perceptio by the UNAT judges of the true measure of the damage suffered by an official terminated, after many years of specialized work, from an international post.

55. It is therefore proposed in annex I A that the relevant provisions of UNAT statute article 9, paragraph 1, (to be split, for technical reasons, into two paragraphs: 1 and 1A) be maintained substantially unchanged, except that the alternative to specific performance be retained only for those instances in which the applicant is to be reinstated or his separation is to be rescinded, or he is to be given a particular assignment. In other instances, for example if the Tribunal should require an allowance to be paid, a promotion to be implemented, or participation in the Pension Fund to be provided for in a contract of employment, these measures would have to be taken as ordered by the Tribunal, unless the latter itself decides to substitute monetary compensation.

56. In connection with this proposal it should be noted that the ILO Working Party (see para. 9 above) remarked that: "In this connection, the Statute of the UNAT was being brought partially into line with ILOAT procedures" and expressed the view that: "the Governing Body might, in its report on this item, note with regret that the proposed UNAT amendments went only some of the way towards harmonisation with the ILOAT procedures which the Working Party found to be balanced and consistent with legal principles". 21/

3. Limit on the amount of alternative compensation

57. Monetary compensation is provided for in the statutes of both tribunals only as an alternative to specific performance, although, as pointed out above, the conditions under which such alternative becomes operative are different in respect of the two tribunals, and the UNAT statute (which was especially amended in 1953 for this purpose) provides, unlike the ILOAT statute, a conditional limit on the amount of monetary compensation that may be granted. Specifically, it requires that the alternative compensation "shall not exceed the equivalent of two years' net base salary" though UNAT may "in exceptional cases, when it considers it justified, order the payment of a higher indemnity" in which case "a statement of the reason for the Tribunal's decision" must accompany the order.

58. It should first of all be noted that the above provision, though expressed in general terms as if applicable to all judgements, is really only applicable to those in which a controverted separation is at issue. In other situations the limit is either inapplicable or irrelevant. For example, if the judgement should require a disputed allowance to be granted, then the Tribunal normally does not even contemplate the possibility of a decision by the Secretary-General not to comply, and therefore does not set an alternative compensation, while the monetary value of such a judgement may, over the years, actually amount to far more than the statutory limit. In other instances, such as indemnity granted in respect of a service-incurred injury or as damages for a tort, it would be mathematically easy to compare such a lump sum with the stated limit, but to do so would take that limit entirely outside of its statutory context.

59. Secondly, it should be noted that the limit can be interpreted either substantively or merely procedurally. In the former sense, it would mean a directive from the General Assembly that no matter how much compensation an applicant would deserve if the Secretary-General should decide not to perform the Tribunal's judgement specifically, he is to receive no more than two years' base salary in compensation unless there was some "exceptional" factor (i.e., not merely the fact that that amount would be inadequate but also some other unusual element, e.g., some clearly reprehensible behaviour on the part of the organization). However, considered just as a procedural limitation, it would merely mean that, although the Tribunal is authorized to grant whatever compensation it considers proper, it must explain itself whenever that amount exceeds two years' base salary. Both the Tribunal and the staff observers who criticize its statute appear to adhere to the former interpretation. Since the limitation was imposed in 1953, UNAT has only once made use of its power to grant and justify a higher compensation and generally its awards have stayed well below the statutory limit.

60. Thirdly, as pointed out in paragraph 54 above, one result of fixing low compensation is to deprive the respondent of a realistic basis for a decision on whether to perform specifically or to compensate, i.e., if the alternative compensation is too low, he will almost always find it "in the interest of the United Nations" to pay rather than to perform.

61. Fourthly, it might be noted that the recently adopted WBAT statute basically follows in this respect the pattern of the UNAT provision, but states the limit at "three years' net pay" (WBAT statute, art. XII, para. 1).

62. On the basis of the above considerations, two alternative courses of action would appear to commend themselves:

(a) To delete the limit appearing in UNAT statute article 9, paragraph 1 entirely, which would bring the closest alignment to the ILOAT statute and would respond to the argument, pressed with particular vigour by FICSA, that if the Tribunal considers that a particular level of compensation is objectively warranted, any diminution thereof to meet a statutory limit would necessarily constitute an injustice;

(b) To raise the limit, at least to the level set in the UNAT statute (three years' pay), it being understood that the limit is not intended to constrain the power of UNAT to award appropriate alternative compensation, but merely to furnish the Secretary-General and the General Assembly with a reasonable explanation of particularly large awards. On balance, the latter argument, which is not expected to diminish the substantive rights of any applicant, seems more persuasive and an appropriate amendment to the end of the first sentence of new paragraph 1 A of article 9 of the UNAT statute is therefore proposed in annex I A. In addition, the word "normally" has been added to that sentence and the words "in exceptional cases" are proposed to be deleted from the next sentence.

63. It should also be noted that, from a purely technical point of view, a limit based on years of "net base salary" is outdated. A net base figure neither takes into account the post adjustment payable at the duty station at which the applicant was stationed, nor even the WAPA adjustment that reflects the extent to which base salary levels have on a world-wide basis fallen behind the actual levels of United Nations compensation, as a result of inflation and currency adjustments. For this reason the General Assembly, on the recommendation of ICSC, has in recent years provided that all corresponding amounts fixed in the Staff Regulations be expressed, for Professional and higher and for Field Service categories of staff, in terms of periods "of gross salary, adjusted by movements of the weighted average of post adjustments, less staff assessment", and for General Service and related categories in terms of periods "of pensionable remuneration less staff assessment" (e.g., Staff Regulations, annex III). Incidentally, the limit as currently expressed also makes it difficult for the Tribunal to take into account the fact that in certain instances some States may tax the alternative compensation UNAT pays while most States do not do so. Consequently, it is proposed in annex I A that a further amendment to the end of the first sentence of new paragraph 1A of article 9 of the UNAT statute be introduced, together with a new paragraph 4 of article 9, which is designed to define all monetary limits in the UNAT statute in such a way that any relevant changes made from time to time by the General Assembly in the Staff Regulations would automatically apply in respect of the statute.

4. Award of costs

64. The statute of neither Tribunal provides for the payment of costs. Nevertheless both tribunals, following the example of the League Tribunal (LNAT), have decided that they may award costs to successful applicants 22/ and have consistently done so. However, these awards have generally been very modest and, especially in the case of UNAT, have not kept pace with the increase of legal fees in New York, Geneva or elsewhere in Europe.

65. In awarding costs, both tribunals, and especially UNAT, implicitly or explicitly (under guidelines adopted by UNAT in 1950 (A/CN.5/R.2)), take into account whether the applicant actually needed to incur legal costs, i.e., to engage outside counsel, in view of the general availability of free and usually competent (often more so than outside) legal assistance from inside the Organization or sometimes from another organization. A more liberal interpretation of this criterion might encourage greater resort to outside counsel, which, because of

their general ignorance of international administrative procedures, would not necessarily benefit applicants and would sometimes be detrimental to the effective functioning of the tribunals.

66. It would therefore be desirable to find a formula under which the tribunals would still require justification for a staff member to engage outside counsel; but if acceptable justification is given, the costs awarded should be commensurate with reasonable legal fees, naturally taking into account the difficulty and importance of the particular case, and be limited to those instances in which the applicant prevailed or at least raised an issue of exceptional importance.

67. In light of the above, it is proposed in annex I A that a new paragraph 2A be added to article 9 of the UNAT statute, by which the Tribunal would formally be authorized to award costs; a similar proposal is being made in respect of ILOAT. No closer or more precise directives for the Tribunal would appear necessary, though a related amendment (addition of a new subpara. (2)(k) to art. 6) would require the Tribunal to adopt a rule on this subject, which would presumably be based on the 1950 UNAT guidelines.

F. Post-judgement proceedings by the tribunals

1. Revision

68. Article 12 of the UNAT statute provides for the revision of judgements on the basis of newly discovered decisive facts, provided application therefor is made within 30 days of its discovery and within one year of the date of the judgement. The ILOAT instruments contain no such provision, and that Tribunal has no definitive jurisprudence on this point; however, it is proposed that a similar provision be added to the ILOAT statute.

69. The 30-day and the one-year limits in the UNAT statute may be considered unreasonably short, although it would seem that some limits are desirable, if only to cut off mischievous applications made years later. (However, art. XIII, para. 1 of the statute of WBAT merely provides for a six-month limit after discovery of the fact, with no absolute limit.) It is consequently proposed in annex I A that in the second sentence of article 12 (which is to become part of new para. 1 of that article), the 30-day limit be extended to three months, and the one-year limit to three years. Some other minor amendments have also been included, corresponding to the formulation being proposed for the ILOAT statute or to achieve greater consistency with other provisions of article 12.

2. Completion

70. The statute of neither Tribunal provides any remedy if a judgement does not dispose of all the claims made in an application. Since complaints to that effect are made from time to time, it is proposed that an appropriate provision be introduced into the statutes of both tribunals. In respect of UNAT, this is proposed in annex I A in the form of a new paragraph 3 of article 12 of the statute; a corresponding addition is being proposed in respect of ILOAT.

3. Interpretation

71. The statute of neither Tribunal provides for the clarification or interpretation of judgements. Nevertheless, both tribunals have sometimes agreed to interpret prior judgements.

72. It would, however, seem desirable to introduce into the statutes of both tribunals an explicit authorization for the interpretation of judgements. In respect of UNAT this is proposed in annex I A in the form of a new paragraph 4 of article 12 of the statute; a corresponding addition is being proposed in respect of ILOAT. Since Tribunal judgements are normally implemented immediately, questions of interpretation almost always arise soon after they are rendered; consequently, the suggestion of UNAT that requests for interpretation be made within one year has been incorporated.

G. Review of Tribunal judgements

1. Method of review

73. The present limited method of review, or in a sense appeals of, Tribunal judgements is one of the most complex and controversial aspects of the functioning of these bodies. At least a capsule history is essential for understanding and describing the present situation and the implication of possible improvements:

(a) LNAT had no provision for review or appeal. However, at its last session, the League Assembly refused to comply with a series of judgements of the Tribunal on the ground that the latter had exceeded its jurisdiction in examining decisions of the Assembly itself; in the absence of any method of judicially reviewing these judgements or of challenging decisions of the Assembly, the latter's refusal prevailed.

(b) ILOAT, which succeeded LNAT, was consequently established with a provision (art. XII) permitting the ILO Governing Body to challenge a decision of ILOAT confirming its jurisdiction or a judgement that the Governing Body considered vitiated by a fundamental procedural fault, by requesting an advisory opinion from the International Court of Justice, which would be considered as binding. When the ILOAT statute was amended to permit the extension of its jurisdiction to other organizations, their executive boards were allowed to request reviews by the Court of Tribunal judgements on a similar basis (though actually they can only do so if they have been authorized by the General Assembly to address questions to the Court, which is only possible for specialized and similar agencies). On this basis, the UNESCO Board secured a review of (but no change in) an ILOAT judgement in favour of several staff members separated for allegedly political reasons. 23/

(c) UNAT, though established after ILOAT, originally had no provision corresponding to article XII of the latter's statute. However, after the International Court of Justice advised the General Assembly in 1955 (in relation to a series of cases involving separations for allegedly political reasons) that, in the absence of such a provision, there was no possible ground for refusing to abide

by a UNAT judgement and no method of appealing or reviewing it, 24/ the Assembly added article 11 to the UNAT statute, based on the ILOAT precedent; in addition, primarily in order to make the procedure more fair to applicants, it introduced two innovations: applicants also were permitted to initiate the review procedure (along with States and the executive head, who in effect are the only entities able to do so under an ILOAT-like procedure since only they have automatic access to the executive boards of organizations), and the grounds for review were expanded to include two additional ones: an alleged failure of the Tribunal to exercise its jurisdiction and alleged errors of law relating to the Charter. Finally, for want of a United Nations organ corresponding to the "executive boards" of the specialized agencies, the Assembly assigned the competence to request advisory opinions in relation to a UNAT judgement to a specially created Committee on Applications for Review of Administrative Tribunal Judgements. Proceedings before the Committee have been initiated 44 times in about three decades, though lately an increasing trend has been noticed; one review was requested by a State and the others by applicants. The Committee addressed questions to the Court in connection with three UNAT judgements: The Fasla 25/ and Yakimetz 26/ cases (judgements Nos. 158 and 333) proposed by the respective applicants and the Mortished 27/ case (judgement No. 273) proposed by a Member State. In all three instances in which advisory opinions have so far been rendered, these in effect upheld the judgements. Although other organizations that submit to UNAT are not automatically excluded from this review procedure, those that have submitted (ICAO and IMO) have (by means of the article 14 special agreements) contracted out of the review option, as have all those organizations that have agreed to allow their staff members to submit to UNAT appeals against a UNJSPB decision under article 48 of the Pension Fund Regulations (see paras. 90-92 below).

74. The arrangements described above raise a number of distinct, yet interrelated issues. Under the headings below an attempt is made to deal, as far as possible, separately with each of these, but it should be realized that a complete picture can only be obtained by considering all of them together.

(a) Who may initiate the review process

75. Under article 11, paragraph 1, of the UNAT statute, it is clear who may initiate the review procedure before the Committee on Applications for Review of Administrative Tribunal Judgements: any Member State; the Secretary-General; and the applicant in the Tribunal proceeding (or his legal successor). In article XII of the ILOAT Statute this matter is not specified at all; however, evidently only entities that have the right to submit formal proposals to the ILO Governing Body (or to the executive board of any other organization that has submitted to the jurisdiction of ILOAT and has been authorized to request advisory opinions from the International Court of Justice) can do so: members of the Governing Body; the Director-General; and possibly, to a limited extent, the ILO Staff Union.

76. In respect of UNAT, the objection has frequently been raised that it is anomalous and perhaps even improper for a Member State, which naturally was not a "party" to the Tribunal proceeding, to be in a position to request a review of the resulting judgement. Indeed, the International Court of Justice itself reserved this question in the Fasla case and carefully reviewed it in the Mortished case, in

which it concluded, albeit somewhat reluctantly, that there was no insuperable legal obstacle. With reference to the policy issue, it should be observed that, in the first place, the respondent party in a Tribunal proceeding (explicitly in ILOAT, implicitly in UNAT) 13/ is the organization rather than its executive head. Secondly, in respect of initiating the review of a UNAT judgement, a Member State is in effect placed on a par with the Secretary-General and the applicant, while in respect of an ILOAT judgement, a State member of ILO has a distinct procedural advantage over the applicant (and indeed, no applicant has ever succeeded in initiating the review of an ILOAT judgement). Finally, it should be recalled (see subparas. 73 (b) and (c) above) that the review procedures for Tribunal judgements were not established primarily for the purpose of giving applicants or even executive heads another level of appeal, but rather for the purpose of enabling States to challenge judgements that they considered for some reason as unacceptable and to do so before the principal judicial organ of the United Nations, rather than in a representative body (such as the General Assembly of the League of Nations or the United Nations) in which the decisions of a subsidiary organ such as a Tribunal might well be set aside on essentially political considerations.

77. Consequently, any proposal to eliminate or seriously limit the right of States to initiate the review process would seem contrary to the purpose for which this process was originally instituted and, if nevertheless accepted, might in the long run endanger the authority of the tribunals themselves. On the other hand, it does not appear to be essential that the review procedure that may be initiated by States be the same as that open to the applicant and to the executive head, or that it extend to all of these the same grounds for review; these points will be explored below.

(b) What body is to carry out the review

78. Under both the UNAT and ILOAT statutes, it is the International Court of Justice that is to carry out the review of the judgements of the tribunals. Although it has sometimes been argued that the World Court is not an appropriate body, either in terms of its dignity or its experience, to deal with issues involving individual staff members, the choice of the principal judicial organ is explained by the fact that the primary purpose of the review procedure is to deal with challenges by States against the tribunals as subsidiary organs of the principal political bodies of their respective organizations. The relatively frequent attempts by applicants to reach the Court through the Committee on Applications for Review (in which so far only two applicants were successful) were not foreseen when the review procedure was established and are of course altogether unavailable in respect of all ILOAT judgements or even in respect of UNAT judgements concerning applicants from organizations other than the United Nations or concerning Pension Fund cases.

79. It would thus appear useful to consider whether the International Court of Justice is the appropriate body to carry out the review of tribunal judgements in those instances in which a review is initiated by an applicant or by the executive head, or whether these should either be precluded entirely from initiating a review (as is, in fact, the situation in the common system of all except United Nations staff members and the Secretary-General) or be directed to some other review

organ. If such an organ is to be contemplated at all, it would seem that it should be some existing body, so as to avoid the necessity of creating additional judicial machinery; furthermore, its members should, if possible, have extensive experience in international administrative matters; finally, the body should clearly be a judicial organ, so as to preclude a political or administrative organ from reviewing the decisions of a judicial one.

80. The above-mentioned requirements suggest that any review body substituted in part or in whole for the International Court of Justice should consist largely of judges from existing administrative tribunals. Various solutions might be possible: a grand panel of all the judges of the same tribunal of which a three-member panel rendered the original judgement; some combination of the senior judges of UNAT and ILOAT (which might assist in furthering the harmonization of the jurisprudence of the two tribunals); or judges of other administrative tribunals, such as that of the World Bank.

(c) What body is to decide whether a review should be carried out

81. If any type of review is to be carried out by the International Court of Justice, by means of its advisory competence, an appropriate request therefor must be addressed to the Court by an organ authorized to do so. Under Article 96 of the Charter of the United Nations, such organs are the General Assembly itself and, if authorized by the Assembly, other principal or subsidiary organs of the United Nations and the specialized agencies. Thus none of the entities authorized by the UNAT statute to institute a review process (see para. 75 above) can approach the Court directly (although the Assembly could authorize the Secretary-General to do so). Indeed, the principal reason for creating the Committee on Applications for Review, a subsidiary organ of the General Assembly, was so that it could serve as an authorized requesting organ.

82. The objection has been raised that the Committee on Applications for Review is an essentially political body, although the same point might be made in respect of the ILO Governing Body and the executive boards that are authorized to request the review of ILOAT judgements, and that it is improper to introduce such an organ between two judicial ones (the tribunals and the International Court of Justice). This misperceives the function of the requesting body, which is not really to intervene in the judicial process but to make the policy decision, on behalf of the respondent organization, as to whether an appeal should be taken; in any event, the final decision is always a judicial one: either that of the tribunal (if no appeal is taken), or that of the World Court (if an appeal is decided on). Furthermore, if the primary purpose of the review procedure is to be served, i.e., the defence of the tribunals against political challenges (see para. 76 above), then the organ that decides whether a Member State's challenge is to be transmitted to the Court must be a political one.

83. The same considerations do not, however, apply insofar as the review procedure is to serve the function of permitting ordinary appeals from Tribunal judgements by the applicant or by the executive head. For this purpose, a judicial body would be preferable. Indeed, if the body that carries out the review is to be composed of Tribunal judges (see para. 80 above) and thus does not have to be elaborately

established or convened, it is not actually necessary to take a decision that such a review be carried out: the review panel itself can subsume that decision in its consideration of the "appeal" itself. Furthermore, since that Panel, regardless of its composition, would be a subsidiary organ of the General Assembly, it could be authorized by the latter to address a request for an advisory opinion to the Court, if the Panel considers that it is faced with a legal question of sufficient importance and complexity that requires an answer from the principal international judicial organ.

(d) Grounds for a review

84. Article XII of the ILOAT statute allows only two grounds on which a review of a judgement might be sought from the International Court of Justice (see subpara. 73 (b) above) and UNAT statute article 11, paragraph 1, allows two additional ones (see subpara. 73 (c)). An examination of these grounds suggests that if the purpose of the review is merely to permit the referral of particularly sensitive cases to the International Court of Justice (see para. 76 above), then the listed grounds may be too many, and that it might be sufficient to restrict the grounds of review to situations in which a Tribunal might have exceeded its jurisdiction or those in which it might have made an error on a question of law relating to a treaty (e.g., the United Nations Charter or the constitutional instrument of some other international organization; a privileges and immunities agreement).

85. On the other hand, if the review process is to serve more general appellate purposes and not be carried out by the International Court of Justice, then some broader, but still not unrestricted, bases for requesting a review might be specified, perhaps by adding some additional grounds, such as the basing of a judgement on a ground not argued by either party, as to which the Tribunal had thus not heard any relevant arguments; or an unexplained departure from well-established jurisprudence of either common system Tribunal, which ground would, inter alia, serve to further the harmonization of the jurisprudence of these tribunals.

(e) Possible approaches

86. The above analysis suggests that a preferred solution might involve a bifurcation of the review process by establishing two separate procedures:

(a) One available to States, leading through the Committee on Applications for Review of Administrative Tribunal Judgements to the International Court of Justice, essentially as at present, with just two differences: the grounds for review would be restricted to only two and the Committee would have the possibility of requesting the advice of the joint panel (see subpara. (b) below), in particular as to the formulation of the questions to be addressed to the Court;

(b) The other available to the applicant and the executive head, leading directly to a panel to be constituted jointly with ILOAT (thus serving the objective of harmonization), on several grounds (essentially the four available now, plus possibly the two others discussed in para. 85 above). The said joint panel might summarily decline to review the judgement; possibly be authorized to

confirm or modify the judgement if it considers that it is defective within the meaning of any of the specific grounds on which it can be challenged; or, in rare instances, request an advisory opinion of the Court. In any event, its proceedings are to be expeditious and non-burdensome for the parties, and for this purpose are to be governed by special rules. The formulation of such a dual system is set out in annex I A, in revised article 11 and proposed new article 11 bis.

87. Naturally, numerous variants of the above proposal are possible. It might be decided to eliminate entirely the review available to States (revised art. 11) and/or the appeal proposed for applicants and executive heads (new art. 11 bis), or the existing procedure could be abolished entirely and States too could be relegated to the proposed new article 11 bis procedure. As a variant of the latter, either the proposed substantive review function of the joint panel might be eliminated, leaving the panel as solely a judicial conduit to the Court, or the latter function could be eliminated leaving the panel as simply the highest appellate body. Finally, the Committee on Applications for Review might be required to secure the advice of the joint panel, rather than merely having the option of doing so.

88. The considerations relating to whether and how to provide for the review of UNAT judgements applies essentially to the same extent to judgements relating to the United Nations itself and to those relating to other organizations participating in the common system. Consequently it is suggested in annex I A that in the proposed new final clause of article 14, specific reference be made to articles 11 and 11 bis in order to make it easier for organizations submitting to the Tribunal to do so also in respect of those provisions. In addition, it is proposed in annex I C, paragraph 5, that the General Assembly recommend that organizations submitting to UNAT also provide for the applicability of the review provisions.

89. Because of the difference in the structures of the United Nations and ILO (in particular the absence in the former of an organ corresponding to the Governing Body) and the somewhat different bases on which they can arrange to address requests for advisory opinions to the International Court of Justice (e.g., ILO could not establish a body such as the Committee on Applications for Review of Administrative Tribunal Judgements), no full conformity of the mechanisms whereby judgements of the two tribunals are referred to the Court can be achieved. Thus, although ILO proposes to establish a joint panel identical to the one proposed to be established in the UNAT statute (see annex I A, proposed art. 11 bis, para. 3), its functions would be somewhat different, i.e., merely to advise the Governing Body as to questions to be addressed to the International Court of Justice. Except for the more automatic and binding nature of the relationship between the Governing Body and the joint panel, that relationship would be rather similar to the optional one foreseen for the panel in relation to the Committee on Applications for Review (annex I A, arts. 11, para. 2, proposed addition to first sentence, and art. 11 bis, para. 4(a)). In order to confirm the legal identity of the joint panels proposed to be established under the two statutes, it is suggested that this be specified in subparagraph 4(b) of proposed new article 11 bis in annex I A.

2. Review of United Nations Joint Staff Pension Fund cases

90. In the light of article 48(c) of the Regulations of the United Nations Joint Staff Pension Fund, it would appear that the review procedure provided for in article 11 of the UNAT statute is not applicable in respect of UNAT judgements rendered in a proceeding challenging a decision of the Pension Board. Moreover, all the organizations members of the Pension Fund that have concluded agreements with the United Nations to record their acceptance of the Tribunal's jurisdiction in Pension Fund cases (as required by art. 48(a)(i) of the Fund's Regulations) have specifically stated in those agreements that "The judgements of the Tribunal shall be final and without appeal", a provision evidently designed to exclude the article 11 procedure. Incidentally, the application of that procedure to a UNAT judgement rendered on an appeal against a decision of the Pension Board would raise complicated questions as to whether and to what extent the Board would assume the functions specified for the Secretary-General in article 11, since it is its decision (rather than that of the Secretary-General) that is the subject of the judgement in question.

91. Although most appeals so far submitted against decisions of the Pension Board have involved matters solely of concern to the individual applicant, it seems likely that in the future at least some appeals will involve questions concerning large groups of present or future beneficiaries and will thus potentially affect very large amounts of the Fund's resources. Consequently, many of the reasons for providing at least a restricted opportunity for the review of Tribunal judgements relating to a decision by an executive head, which are discussed in paragraphs 73 to 77 above, apply equally to those judgements that relate to decisions of the Pension Board.

92. It is consequently proposed that:

(a) Paragraph (c) of article 48 of the Pension Fund Regulations be amended, as indicated in paragraph 4 of the draft resolution set out in annex I C, so as to make applicable the provisions referred to in subparagraph (b) below. As required by article 49(a) of the Pension Fund Regulations, the Board has been consulted concerning the proposed amendment and has agreed thereto; 28/

(b) The applicability of the provisions for the review of UNAT judgements (i.e., UNAT statute art. 11 and proposed art. 11 bis), as well as of the various post-judgement proceedings set out or proposed to be set out in statute article 12, should be explicitly specified in the second sentence of paragraph 1 of the proposed new article 2 *tres* of the UNAT statute, by which the provisions relating to UNAT that now appear solely in article 48 of the Pension Fund Regulations would at least be incorporated by reference into the UNAT statute. The words "*mutatis mutandis*" in that sentence would signify that in respect of the review of judgements relating to Pension Fund cases, the Board would have to be substituted, at least to some extent, for the Secretary-General; the extent of such substitution would be spelled out in the rules of procedure of the Committee on Applications for Review and in the joint panel rules called for by the last sentence of proposed new article 11 *bis* (3);

(c) As it is tentatively proposed in the bracketed final clause of the sentence referred to in (b) above, that organizations members of the Fund (other than the United Nations) should continue to be able to contract out of the provisions if they desire to do so, paragraph 5 of annex I C should then contain a General Assembly recommendation against exercising this option.

3. Procedures of the International Court of Justice

93. One of the objections against the present system of review by advisory opinions of the Court is the truncated Court procedure foreseen. Because no way was seen for individual applicants to appear through counsel in oral proceedings in the Court, the General Assembly, in paragraph 2 of resolution 957 (X), by which it adopted article 11 of the UNAT statute, recommended that neither States nor the Secretary-General seek to present oral statements in such a Court proceeding. The Secretary-General and all interested States have so far complied with this request, but unease has been expressed that this does violence to the judicial procedures of the Court, 29/ that in some cases a hearing may be necessary for the proper presentation of a case and that the entire procedure is thus at the mercy of any State that might insist on its right to make an oral statement under article 66, paragraph 2, of the Statute of the Court (which would result in the type of inequality of arms vis-à-vis the applicant that would almost surely cause the Court to abort the proceeding).

94. However, this entire procedural limitation appears to be unnecessary. Under article 11, paragraph 2 of the UNAT statute, the Secretary-General is obliged to transmit to the Court the views of the applicant in the Tribunal proceeding as to which the Court's opinion was requested. In the "appeals" so far brought to the Court under article 11 of the UNAT statute and the one brought under article XII of the ILOAT statute, the applicant's views were presented to the Court by having the executive head concerned (respectively the Secretary-General of the United Nations and the Director-General of UNESCO) forward directly, without any editing or censorship, all written communications received from the applicant or his counsel. Precisely in the same way, if oral proceedings were held, counsel selected by the applicant (and acceptable to the Court) could be introduced as the Secretary-General's special representative to express the applicant's views. With respect to this proposal the President of the Court has indicated "that the Court, which has stressed on several occasions the maintenance of the principle of equality among the parties, will continue to bear it in mind in determining its own procedure in each particular case".

95. Whether or not article 11 of the UNAT statute is maintained unchanged, or is restricted to purely State-initiated proceedings (as proposed in para. 86 (a) above), or a new type of reference to the Court is introduced (as proposed in para. 86 (b) above), the General Assembly might consider changing the recommendation in its resolution 957 (X) in the sense indicated at the end of paragraph 94 above. This recommendation should be formulated broadly enough so as also to apply to reviews sought under article XII of the ILOAT statute. A proposed text to this effect appears in annex I C, draft paragraph 7.

H. Co-operation between the tribunals

1. General proposals

96. The report of ACC to the General Assembly at its thirty-fourth session (see para. 3 above) included the suggestion that some type of joint machinery might be established to which either tribunal could resort for the resolution of points of law related to the common system (see A/C.5/34/31, para. 12). For this purpose, a whole range of possibilities should be considered:

(a) Mere informal contacts (perhaps through regular or ad hoc meetings of Tribunal judges) to settle common problems and issues not related to any particular case;

(b) Joint administrative machinery, for example for the purpose of preparing indices or repertories of judgements;

(c) Exchange of information about the respective jurisprudence of the tribunals, whether or not related to a particular case;

(d) Formal requests for opinions addressed by one Tribunal to the other;

(e) Joint consideration of related cases, i.e., either cases with the same applicant against different organizations but involving the same cause of action (e.g., against the employing organization and the Pension Fund), or a case involving different parties but basically the same issues;

(f) Establishment of a joint body for the consideration of appeals and of requests for advisory opinions, as suggested in paragraphs 80, 86 (b) and 29 above.

97. Possibilities (a), (b) and (c) above would generally require no structure and no formal recognition in either the statutes or the rules of the tribunals, but might be specifically encouraged by the General Assembly, and this is suggested in annex I C, draft paragraphs 8 and 9; however, one specific proposal, that for the establishment of an assessor, which is discussed in paragraphs 98 and 99, might be reflected in the statutes of the two tribunals (see annex I A, proposed new art. 5 bis). Possibility (d) would probably require amendment of the statutes of both tribunals, both to enable them to address requests to the other and to respond to those received, while possibility (e) might be arranged through appropriate provisions in the rules of the two tribunals but would probably also require statutory amendments; however, it should not be anticipated that there would be many occasions to use either of these devices. Finally, possibility (f) is embodied in paragraph 3 of the proposed new article 11 bis set out in annex I A, as well as in the tentatively proposed article 2 quatro.

2. Assessors

98. One device that might assist both the management of the increasingly heavy work of either or both tribunals and the convergence of their jurisprudence would be the appointment of one or more "assessors". Such officials, who function under

various designations in a number of higher national courts as well as in international ones, such as the Court of Justice of the European Communities, assist the judges of the forums to which they are assigned by preparing impartial, in-depth analyses of all or some of the cases submitted to these courts, thus supplying these judges, to whom of course all power of decision is reserved, with a complete study of the relevant legislation and jurisprudence, which is becoming increasingly voluminous in all jurisdictions, including that of the United Nations common system. In respect of the tribunals, one could envisage appointing either separate assessors for one or both tribunals, depending on their respective needs, or a single assessor or eventually a joint team of assessors for both tribunals. Whether working on a full-time or initially perhaps on a part-time basis, they would supplement the studies that the members of the tribunals could make during the limited time they have during their relatively brief sessions and, in particular, would enable these members to keep in touch informally with the other tribunal so as to further the harmonization of their jurisprudence.

99. While it is not intended to establish the institution of assessors immediately, it is considered that the major amendment of the statutes of both of the tribunals, an exercise that is undertaken only rarely, may be an opportune occasion to introduce into both statutes parallel provisions that would make it possible to appoint assessors when the time is ripe therefor. Under the proposed new article 5 bis in annex I A (which would be supplemented by the related art. 6, para. 2 (a)), before that provision is implemented it would be necessary for the tribunals concerned or for the two tribunals jointly to develop rules for the selection, terms of appointment and functioning of the assessor, for the appropriate financial arrangements to be made by the competent budgetary authorities, and for the agreement of the tribunal or tribunals to be secured for a particular appointment.

Notes

1/ See, in particular, General Assembly resolutions 40/252, part XV, and 40/258 A, para. 7, and decision 41/462, as well as the report of the Joint Inspection Unit on the "Administration of Justice in the United Nations" (A/41/640).

2/ Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1987, p. ____, respectively Declaration by Judge Lachs, and paras. 25-26 of the Opinion and the Separate Opinions of Judges Elias and Ago.

3/ Which resulted in the advisory opinion of 20 July 1982 by the International Court of Justice (Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, p. 325).

4/ At the request of the Tribunal, the text of the UNAT comments is reproduced in annex II hereto.

Notes (continued)

5/ A/C.5/39/SR.33, paras. 12-30; SR.42, para. 7; SR.46, para. 54; SR.39, paras. 17-18; SR.52, para. 62-65; A/C.6/39/SR.64, para. 77; SR.66, paras. 12-13.

6/ ILO documents GB.228/PFA/11/11 and GB.229/PFA/12/8.

7/ ILO document GB.231/PFA/17/5.

8/ ILO document GB.234/PFA/11/17.

9/ ILO document GB.234/11/31, para. 74(a).

10/ This suggestion was in effect endorsed in para. 43 of the Joint Inspection Unit report referred to in note 1 above.

11/ ILO document GB.233/PFA/8/14.

12/ International Labour Conference, provisional record, seventy-second session (Geneva, 1986), Nos. 18 and 25.

13/ In UNAT, appeals (i.e., applications) are always filed, except in respect of UNJSPF cases against the executive head, and the title of the case and the judgement so indicates (e.g., X against the Secretary-General of the United Nations). In ILOAT, the appeal is against the employing organization, though the title of the judgement itself only indicates the name of the applicants (e.g., In re X). There appears to be no need to harmonize this procedural discrepancy, although if it were desired to do so, it might be best if in both tribunals the appeals were filed against the organization and the title of the judgement would be in the form: X v. Organization (which is the form already used in the table of contents of booklets containing the judgements of each session of ILOAT).

14/ UNAT is available to all United Nations staff members, including those employed by subsidiary organs such as UNDP, UNICEF, UNHCR, etc., with the exception of UNRWA area staff (about 17,000), whose Staff Regulations provide for the establishment of "a special panel of adjudicators" to which staff members may apply against administrative decisions and disciplinary measures (UNRWA Staff Regulation 11.2 Applicable to Area Staff Members), and with the exception of staff members of the ICJ Registry whose Staff Regulations (Art. 11 and Annex VI, adopted on a provisional basis) provide for disputes to be submitted first to one of the Judges of the Court designated by it as Judge for Staff Appeals and, if need be, to the Court itself.

15/ See, e.g., In re Connolly-Battisti (No. 7) v. FAO (ILOAT Judgement No. 403); In re Garcia and Marquez (No. 2) v. PAHO (WHO) (ILOAT Judgement No. 496).

16/ UNAT confirmed its inability to respond to a request from the Secretary-General for an advisory opinion when it declined to advise him as to whether he could take a certain administrative measure (cancellation of the reimbursement of income taxes on partial lump sum payments from the Pension Fund)

Notes (continued)

that was later reviewed in Powell v. the Secretary-General of the United Nations (Judgement No. 237). When ILOAT was faced with a request from the ILO Director-General, endorsed by the Governing Body and the Staff Union, its three titular members gave an opinion in their personal capacity on the question of whether the Director-General could, without negotiations with the Staff Union, reduce the salaries of General Service staff in Geneva that had been agreed to with the Union; that opinion was not considered an act of the Tribunal.

17/ UNAT has held, however, that even if the appeals body concerned unanimously considers an appeal frivolous and the Tribunal is thus precluded from considering it on its merits, it may still consider whether the joint body's conclusion was vitiated by some irregularity; see Bartel v. the Secretary-General of ICAO (Judgement No. 259), confirmed in Marrett v. the Secretary-General of ICAO (Judgement No. 288).

18/ This proposal was explicitly endorsed in paras. 82, 101 and 103 (Recommendation 4(b)) of the JIU report referred to in note 1 above.

19/ Such multiple actions are already customary in ILOAT, through the procedure of "intervention"; see, among many others, In re Nuss v. European Patent Organisation (ILOAT Judgement No. 369), with 31 intervenors, and In re Benard and Coffino v. International Trade Organization/General Agreement on Tariffs and Trade (ILOAT Judgement No. 380), with 134 intervenors.

20/ See, e.g., the Powell, Carlson and Masiello cases (UNAT Judgements Nos. 237-239) and the Mortished case (UNAT Judgement No. 273) and, in particular, the Molinier, Aggarwal, Akrouf, Davis, Goffman and Noaman cases (UNAT Judgement No. 370), in which the Tribunal rejected applications to intervene from six further staff members, since it observed that the Respondent had undertaken to apply any decision "in respect of all officials who can rely on the same legal principle" (ibid., para. III); the General Assembly subsequently specifically approved the implementation of that Judgement as applied to all affected officials (see A/C.5/41/35 and resolution 41/209, sect. VIII).

21/ ILO document GB.234/PFA/11/17, para. 10.

22/ In a few cases, UNAT has awarded costs to unsuccessful applicants (e.g., Harpignies, Judgement No. 182) when it considered that their application raised a question of law or policy of exceptional importance.

23/ Judgements of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO, Advisory Opinion, I.C.J. Reports 1956, p. 77.

24/ Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954, p. 47.

25/ Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973, p. 166.

Notes (continued)

26/ Application for Review of Judgement No. 333 of the United Nations Advisory Tribunal, Advisory Opinion, I.C.J. Reports 1987, p.____.

27/ Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, p. 325.

28/ See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 9 (A/39/9 and Corr.1), para. 121, and annex IX.

29/ Application for Review of Judgement No. 273, op. cit., Separate Opinion of Judge Mosler, sect. I.2, third paragraph, pp. 380-381.

ANNEX I

Proposed legal instruments

A. Statute of the United Nations Administrative Tribunal

Proposed revisions and comparison to the ILOAT statute

UNAT text	ILOAT text
(ESTABLISHMENT)*	
ARTICLE 1	ARTICLE I
A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal.	There is established by the present Statute a Tribunal to be known as the International Labour Organisation Administrative Tribunal.
(COMPETENCE)	
ARTICLE 2	ARTICLE II
1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words "contracts" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.	1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.
2. The Tribunal shall be open:	2. The Tribunal shall be competent to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of his employment and to fix finally the amount of compensation, if any, which is to be paid.
(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;	6. The Tribunal shall be open
(b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of [staff] 1/ regulations and rules upon which a [the] 1/ staff member could have relied. 2/	(a) to the official, even if his employment has ceased, and to any person to whom the official's rights have devolved on his death;
	(b) to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.
2A. 3/ The Tribunal shall also be competent to hear and pass judgement upon:	4. The Tribunal shall be competent to hear complaints alleging non-observance of their contracts from persons employed by or performing services for the International Labour Organisation where such contracts so provide, as well as disputes arising out of contracts to which the International Labour Organisation is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution.
(a) Applications alleging non-observance of the terms of appointment of any person appointed by the General Assembly to a remunerated post with the United Nations; 4/	

* The bracketed titles here indicated do not appear in the text of either the UNAT or the ILOAT statute. However, it may be considered useful to add such headings to these texts.

UNAT text

ARTICLE 2 (Cont.)

(b) Applications alleging non-observance of the contracts of employment of any other person employed by or performing services under contract with the United Nations, if the terms of his employment or contract provide for the competence of the Tribunal; 5/

(c) Applications alleging non-observance of contracts of employment of persons employed by any recognized entity created or managed by officials of the United Nations, provided national courts are precluded from exercising jurisdiction. 6/

Paragraph 2 of this article shall apply, mutatis mutandis.

3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by a [the] 1/ decision of the Tribunal.

[4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950.] 7/

[ARTICLE 2 BIS

The Tribunal shall also be competent to decide, at the request of the Secretary-General, on the validity of any financial claim by the United Nations against a person referred to in subparagraph 2(a), 2A(a) or 2A(b) of article 2. 8/]

ARTICLE 2 TRES 3/

1. The Tribunal shall, in respect of applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund arising out of decisions of the United Nations Joint Staff Pension Board, have the jurisdiction specified in the Regulations of the Fund. 9/ Articles 11, 11 bis and 12 shall apply, mutatis mutandis[, except to the extent that the member organization of the Fund concerned otherwise specifies]. 10/

2. The Secretary-General shall conclude a special agreement with each member organization of the Fund which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases. 11/

ILOAT text

ARTICLE II (Cont.)

4 bis. The Tribunal shall be competent to hear complaints alleging non-observance of their contracts of employment from persons employed by recognized entities created or managed by officials of the Organisation in cases to which national courts are precluded from exercising jurisdiction.

7. Any dispute as to the competence of the Tribunal shall be decided by it, subject to the provisions of article XII.

ARTICLE II BIS

The Tribunal shall also be competent to decide, at the request of the Director-General, on the validity of any financial claim by the Organisation against an official or former official or a person referred to in article II, paragraph 4 of the present statute, even if his employment has ceased.

ARTICLE II (Cont.)

3. The Tribunal shall be competent to hear any complaint of non-observance of the Staff Pensions Regulations or of rules made in virtue thereof in regard to an official or the wife, husband or children of an official, or in regard to any class of officials to which the said Regulations or the said rules apply.**

** N.B. This provision refers exclusively to the ILO Staff Pension Fund, taken over from the League of Nations upon the latter's dissolution, which no longer has any active participants.

UNAT text

ILOAT text

(ADVISORY OPINIONS)

[ARTICLE 2 QUATRO

The Joint Panel established by paragraph 3 of article 11 bis may, at the request of the Secretary-General taken in consultation with members of the Administrative Committee on Co-ordination, give an advisory opinion on any general legal question of interest to organizations applying the United Nations common system of staff administration and relating to the provisions of or proposed to be included in the contracts of employment or the terms of appointment referred to in paragraph 1 of article 2. Individual members of the staff and representatives of recognized staff representative organs shall be allowed, under rules established by the Panel, to participate in the proceedings on the basis of which such an opinion is given. 12/]

(COMPOSITION)

ARTICLE 3

1. The Tribunal shall be composed of seven members who shall normally be persons who hold or who have held high judicial office and who should preferably have experience in international administrative or labour questions 13/, no two of whom may be nationals of the same State. Only three shall sit in any particular case, but a fourth may serve as an alternate who may only participate in decisions if another of the members is unable to do so 14/.

2. The members shall be appointed by the General Assembly for three years, and they may be re-appointed[; provided, however, that of the members initially appointed, the terms of two members shall expire at the end of one year and the terms of two members shall expire at the end of two years] 7/. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

2A. The General Assembly shall appoint or re-appoint the members from among a list of candidates compiled by its President after appropriate consultations with Member States, with the executive heads of the organizations with which special agreements pursuant to article 14 or to paragraph 2 of article 2 bis have been concluded, and with staff representative organs. 15/

5[3]. 16/The Tribunal shall elect its President and its two Vice-Presidents from among its members.

[4. The Secretary-General shall provide the Tribunal with an Executive Secretary and such other staff as may be considered necessary.] 17/

ARTICLE III

1. The Tribunal shall consist of three judges and four deputy judges who shall normally be persons who hold or have held high judicial office and should preferably have experience in international administrative or labour questions [all be of different nationalities]. No two members of the Tribunal shall be of the same nationality.

4. [A meeting of] To sit the Tribunal shall be composed of three members designated by the President, of whom one at least must be a judge.

2. [Subject to the provisions set out at paragraph 3 below.] The judges and deputy judges shall be appointed for a period of three years [by the Conference of the International Labour Organisation]. They shall be proposed for appointment by the Director-General of the International Labour Office after such consultations as may be appropriate with the Executive Heads of the organizations referred to in Article II, paragraph 5, of the present Statute and with the staff representatives, and appointed by the International Labour Conference on the recommendation of the Governing Body of the International Labour Office.

RULES. ARTICLE 2

1. At its annual session the Tribunal shall elect its President and its Vice-President for a period of one year. The elected President and Vice-President shall take office immediately. They shall be eligible for re-election.

2. In any event the retiring President and Vice-President shall remain in office until their successors are elected.

3. The elections shall be made by a majority vote.

UNAT text

ILOAT text

ARTICLE 3 (Cont.)

ARTICLE III (Cont.)

3[5]. 16/ A [No] member of the Tribunal may only [can] be dismissed [by the General Assembly unless the other members are of the unanimous opinion] on the ground that he is unsuited for further service, as determined unanimously by the other members and decided by the General Assembly. 18/

3. [The terms of office of the judges and deputy judges who were in office on 1 January 1940 are prolonged until 1 April 1947 and thereafter until otherwise decided by the appropriate organ of the International Labour Organisation. Any vacancy which occurs during the period in question shall be filled by the said organ.] A judge or deputy judge may only be dismissed on the ground that he is unsuited for further service, as determined unanimously by the other members of the Tribunal and decided by the International Labour Conference.

4[6]. 16/ In case of a resignation of a member of the Tribunal, the resignation shall be addressed to the President [of the Tribunal] 1/ for transmission to the Secretary-General. This last notification makes the place vacant.

(SESSIONS)

ARTICLE 4

ARTICLE IV

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

The Tribunal shall hold ordinary sessions at dates to be fixed by the Rules of Court, subject to there being cases on its list and to such cases being, in the opinion of the President, of a character to justify holding the session. An extraordinary session may be convened at the request of the Chairman of the Governing Body of the International Labour Office.

(ADMINISTRATIVE ARRANGEMENTS)

ARTICLE 5

(Article III bis)

0. The Secretary-General shall provide the Tribunal with an Executive Secretary and such other staff as may be considered necessary. 17/ The Executive Secretary and other staff shall be appointed and the conditions of their appointment shall be settled in consultation between the Tribunal and the Secretary-General. The Executive Secretary and his staff shall be responsible only to the Tribunal in the exercise of their functions. 19/

2. The Tribunal shall have a Registrar and such staff as may be necessary. The Registrar and his staff shall be appointed by the Director-General of the International Labour Office in consultation with the Tribunal. In the exercise of their functions, the Registrar and his staff shall be responsible only to the Tribunal.

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

1. In consultation with the Tribunal, the Director-General of the International Labour Office shall make the administrative arrangements necessary for the functioning of the Tribunal.

ARTICLE IX

[1. The administrative arrangements necessary for the operation of the Tribunal shall be made by the International Labour Office in consultation with the Tribunal.]

2. Subject to special agreements concluded pursuant to article 2 tres or 14, 20/ the expenses of the Tribunal shall be borne by the United Nations.

[?]1. Expenses occasioned by sessions of the Tribunal shall be borne by the International Labour Office.

(See also annex to the statute article IX, para. 2, below)

UNAT text

ARTICLE 5 BIS

1. With its agreement, a permanent Assessor may be appointed to assist the Tribunal and, if appropriate arrangements can be made therefor, he may perform similar functions in relation to the Administrative Tribunal of the International Labour Organisation. 21/

2. The function of the Assessor shall be to submit in writing to the Tribunal an independent and objective analysis of applications submitted to it taking into account specially the case law of the Tribunal as well as that of the International Labour Organisation and, as appropriate, that of other international administrative tribunals. Submissions of the Assessor shall be published together with the judgement to which they relate. 21/

3. The rules concerning the selection of the Assessor, the terms of his appointment and his participation in proceedings shall be established after appropriate consultations. 21/

ILOAT text

ARTICLE III BIS

3. With its agreement, a permanent Assessor may be appointed to assist the Tribunal and, if appropriate arrangements can be made therefor, he may perform similar functions in relation to the Administrative Tribunal of the United Nations.

4. The function of the Assessor shall be to submit in writing to the Tribunal an independent and objective analysis of complaints before it taking into account especially the case law of the Tribunal as well as that of the Administrative Tribunal of the United Nations and, as appropriate, that of other international administrative tribunals. Submissions of the Assessor shall be published together with the judgement to which they relate.

5. The rules concerning the selection of the Assessor, the terms of his appointment and his participation in the proceedings shall be established in the Rules of Court after appropriate consultations.

(RULES)

ARTICLE 6

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

2. The rules shall include provisions concerning:

(a) Election of the President and Vice-Presidents;

(a') Selection, terms of appointment and functioning of the Assessor; 22/

(b) Composition of the Tribunal for its sessions;

(c) Presentation of applications and the procedure to be followed in respect to them;

(d) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgement;

(e) Hearing, for purposes of information, of individuals, staff representative organs and other entities [persons to whom the Tribunal is open under paragraph 2 of article 2] 23/, even though they are not parties to the case;

(f) Procedures relating to applications or disputes submitted under paragraph 2A of article 2; 24/

[(g) Procedures relating to claims submitted under article 2 bis; 25/]

(h) Procedures relating to applications submitted under article 2 tres; 26/

[(i) Procedures relating to the giving of advisory opinions pursuant to article 2 quatro; 27/]

ARTICLE X

1. Subject to the provisions of the present Statute, the Tribunal shall draw up Rules of Court covering -

(a) the election of the President and Vice-President;

(f) the selection of the Assessor, the terms of his appointment and his participation in proceedings.

(b) the convening and conduct of its sessions;

(c) the rules to be followed in presenting complaints and in the subsequent procedure, including intervention in the proceedings before the Tribunal by persons whose rights as officials may be affected by the judgment;

(e) [generally, all matters relating to the operation of the Tribunal which are not settled by the present Statute.] the conditions and modalities under which individuals, staff representatives or entities may be heard for purposes of information even though they are not parties to the case; and

(d) the procedure to be followed with regard to complaints and disputes submitted to the Tribunal by virtue of paragraphs 3 and 4 and 4 bis of article II, as well as applications submitted under article II bis;

UNAT text

ARTICLE 6 (Cont.)

(j) Expeditious procedures relating to applications under article 12; 28/

(k) Award of costs pursuant to paragraph 2A of article 9; 29/ and generally

(l) [(f)] Other matters relating to the functioning of the Tribunal.

ILOAT text

ARTICLE X (Cont.)

[g] generally, all matters relating to the operation of the Tribunal which are not settled by the present Statute [formerly (e)]

2. The Tribunal may amend the Rules of Court.

(COMPLAINTS)

ARTICLE 7

1. An application submitted pursuant to paragraph 1 of article 2 30/ shall not be receivable unless the applicant [person concerned] 1/ has previously submitted the dispute to the joint appeals body provided for in the Staff Regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the [Administrative] 1/ Tribunal.

2. Insofar as the recommendations made by the joint body are [In the event of the joint body's recommendations being] 1/ favourable to the applicant [application submitted to it, and in so far as this is the case] 1/, an application [to the Tribunal] 1/ shall be receivable if the Secretary-General has:

(a) Rejected the recommendations;

(b) Failed to take any action within the thirty days following the communication of the opinion; or

(c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.

3. Insofar as [In the event that] 1/ the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, [and in so far as this is the case,] 1/ the application shall be receivable, unless the joint body unanimously considers that it is clearly devoid of any chance of success [frivolous] 31/.

4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. [If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time limit of ninety days shall begin to run from that date.] 7/ Nevertheless, the said time limit on his behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his own affairs, file the application in the name of the said staff member.

ARTICLE VII

1. A complaint shall not be receivable unless the decision complained of [impugned] is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.

3. Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.

2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision complained of [impugned] or, in the case of a decision affecting a class of officials, after the decision was published. This time limit shall be extended to one year if the heirs of a deceased official, or the trustee of an official who is not in a position to manage his own affairs, file the complaint in the name of such an official.

UNAT text	ILOAT text
ARTICLE 7 (Cont.)	ARTICLE VII (Cont.)
[4A. An application pursuant to article 2 bis shall be submitted to the Tribunal within one year after the claim to which it relates has arisen. 25/]	5. An application pursuant to article II bis shall be submitted to the Tribunal within one year after the claim to which it relates has arisen.
5. In any particular case the Tribunal may decide to suspend the provisions regarding time limits.	
6. The filing of an application shall not have the effect of suspending the execution of the decision contested.	4. The filing of a complaint shall not involve suspension of the execution of the decision complained of [impugned].
7. Applications may be filed in any of the [five] official languages of the General Assembly [United Nations]. 32/	
(ORAL PROCEEDINGS)	
ARTICLE 8	ARTICLE V
The oral proceedings of the Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that they be held in private.	The Tribunal shall decide in each case whether the oral proceedings before it or any part of them shall be public or in camera.
(SUBSTANTIVE POWERS OF THE TRIBUNAL)	
ARTICLE 9	Article VIII
1. If the Tribunal finds that an [the] 1/ application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked.	1. In cases falling under Article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision complained of [impugned] or the performance of the obligation relied upon unless, after considering the observations filed on the matter by the defendant organization and the complainant, the Tribunal holds that [If] such rescinding of a decision or execution of an obligation is not possible or advisable; in which case the Tribunal shall award the complainant compensation for the injury caused to him.
1A. 33/[At the same time the Tribunal shall] If an order made pursuant to paragraph 1 of this article in respect of an application submitted pursuant to paragraph 1 of article 2 rescinds the separation or requires the reinstatement or a particular assignment of the applicant, the Tribunal shall at the same time 34/ fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall normally not exceed the equivalent of three [two] 35/ years' net emoluments [base salary] 36/ of the applicant. 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 order.	
2. Should the Tribunal find that the procedure prescribed in the pertinent [Staff] regulations and [or Staff] rules 37/ has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation[, not to exceed the equivalent of three months' net base salary,] 38/ to the applicant for such loss as may have been caused by the procedural delay.	2. Should the Tribunal find that the procedure prescribed in the Staff Regulations has not been observed, it may, at the request of the Director-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation to the complainant for such loss as may have been caused by the procedural delay.

UNAT text

ARTICLE 9 (Cont.)

2A. If the Tribunal finds the application well founded in whole or in part, or if it considers that a point of law of exceptional importance is raised by it, it may award to the applicant compensation for the necessary costs reasonably incurred by him in pursuing the proceeding in the Tribunal. 39/

2B. If the Tribunal finds the application clearly devoid of any chance of success it may, if it considers it appropriate, require the applicant to pay the costs incurred by the Tribunal and the respondent, but not exceeding the equivalent of one month's net emoluments. 40/

3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the respondent [United Nations or, as appropriate, by the specialized agency participating under article 14] 41/.

4. Wherever in this article a compensation or payment limit is stated in terms of "net emoluments" for a specified period, the amount of the limit shall be calculated on the basis of the applicant's current emoluments or his final emoluments before separation, taking into account those emoluments that are specified for determining the amount of a Termination Indemnity under the Staff Regulations, and shall be subject to the reimbursement of any national income tax that may be imposed on the compensation. 36/

ILOAT text

Article VIII (Cont.)

4. If the Tribunal finds the complaint well founded in whole or in part or if it considers that a point of law of exceptional importance is raised by it, it may award the complainant compensation for such reasonable costs as he may have incurred in instituting proceedings before the Tribunal.

3. If the Tribunal finds the complaint to have been clearly devoid of any chance of success it may, if it considers it appropriate, order the complainant to pay the costs involved for the Tribunal and the defendant, up to an amount not exceeding the equivalent of one month's net emoluments.

ARTICLE IX

[3.]2. Any compensation awarded by the Tribunal shall be chargeable to the budget of the International Labour Organisation.

(See also annex to the statute, article IX, para. 3, below)

3. Wherever in this statute a compensation or payment limit is stated in terms of "net emoluments" for a specified period the amount of the limit shall be calculated on the basis of the applicant's current emoluments or his final emoluments before separation, taking into account those emoluments that are specified for determining the amount of a termination indemnity under the Staff Regulations, and shall be subject to the reimbursement of any national income tax that may be imposed on the compensation.

(JUDGEMENTS)

ARTICLE 10

1. The Tribunal shall take all decisions by a majority vote.

2. Subject to the provisions of articles 11, 11 bis 42/ and 12, the judgements of the Tribunal shall be final and without appeal.

3. The judgements shall state the reasons on which they are based.

4. The judgements shall be drawn up, in any of the [five] 32/ official languages of the General Assembly [United Nations] 32/, in two originals, which shall be deposited in the archives [of the Secretariat] 1/ of the United Nations.

5. A copy of the judgement shall be communicated to each of the parties in the case. Copies shall also be made available on request to interested persons.

Article VI

1. The Tribunal shall take decisions by a majority vote.[;] Save as provided for in Article XII, judgments shall be final and without appeal.

2. The reasons for a judgment shall be stated ...

3. Judgments shall be drawn up in a single copy, which shall be filed in the archives of the International Labour Office, where it shall be available for consultation by any person concerned.

2. ... The judgment shall be communicated in writing to the Director-General of the International Labour Office and to the complainant.

(See also annex to the statute, article VI, paras. 2 and 3 below)

.../

UNAT text

ILOAT text

(REVIEW OF JUDGEMENTS AT REQUEST OF STATES OR ORGANS)

ARTICLE XI

1. If a Member State[, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including any one who has succeeded to that person's rights on his death)] 43/ objects to a [the] 1/ judgement on the ground that the Tribunal has exceeded its jurisdiction or competence [or that the Tribunal has failed to exercise jurisdiction vested in it,, 44/ or has erred on a question of law relating to the provisions of the Charter of the United Nations or any other relevant international treaty, 44/ [or has committed a fundamental error in procedure which has occasioned a failure of justice,] 44/ such [Member] State [, the Secretary-General or the person concerned] 43/ may, within thirty days from the date of the judgement 45/, make a written application to the Tribunal asking 46/ the Committee established by paragraph 4 of this article [asking the Committee] 46/ to request an advisory opinion of the International Court of Justice on the matter.

2. Within thirty days from the receipt of an application under paragraph 1 of this article 47/, the Committee shall decide whether or not there is a substantial basis for the application; it may for this purpose request the advice of the Review Panel established by paragraph 3 of article 11 bis 48/. If the Committee decides that such a basis exists, it shall request an advisory opinion of the Court, and the Secretary-General shall arrange to transmit to the Court the views of the person in respect of whom the judgement has been rendered by the Tribunal (including any one who has succeeded to that person's rights on his death) [referred to in paragraph 1] 43/.

3. If no application is made under paragraph 1 of this article, or if a decision to request an advisory opinion has not been taken by the Committee[,] within the periods prescribed in this article, the judgement of the Tribunal shall become final. In any case in which a request has been made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it shall confirm its original judgement[,] or give a new judgement, in conformity with the opinion of the Court. If not requested to convene specially the Tribunal shall at its next session confirm its judgement or bring it into conformity with the opinion of the Court.

4. For the purpose of this article, a Committee is established and authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. The Committee shall be composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The Committee shall meet at United Nations Headquarters and shall establish its own rules, including definitions of the time limits prescribed in paragraphs 1 and 2 of this article. 49/

ARTICLE XII

2. In any case to which the Administrative Board of the Pension Fund** is a party and considers that the Tribunal has exceeded or failed to exercise its jurisdiction or that its judgement is vitiated by a fundamental error of procedure, the question of the validity of the judgement of the Tribunal may also be submitted to the International Court of Justice by the Governing Body, after having sought the advice of the Joint Panel provided for in paragraph 3 below.

4.[2] Whenever the Governing Body decides to request an advisory opinion, the opinion given by the Court shall be binding and, where necessary, the Tribunal shall bring its judgement into conformity with that opinion.

** N.B. This provision refers exclusively to the ILO Staff Pension Fund, taken over from the League of Nations upon the latter's dissolution, which no longer has any active participants.

UNAT text

ARTICLE 11 (Cont.)

5. In any case in which an 1/ award of compensation has been made by the Tribunal in favour of the person concerned and the Committee has requested an advisory opinion under paragraph 2 of this article, the respondent [Secretary-General], 50/ if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one-third of the total amount of compensation awarded by the Tribunal less such termination benefits, if any, as have already been paid. Such advance payment shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 3 of this article, such person shall pay back to the respondent [United Nations] 50/ the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the judgement of the Tribunal pursuant to that paragraph [opinion of the Court] 1/.

ILOAT text

ARTICLE XII (Cont.)

5. The judgement shall be executed if it has not been challenged within thirty days after it has been delivered or, if it has been so challenged, as the case may be (i) when the Governing Body decides not to request an advisory opinion from the International Court of Justice; (ii) when the Court upholds the judgement of the Tribunal; or (iii) when the Tribunal has brought its judgement into conformity with the opinion of the Court.

6. In any case in which an award of compensation has been made by the Tribunal in favour of the person concerned and the Governing Body has requested an advisory opinion under paragraph 3 of this article, the Director-General of the International Labour Office, if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one-third of the total amount of compensation awarded by the Tribunal less such termination benefits, if any, as have already been paid. Such advance payment shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 4 of this article, such person shall pay back to the Director-General the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the judgement of the Tribunal pursuant to that paragraph.

(REVIEW OF JUDGEMENTS AT REQUEST OF PARTIES)

ARTICLE 11 BIS

1. The Secretary-General or the applicant may, by a written application filed with the Tribunal within thirty days from the date of a judgement, request a review of that judgement on the ground that the Tribunal has:

(a) Exceeded its jurisdiction or competence;

(b) Failed to exercise jurisdiction vested in it;

(c) Erred on a question of law relating to the Charter of the United Nations or any other relevant international treaty;

(d) Committed a fundamental error in procedure [which has occasioned a failure of justice]; 51/

[(e) Based the judgement on a reason not argued by either party;

(f) Departed, without justification, from jurisprudence well established by itself or by the Administrative Tribunal of the International Labour Organisation in relation to the common system of staff administration]. 52/

No review may be requested in respect of a judgement rendered pursuant to sub-paragraph (c) of paragraph 2A of article 2.

ARTICLE XII

1. [In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.] When a judgement by the Tribunal is challenged before the Governing Body of the International Labour Office, whether by a Member State or member of the Governing Body, on the grounds that the Tribunal has exceeded or failed to exercise its jurisdiction or erred on a question of law relating to a constitutional provision or any other relevant international treaty, or by one of the parties to the judgement on any of the grounds referred to above or on the ground that the judgement is vitiated by a fundamental error of procedure, the Governing Body may, after having requested the advice of the Joint Panel provided for in paragraph 3 below, submit the question of the validity of the Tribunal's judgement to the International Court of Justice for an advisory opinion. Any such challenge must be made through the Registrar of the Tribunal within thirty days of the judgement challenged.

UNAT text

ARTICLE 11 BIS (Cont.)

2. Any request for a review of a judgement pursuant to paragraph 1 shall be considered and decided as expeditiously as possible by the Joint Panel established by paragraph 3 of this article, which may:

(a) Decline to consider the judgement;

[(b) [Confirm or modify the judgement; articles 9-12 shall apply to the decisions of the Joint Panel, mutatis mutandis; 53/]]

(c) Request an advisory opinion of the International Court of Justice in relation to the judgement; upon receiving such an opinion, the Review Panel shall issue its decision in conformity with that opinion; paragraphs 2, 3 and 5 of article 11 shall apply, mutatis mutandis. 54/

3. For the purpose of this article [and article 2 quatro], 27/ a Joint Panel is established consisting of the President of the Tribunal (or, if he is unavailable or excuses himself, the most senior available member), the President of the Administrative Tribunal of the International Labour Organisation (or, if he is unavailable or excuses himself, the most senior available member of that tribunal) and a Chairman appointed for a specified period by the President of the International Court of Justice after consultations with the Presidents of these two Tribunals. The Panel shall establish its own rules for the expeditious conduct of its business on the basis of succinct written pleadings. 55/

4. The Joint Panel established by paragraph 3 of this article shall also:

(a) Advise the Committee established by paragraph 4 of article 11, if it should so request, as to the formulation of any requests for an advisory opinion to be addressed to the Court pursuant to paragraph 2 of that article; 48/

(b) Carry out such functions as are provided for it by the Statute of the Administrative Tribunal of the International Labour Organisation. 56/

ILOAT text

ARTICLE XII (Cont.)

3. The Joint Panel shall be composed of the President of the Administrative Tribunal of the International Labour Organisation (or if he is unavailable or excuses himself, the most senior available member of the Tribunal), the President of Administrative Tribunal of the United Nations (or if he is unavailable or excuses himself, the most senior available member of that Tribunal) and a chairman appointed for a specified period by the President of the International Court of Justice after consultation with the Presidents of the two Tribunals. If the Panel, stating the reasons therefor, considers that the challenge is unfounded it shall recommend that no further action shall be taken. If the Panel, stating the reasons therefor, considers by a majority decision that the challenge has merit, it shall formulate the questions to be submitted to the International Court of Justice for the consideration of the Governing Body. The Panel shall establish its own rules for the expeditious conduct of its business on the basis of succinct written pleadings.

(REVISION OF JUDGEMENTS)

ARTICLE 12

1. 57/ At the request of any of the parties, [The Secretary-General or the applicant may apply to] the Tribunal may revise [for a revision of] a judgement on the basis any [of the discovery of some] fact or evidence of such a nature as to be a decisive factor and which the moving party was not able to rely on in the original proceeding[, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence]. The request [application] must be made within ninety [thirty] days of the discovery of the fact or evidence and within three [one] years of the date of the judgement 58/.

(Article VIII bis)

1. At the request of any of the parties, the Tribunal may revise a judgment on the basis of any fact or evidence of such a nature as to be a decisive factor in the decision and which the moving party was not able to rely on in the original proceedings. The request must be made within ninety days of the discovery of the fact or evidence and within three years of the date of the judgment.

UNAT text

ARTICLE 12 (Cont.)

2. 57/ Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either on [of] its own motion or at [on] the request [application] of any of the parties 1/.

3. In the event the Tribunal, at the request of any of the parties made within ninety days of the date of a judgement, finds that it has failed to rule on a plea in the original proceeding, the Tribunal shall complete its judgement. 59/

4. In the event of dispute as to the meaning or scope of a judgement, the Tribunal shall construe it at the request of any of the parties [made within one year of the date of the judgement] 60/.

ILOAT text

(Article VIII bis) (Cont.)

2. Clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission may at any time be corrected by the Tribunal either on its own motion or at the request of any of the parties.

3. In the event that the Tribunal at the request of any of the parties made within ninety days of the judgment finds that it has failed to rule on a plea made in the original proceedings, the Tribunal shall rule on that plea.

4. In the event of dispute as to the meaning or scope of a judgment, the Tribunal shall construe it upon the request of any of the parties made within one year of the date of the judgment.

(AMENDMENT OF STATUTES)

ARTICLE 13

The present statute may be amended by decision[s] 1/ of the General Assembly.

ARTICLE XI

The present Statute shall remain in force during the pleasure of the General Conference of the International Labour Organisation. It may be amended by the Conference or such other organ of the Organisation as the Conference may determine.

(JURISDICTION OVER OTHER ORGANIZATIONS)

ARTICLE 14

The competence of the Tribunal may be extended to any organization that has accepted the Statute of the International Civil Service Commission [specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter] or to any other international organization specified by the General Assembly, 61/ upon [the] 1/ terms established by a special agreement to be made with each such organization [agency] 61/ by the Secretary-General [of the United Nations] 1/. Each such special agreement shall provide that the organization [agency] 61/ concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member or other employee 62/ of that organization [agency] 61/ and shall include, inter alia, provisions concerning the organization's [agency's] 61/ participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal; each such special agreement shall also specify whether and how the provisions of articles 2, [2 bis] 7, 9, 11 and 11 bis shall apply, mutatis mutandis, in respect of proceedings relating to the organization concerned 63/.

ARTICLE II

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other intergovernmental international organisation approved by the Governing Body which has addressed to the Director-General of the International Labour Office a declaration recognising, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure. Such a declaration may also recognise the competence of the Tribunal under the provisions of paragraph 4, but only in relation to contracts of employment or services, and paragrah 4 bis of this article and of article II bis.

(See also the annex to the statute, below)

/...

UNAT text

ILOAT text

ANNEX TO THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANISATION***

The Statute of the Administrative Tribunal of the International Labour Organisation applies in its entirety to those international intergovernmental organisations which, in accordance with their Constitution or internal administrative rules, recognise the jurisdiction of the Tribunal and formally declare that they adopt its Rules of Procedure in accordance with paragraph 5 of article II of the Statute, subject to the following provisions which, in cases affecting any one of these organisations, are applicable as follows:

Article VI, paragraph 2.

The reason for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office, to the Director-General of the international organisation against which the complaint is filed, and to the complainant.

Article VI, paragraph 3.

Judgments shall be drawn up in two copies, of which one shall be filed in the archives of the International Labour Office and the other in the archives of the international organisation against which the complaint is filed, where they shall be available for consultation by any person concerned.

Article IX, paragraph 2.

Expenses occasioned by the sessions or hearings of the Administrative Tribunal shall be borne by the international organisation against which the complaint is filed.

Article IX, paragraph 3.

Any compensation awarded by the Tribunal shall be chargeable to the budget of the international organisation against which the complaint is filed.

Article II bis and Article VIII, paragraph 2

The Executive Head of the organisation concerned will make the request.

*** This annex, setting forth the modifications to the ILOAT statute as applied to those intergovernmental organizations that have recognized its jurisdiction in accordance with article II (5) of the statute, is to be revised in the light of the proposed modifications to the statute as applied to ILO. In particular, it is intended that competence over contracts with persons employed by or performing services for an organization other than ILO be extended in respect of all organizations that have recognized the competence of ILOAT; likewise it will be necessary to specify the manner in which the provisions of article XII, as modified, will apply to organizations other than IIO.

UNAT text

ILOAT text

Article XII

[Article XII, paragraph 1.

In any case in which the Executive Board of an international organisation which has made the declaration specified in article II, paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted to the Executive Board concerned, for an advisory opinion, to the International Court of Justice.]

Article XII of the Statute of the Tribunal shall apply, mutatis mutandis, to the organisations which have made the declaration specified in Article II, paragraph 5, of the Statute of the Tribunal.

Article XII, paragraph 6

The Executive Head of the organisation concerned will make the payment in question.

B. Rules of the United Nations Administrative Tribunal (Extract)

Proposed revisions and partial comparison to ILOAT rules

UNAT text	ILOAT text
Chapter I. Organization	CHAPTER I. Organization
Chapter II. Sessions	
ARTICLE 6	Statute Article III
1. The President shall designate the three members of the Tribunal who, in accordance with article 3 of the Statute, shall constitute the Tribunal for the purpose of sitting in each particular case or group of cases. The President may, in addition, designate a member [one or more members] of the Tribunal to serve as an alternate[s], who shall not participate in the decisions of the Tribunal except in the absence of one of the members designated pursuant to the first sentence. 64/	4. A meeting of the Tribunal shall be composed of three members, of whom one at least must be a judge.
Chapter III. Written proceedings	CHAPTER II. Procedure
ARTICLE 13	ARTICLE 13
An applicant may present his case before the Tribunal in person, in either the written or oral proceedings. Subject to article 7 of these rules, he may designate a staff member of the United Nations or one of the organizations referred to in article 14 of the Statute [specialized agencies] 65/ so to represent him, or may be represented by counsel authorized to practice in any country a member of the organization concerned. The President or, when the Tribunal is in session, the Tribunal may permit an applicant to be represented by a retired staff member of the United Nations or one of the above-specified organizations [specialized agencies] 65/.	1. During the oral proceedings the complainant may either present his case personally or designate as his representative an agent who must be a member of the Bar in a State Member of the defendant organisation. The complainant may also, with the authorisation of the President, be represented by an official of an organisation having recognised the competence of the Tribunal possessing the requisite qualifications.
Chapter IV. Oral proceedings	
Chapter V. Additional documentation during the proceedings	
Chapter VI. Remand of a case under article 9, paragraph 2, of the Statute	
Chapter VII. Intervention	
ARTICLE 19	ARTICLE 17
1. Any person to whom the Tribunal is open under article 2, 2 tres or [paragraph 2, and article] 66/ 14 of the Statute may apply to intervene in a case at any stage thereof on the ground that he has a right which may be affected by the judgement to be given by the Tribunal. He shall for that purpose draw up and file an application in form of annex II for intervention in accordance with the conditions laid down in this article.	2. Any person to whom the Tribunal is open under article II of its Statute may apply to intervene in a case on the ground that he has a right which may be affected by the judgment to be given. 4. Applications to intervene may be made at any stage. The Tribunal shall decide whether they shall be allowed.

UNAT text

ARTICLE 20

The Secretary-General of the United Nations, the chief administrative officer of an organization referred to in article 14 of the Statute [a specialized agency] 65/ to which the competence of the Tribunal has been extended in accordance with the Statute, or the Secretary [Chairman] 67/ of the Joint Staff Pension Board, may, on giving previous notice to the President of the Tribunal, intervene at any stage, if they consider that their respective administrations may be affected by the judgement to be given by the Tribunal.

Chapter VIII. Applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund

Chapter IX. Miscellaneous provisions

ARTICLE 23

2[1]. The Tribunal, at its discretion, may grant a hearing[, for purposes of information,] to any other person or entity [to whom the Tribunal is open under paragraph 2 of article 2 of the Statute even though they are not parties to the case, whenever such persons may be] expected to furnish information pertinent to the case. 68/

1[2]. The Tribunal may[, in its discretion,] grant a hearing to recognized [duly authorized] representatives of [the] staff representative organs [association] 69/ of the organization concerned. 68/

ARTICLE 24

1. The Tribunal or, in the interval between its sessions, the President or the presiding member may shorten or extend any time limit fixed by these rules.

2. The Tribunal shall appropriately suspend the provisions as to time limits in these rules and in article 7 of the Statute if the respondent has proposed to a prospective applicant that he delay the submission of an application pending the judgement of the Tribunal on another application raising similar issues, should the dispute with the prospective applicant not be satisfactorily resolved after such judgement has been rendered. 70/

ILOAT text

1. The Director-General of the International Labour Office, the Chairman of the Administrative Board of the Pensions Fund, or their representatives, may, on giving previous notice to the President of the Tribunal, intervene if they consider that their respective administrations may be affected by the decision to be taken by the Tribunal.

ARTICLE 18

The Tribunal or, in the interval between its sessions, the President, may shorten or extend any time limit fixed by the present Rules.

UNAT text

ILOAT text

(Proposed new chapters)

A. Conduct of proceedings under subparagraphs 2A(a)-(c) of article 2 of the statute (applications from other than staff members) 71/

[B. Conduct of proceedings pursuant to article 2 bis relating to a claim by the employing organization, 71/]

[C. Conduct of advisory proceedings pursuant to article 2 quatro of the statute 71/]

D. Conduct of revision proceedings under article 12(1) of the statute 71/

E. Conduct of correction proceedings under article 12(2) of the statute 71/

F. Conduct of interpretation proceedings under article 12(4) of the statute 71/

G. Award of costs pursuant to article 9(2A) of the statute 71/

H. Selection, terms of appointment and functioning of the Assessor pursuant to article 5 bis of the statute 71/

[I. Joint proceedings with the Administrative Tribunal of the International Labour Organisation] 72/

/...

C. Elements of a draft General Assembly resolution

Harmonization and further development of the statutes, rules and practices of the administrative tribunals of the International Labour Organisation and of the United Nations

The General Assembly,

Recalling its resolution 351 A (IV) of 24 November 1949 by which it established the United Nations Administrative Tribunal and adopted the statute of the Tribunal, and resolutions 782 B (VIII) of 9 December 1953 and 957 (X) of 8 November 1955 by which it amended that statute,

Having received the report of the Secretary-General on this subject (A/42/328) submitted in response to decisions 34/438 of 17 December 1979 and 36/453 of 18 December 1981, resolution 37/129 of 17 December 1982 and decision 38/409 of 25 November 1983,

Having considered the relevant parts of the report of the United Nations Joint Staff Pension Board for 1984, 73/

1. Decides to amend the statute of the United Nations Administrative Tribunal, effective 1 January 1988 with respect to judgements rendered by the Tribunal thereafter, as specified in annex I A to the report of the Secretary-General;

2. Requests the United Nations Administrative Tribunal to consider amending the rules of the Tribunal along the lines indicated in annex I B to the report of the Secretary-General;

3. Recommends that the International Labour Organisation consider amending the statute of its Administrative Tribunal and that the Tribunal amend its rules along the lines indicated in the report of the Secretary-General;

4. Decides to amend paragraph (c) of article 48 of the Regulations of the United Nations Joint Staff Pension Fund to read as follows:

> "Subject to the relevant provisions of the Statute of the Tribunal, its judgements as to any application submitted pursuant to this article shall be final and without appeal." 74/

5. Further recommends that organizations to which the competence of the United Nations Administrative Tribunal is extended pursuant to article 14 of its statute and those that accept its jurisdiction in respect of Joint Staff Pension Fund cases pursuant to the Regulations of the Fund and in response to resolution 678 (VII) of 21 December 1952 should do so also in respect of the review procedures for Tribunal judgements specified in articles 11 and 11 bis of its Statute; 75/

6. Decides that the appointment of members of the United Nations Administrative Tribunal will be considered by the Sixth Committee 76/ [, which

should take into account the qualification of candidates to perform a judicial function and their experience with international administrative or labour questions]; 77/

7. Withdraws the recommendation set out in paragraph 2 of its resolution 957 (X), on the understanding that it is for the International Court of Justice to determine its own procedure in each particular case in accordance with its Statute and the Rules of the Court; 78/

8. Recommends that the Administrative Tribunals of the United Nations and of the International Labour Organisation continue their informal contacts, through meetings and otherwise, for the resolution of common problems and issues and for the exchange of information about their respective jurisprudence and consider the establishment of joint administrative machinery for the purpose of preparing indices or repertories of decisions; 79/

9. Requests the Secretary-General, in his capacity as Chairman of the Administrative Committee on Co-ordination, to assist the Tribunals in carrying out the recommendations set out in paragraph 8 above; 79/

[10. Requests the Secretary-General to study the question of securing recognition by, and the enforceability through, national courts of Tribunal judgements concerning a claim by an employing organization. 80/]

Notes

1/ Editorial change.

2/ In spite of the apparently extensive coverage of this subparagraph, its drafting history and its subsequent interpretation by UNAT (see in particular Kimpton v. the Secretary-General of the United Nations (Judgement No. 115) indicates that it refers solely to certain beneficiaries of officials (i.e., to persons covered by ILOAT statute article II, para. 6 (b)).

3/ For purposes of clarity, paragraphs or articles proposed to be inserted between existing provisions are, for the most part, assigned temporary numbers in this draft, to be replaced by consecutive numbering if the proposed amendments are adopted.

4/ See para. 19 of the commentary above. Unless otherwise indicated, all paragraph references in these notes are to that section of the present document.

5/ See para. 21.

6/ See para. 23.

7/ Proposed deletion of a transitional provision of no current significance.

8/ See para. 32.

Notes (continued)

9/ In order to eliminate the anomaly whereby a significant part of the jurisdiction of the Tribunal, i.e. that relating to the United Nations Joint Staff Pension Fund, is not referred to at all in the statute of the Tribunal, it is proposed to add a new article 2 tres, which is so formulated that any amendment of the relevant provisions of the Pension Fund Regulations (at present art. 48) would not normally require any further amendment of the Tribunal's statute.

10/ See para. 92.

11/ This provision would codify the prevailing practice.

12/ See para. 30.

13/ See para. 12. As an alternative, the bracketed words could be added to paragraph 6 of the proposed draft General Assembly resolution in annex I C.

14/ As suggested by UNAT (annex II, para. 21), evidently to clarify a point addressed by the International Court of Justice in its advisory opinion on the Mortished case (op. cit., p. 375, paras. 35-37).

15/ See para. 14.

16/ It is proposed to renumber paragraphs 3, 5 and 6 of article 3 in a more logical order.

17/ It is proposed that present paragraph 4 of article 3 become the first sentence of a new first paragraph of article 5 in which it seems more logically to belong.

18/ To clarify the procedure, in the same sense as is being proposed in a new provision to be inserted into the ILOAT statute, for dismissing a member of UNAT.

19/ As proposed by UNAT (annex II, para. 24).

20/ Addition proposed to assure consistency with the penultimate clause of article 14, and taking into account paragraph 2 of proposed new article 2 tres.

21/ See para. 97.

22/ Consequential on the proposed addition of article 5 bis.

23/ See para. 44.

24/ Consequential on the proposed extension of the jurisdiction of the Tribunal (see paras. 17-18) by the addition of proposed new paragraph 2A of article 2.

Notes (continued)

25/ Consequential on the tentatively proposed extension of the jurisdiction of the Tribunal (see para. 32) by the addition of new article 2 bis.

26/ Consequential on the proposed addition of new article 2 tres (see note 9 above). Such provisions already exist in chapter VIII of the rules of the Tribunal.

27/ Consequential on the tentatively proposed new article 2 quatro.

28/ In view of the increasing number of applications under existing article 12 and the proposed addition of two new provisions as paragraphs 3 and 4, it may be useful for the parties to receive guidance as to the method of initiating and conducting post-judgement proceedings in the Tribunal.

29/ Consequential on the proposed addition of new paragraph 2A of article 9. See para. 67.

30/ Consequential on the proposed addition of new paragraph 2A of article 2, to which article 7 cannot apply.

31/ See subpara. 37 (a).

32/ Required by General Assembly resolution 35/219 A, paragraph 1. As proposed to be formulated, the languages used by the Tribunal would in the future always be automatically adjusted to those of the General Assembly (at present the six languages specified in rule 51, A/520/Rev.15).

33/ As the second and subsequent sentences of the present paragraph 1 of article 9 cannot apply to applications submitted pursuant to the proposed new paragraph 2A of article 2 or to the proposed new article 2 tres, it is proposed that these sentences be separated into a new paragraph 1A of article 9, applicable solely to applications submitted pursuant to paragraph 1 of article 2.

34/ See para. 55.

35/ See subpara. 62 (b).

36/ See para. 63.

37/ To broaden the applicability of this provision to apply also to applications submitted pursuant to proposed new paragraph 2A of article 2 and proposed new article 2 tres, it is proposed to substitute a phrase from the second sentence of article 2(1).

38/ See para. 49.

39/ See para. 67 and note 23 to para. 64.

40/ See subpara. 37 (b).

Notes (continued)

41/ Consequential in part to the proposed addition of subparagraph (c) of proposed new paragraph 2A of article 2, as well as of article 2 tres, which may result in proceedings in which the United Nations is not the respondent, and in part to the proposed amendment to article 14.

42/ Consequential on the proposed addition of new article 11 bis.

43/ See paras. 75-76 and 86 (a).

44/ See paras. 84 and 86 (a).

45/ Under article II.1 of the rules of procedure of the Committee on Applications for Review of Administrative Tribunal Judgements (A/AC.86/2/Rev.3), the date of the Tribunal's judgement "shall be considered to be the date on which it has been received by the parties to the proceedings before the Tribunal, which date shall be presumed to be two weeks after the dispatch of copies thereof by the Executive Secretary of the Tribunal". Furthermore, the Committee agreed that the date so specified "should have the status of a presumption only, so that it would be open to either party to the proceedings to show that the actual date of receipt of a judgement delivered by the Administrative Tribunal was later than two weeks after its dispatch by the Executive Secretary" (ibid., footnote 1/ and A/AC.86/28, para. 4).

46/ It is proposed that henceforth applications to the Committee on Application for Review be submitted to the Tribunal (i.e., to its Executive Secretary), as would also be the case, under proposed article 11 bis, paragraph 1, of applications to the joint panel; this would mean that the Committee would no longer need to have its own secretary.

47/ Under the same provision referred to in footnote 45/, "the date of receipt of an application is the date when copies of that application are dispatched to the members of the Committee [on Applications for Review] by the Secretary of the Committee".

48/ See para. 86 (a).

49/ Addition proposed in order to ensure that rules such as those referred to in notes 45 and 47 are considered valid.

50/ To achieve consistency and to take account of situations in which the United Nations is not the respondent organization (under proposed art. 2 tres or under art. 14).

51/ The bracketed words, which do not appear in article XII, paragraph 1, of the ILOAT statute, were included in article 11, paragraph 1, of the UNAT statute when that provision was added as an adaptation of the earlier ILOAT provision.

52/ See paras. 85 and 86 (b).

Notes (continued)

53/ See paras. 80 and 86 (b).

54/ See paras. 83 and 86 (b).

55/ See para. 86 (b).

56/ See para. 89.

57/ Since proceedings to revise a judgement on the basis of newly discovered facts are different from those for the correction of errors, it is proposed to separate existing article 12 into two paragraphs; such a change is particularly desirable because of the proposed addition of two new post-judgement procedures in new paragraphs 3 and 4.

58/ See para. 69.

59/ See para. 70.

60/ See para. 72.

61/ Since the primary purpose of article 14 is to permit UNAT to serve also the other organizations of the common system, it is proposed to delete the specific reference to the specialized agencies (some of which, such as the World Bank and IMF, do not follow the common system), and to substitute the criterion that at present defines membership in the common system (i.e., acceptance of the ICSC Statute), which would also include organizations, such as IAEA, that are not specialized agencies. In addition to the common system organizations, which may submit to UNAT without further action of the General Assembly, it is proposed that the Tribunal might also be opened to other international organizations specified by the General Assembly.

62/ See para. 20.

63/ To permit organizations that submit pursuant to article 14 to specify to what extent they wish to make use of the provisions relating to:

(a) Proceedings other than applications brought by staff members (art. 2(2A));

(b) Claims by employing organizations against staff members (art. 2 bis);

(c) Internal appeals procedures (art. 7),

(d) Compensation and costs (art. 9);

(e) Review of judgements (arts. 11 and 11 bis).

64/ Consequential on the proposed addition to article 3(1) of the statute.

Notes (continued)

65/ Consequential on a proposed amendment to article 14 of the statute (see note 61 above).

66/ Consequential on the proposed addition of articles 2(2A) and 2 *tres* to the statute.

67/ It is the Secretary of UNJSPB, appointed in accordance with article 7(a) of the UNJSPF Regulations, who corresponds most closely to the chief administrative officer of an agency and who is the appropriate source of notices issued pursuant to article 30 of the UNAT Rules.

68/ See para. 44.

69/ To reflect the new language of United Nations Staff Regulation 8.1(b).

70/ See para. 47.

71/ New rules called for by proposed new subparagraphs 2 (f)-(k) and 2 (a) of article 6 of the statute (see notes 22 and 24-29 above).

72/ See paras. 96 (e) and 97.

73/ *Official Records of the General Assembly, Fortieth Session, Supplement No. 9* (A/40/9).

74/ See para. 92 (a).

75/ See para. 92 (c).

76/ See para. 12.

77/ See para. 12. This text may be considered as an alternative to the language proposed to be added to article 3(1) of the regulations (see annex I A).

78/ See para. 95.

79/ See paras. 96 (a)-(c) and 97.

80/ See para. 32.

ANNEX II

Comments by the United Nations Administrative Tribunal on the note by the Office of Legal Affairs entitled "Harmonization and further development of the statutes, rules and practices of ILOAT and UNAT: draft proposals"*

1. The Tribunal welcomes the study initiated by the General Assembly of measures that might be taken to harmonize the proceedings of the two common system administrative tribunals and at the same time to improve the statutes and rules of the two tribunals. If the General Assembly decides to pursue this subject, the Tribunal would be glad to respond to questions Member States may wish to ask, and to comment on developments, possibly by means of an oral presentation. The Tribunal would like also to suggest the possibility of inviting the participation of Madame Paul Bastid, a principal architect of the Statute of the Tribunal, a member from 1950 to 1982, and its President during two substantial periods; she could provide valuable views on many facets and problems of the Tribunal's work.

2. Composition of the Tribunal (paras. 11-16). The Tribunal is unable to agree with any suggestion that members of UNAT should have held high judicial office in their own countries. Such a qualification has been regarded as unduly limiting even in the case of the International Court of Justice and, had it been in effect, would have deprived UNAT of some of its most distinguished members. Consequently, the Tribunal believes that the provisions of and practice under article 3 of the statute should be maintained.

3. The Tribunal also cannot support the proposal that, in place of the current system of nominations and elections, members of UNAT should be proposed by the Secretary-General. Bearing in mind the desirability of maintaining the independence of the Tribunal, it is not appropriate to give an enhanced role in the selection of members to the Secretary-General who is, after all, the respondent in most cases coming before UNAT.

4. Jurisdiction (paras. 17-32). The Tribunal sees no objection to extending its jurisdiction to (a) limited special categories of officials who while not staff members hold a remunerated United Nations post, (b) consultants and other holders of Special Service Agreements and (c) employees of staff representative organs and staff enterprises. But it has considerable reservation concerning the proposal to give it jurisdiction over "other contractual disputes", which the proposal does not define but which, if they had a principally commercial rather than personnel or administrative character, could carry the Tribunal into quite different fields.

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* These comments refer to an earlier version of the present paper and consequently do not take account of changes made subsequently, whether in response to these comments or otherwise, except that the paragraph references have been adjusted to refer to the present text.

5. The Tribunal has considerable doubt whether the better administration of the Secretariat would be furthered by the proposal to give UNAT the power to deliver advisory opinions at the request of the Secretary-General. Any tendency for the Secretary-General, before deciding on difficult or controversial matters, to turn first to the Tribunal, thus interposing the Tribunal in the operation of the Secretariat, would be undesirable. The Tribunal believes that its role is better limited to review in the course of subsequent challenge to decisions of the Secretary-General, as has been the case since its establishment by the General Assembly.

6. Prerequisites for proceedings (paras. 33-37). The Tribunal questions whether the Joint Appeals Board should have the power to prevent an application from reaching UNAT if the Board finds unanimously that the application is "clearly devoid of merit". From the purely legal point of view, it would be more desirable for the statute to leave to the Tribunal, in the light of its jurisprudence, the final decision whether an application has any merit.

7. It may also be questioned whether the Tribunal should be authorized to impose costs on an applicant, even if limited to one month net emoluments. Many of the cases before UNAT involve persons no longer in the service of the United Nations, which would mean that, if imposed in such instances, costs would be difficult to collect.

8. Procedures (paras. 38-47). The Tribunal has no comments to offer.

9. Remedies (paras. 48-67). From the viewpoint of the Tribunal, increasing the amount of monetary compensation it can award from two to three years of emoluments, as with the World Bank Tribunal (the ILO Tribunal has no limit), does not seem necessary; UNAT awards have only once since 1950 invoked the statute's power exceptionally to make an award greater than two years net base salary. This is a question of policy which may depend in part on how far the General Assembly wishes to pursue "harmonization".

10. The proposal to include a new paragraph 2A in article 9 of the statute in order to provide standards for awarding costs to an Applicant appears to be unduly complicated. If change is thought desirable, a reform along the lines proposed to ILOAT may be preferable, namely, to revise UNAT's statute to provide that "If the Tribunal finds the application well-founded in whole or in part, it may award to the applicant compensation for reasonable costs incurred by him in instituting proceedings before the Tribunal".

11. Post-judgment proceedings (paras. 68-72). The Tribunal agrees with the suggestion that a request for the interpretation or clarification of a judgment be allowed, but a one-year time-limit should be added.

12. Review of Tribunal judgments (paras. 73-95). The Tribunal thinks appropriate on its part a measure of reticence with regard to matters relating to the review of its judgments.

13. The Tribunal has considered the various proposals presented by the Office of Legal Affairs. It recalls that the current system established by the General Assembly for review of UNAT judgments by the International Court of Justice has proved practicable and useful. The high authority of the Court as reflected in the Fasla and Mortished opinions suggests to the Tribunal that the role of the Court should be retained. The system proposed in article 11 bis, and the changes by way of "harmonization" that would be required in the ILOAT statute, would create new and more difficult problems.

14. The Tribunal considers that the existing system should be retained permitting review to be sought by Member States, by the Secretary-General or by the applicant.

15. The Tribunal also notes that, in the usual case, an applicant has already had recourse to the elaborate procedure of the Joint Appeals Board.

16. There does not seem to be justification for adding another tier in the form of a "review panel" comprising members of both ILOAT and UNAT, as suggested by the Office of Legal Affairs in article 11 bis, which would add significantly to the cost and time required by the judicial process.

17. The Tribunal wishes in this connection to draw attention to the need to reduce the difficulties under which the joint appeals boards operate. The boards constitute an indispensable first phase of the consideration of complaints by staff members concerning non-observance of contracts of employment and terms of appointment. For a long time now, the work of the various boards in New York, Geneva and Vienna has met with serious difficulties because of inadequate human, financial and administrative resources. The Tribunal has in a number of its judgments recalled the maxim that justice delayed is justice denied. However, in spring 1984 it has had to deliver a judgment in a case in which the Joint Appeals Board (Geneva) procedure took a full five years, none of the delays being attributable to the staff member concerned. The Tribunal is also aware that, in New York, the extremely small number of staff members assigned by the Office of Personnel Services to prepare the responses on behalf of the Administration is unrealistic and they cannot perform the work in a timely manner.

18. The Tribunal thus urges that the joint appeals boards be provided with adequate resources so that they can achieve the purposes for which the General Assembly created them when it adopted Staff Regulation 11.1 35 years ago. While the Administrative Tribunal itself has kept pace with its work, the inability of the joint appeals boards to fulfil their functions in a reasonably timely way is harmful to the Organization's staff members, to the appeals system, and to the United Nations.

19. Co-operation between the Tribunals (paras. 96-99). The Tribunal welcomes and is seeking to encourage wider contacts between the members and secretariats of UNAT and ILOAT in order to facilitate the resolution of common problems. It favours a regular joint meeting during the UNAT spring session when the two tribunals are sitting in the same city (Geneva).

20. The Tribunal also believes that consideration should be given to the preparation of joint ILOAT/UNAT repertoires or indices of judgments, which could be very useful in the further harmonization of the work of the two tribunals.

21. Additional matters. The Tribunal has long found it useful to appoint a fourth member to serve in a particular case as an alternate in the event of incapacity of one of the members. If the General Assembly were otherwise to revise the statute, the Tribunal suggests that this practice be codified in a revision of the second sentence of article 3, paragraph 1, of the statute to provide that "Only three shall sit in any particular case but the President may appoint a fourth member to serve as an alternate, who shall have the right to vote if a member is unable to do so".

22. In order to foster the independence of the Tribunal, it is believed that the statute, if otherwise to be revised, should make clear that the concurrence of the Tribunal should be required with respect to the terms of appointment and the actual appointment of the Executive Secretary and staff, rather than their being made solely by the Secretary-General who is a party to most cases coming before the Tribunal. The Executive Secretary and staff, as officials of a judicial body, must have the necessary independence of the parties to proceedings. It is thus suggested for the consideration of the General Assembly that there be added to article 3, paragraph 4, of the statute provision along the lines that:

> "The Executive Secretary and other staff shall be appointed and the relevant conditions of appointment shall be settled in consultation between the Tribunal and the Secretary-General. The Executive Secretary and his staff shall be responsible only to the Tribunal in the exercise of their functions."

ANNEX III

Jurisdiction of the administrative tribunals of the United Nations and the International Labour Organisation

A. UNAT in respect of all staff disputes

United Nations a/	(UN)
International Civil Aviation Organization	(ICAO)
International Maritime Organization	(IMO)

B. UNAT in respect of Pension Board decisions

Registry of the International Court of Justice	(ICJ)
International Fund for Agricultural Development	(IFAD)
International Centre for the Study of the Preservation and the Restoration of Cultural Property b/	(ICCROM)

C. UNAT in respect of Pension Board decisions and ILOAT in respect of all other staff disputes

International Labour Organisation c/	(ILO)
Food and Agriculture Organization of the United Nations	(FAO)
United Nations Educational, Scientific and Cultural Organization	(UNESCO)
World Health Organization	(WHO)
International Telecommunication Union	(ITU)
World Meteorological Organization	(WMO)
World Intellectual Property Organization	(WIPO)
International Atomic Energy Agency	(IAEA)
Interim Commission for the International Trade Organization	(ICITO/GATT)
United Nations Industrial Development Organization	(UNIDO)

D. ILOAT in respect of all staff disputes d/

Universal Postal Union	(UPU)
European Organization for Nuclear Research b/	(CERN)
European Organisation for the Safety of Air Navigation b/	(Eurocontrol)
European Patent Organisation b/	(EPO)
European Southern Observatory b/	(ESO)
Intergovernmental Council of Copper Exporting Countries b/	(CIPEC)
European Free Trade Association b/	(EFTA)
Inter-Parliamentary Union b/	(IPU)
European Molecular Biology Laboratory b/	(EMBL)
World Tourism Organization b/	(WTO)
African Training and Research Centre in Administration for Development b/	(CAFRAD)
Central Office for International Railway Transport b/	(OCTI)
International Center for the Registration of Serials b/	(CIEPS)
International Office of Epizootics b/	(OIE)

Notes

a/ Excepting the Registry of the International Court of Justice (see part B) and UNRWA area staff (see commentary, note 14).

b/ Not a participant in the United Nations common system.

c/ ILOAT also in respect of the ILO Staff Pension Fund and certain private law contracts.

d/ These organizations are not members of the United Nations Joint Staff Pension Fund. The only member organization of the Fund that has not yet agreed to the submission of disputes relating to Pension Board decisions is the European and Mediterranean Plant Protection Organization (EPPO), which is not a participant in the United Nations common system.
