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### OTHER PERSONNEL QUESTIONS

#### Repatriation Grant

#### Note by the Secretary-General

1. The purpose of this note is to inform the General Assembly of the administrative action that the Secretary-General proposes to take following the confirmation by the United Nations Administrative Tribunal of its Judgement No. 273 (Mortished v. the Secretary-General of the United Nations) which was the subject of an advisory opinion of the International Court of Justice (ICJ). 1/
2. In its Judgement No. 273 the Administrative Tribunal recognized that the applicant, Mr. Mortished, was entitled to receive repatriation grant on the terms defined in staff rule 109.5(f), despite the fact that that rule was no longer in force on the date of his separation from the United Nations. The Tribunal ordered payment to him of compensation in the amount of the repatriation grant to which he would have been entitled without evidence of relocation had the Secretary-General not cancelled that rule in pursuance of General Assembly resolution 34/165. A brief account of the facts of the case may be found in paragraphs 10-12 of the ICJ advisory opinion.
3. The International Court of Justice in its advisory opinion concluded that the Tribunal had not erred on any of the grounds which formed the basis for the request for an advisory opinion made by the General Assembly's Committee on Applications for Review of Administrative Tribunal Judgements pursuant to Article 11 of the Tribunal's Statute. In particular, the Court found that the Tribunal had neither erred on a question of law relating to the provisions of the Charter of the United Nations nor exceeded its jurisdiction.
4. Judgement No. 273 became final on 28 September 1982 when the Tribunal confirmed it in the light of the advisory opinion. Mr. Mortished has been paid as

ordered by the Tribunal. There are a number of other claimants whose appeals remain to be adjudicated and future claims of a similar nature are anticipated. The Tribunal's Judgement was solely addressed to the appeal of Mr. Mortished and, as a matter of law, does not compel the Secretary-General to pay other claimants. However, the Secretary-General considers it doubtful that the Tribunal would, in future appeals, under the same regulations, distinguish the rights of other staff members from those of Mr. Mortished on the basis of details of his particular situation. Furthermore, it is unlikely that the Tribunal, and even less likely, that the International Court of Justice would come to a different conclusion. The Secretary-General believes that in order to avoid further prolonged litigation, it would be advisable as well as justifiable to treat similar claims in the same manner as decided by the Tribunal in the Mortished case. It is therefore the Secretary-General's intention to act accordingly with respect to all claims for repatriation grant by staff members who had accrued qualifying service for the grant prior to 1 July 1979.

Notes

1/ International court of Justice, Reports of Judgements, Advisory Opinions and Orders, Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion of 20 July 1982.

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