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Held at Headquarters, New York, on Thursday, 11 November 1999, at 10 a.m.

Chairman: Mr. Mochochoko . . . . . (Lesotho)

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The meeting was called to order at 10.25 a.m.

Agenda item 161: Review of the Statute of the United Nations Administrative Tribunal (*continued*) (A/C.6/54/L.13)

1. **Mr. Thierry** (President of the United Nations Administrative Tribunal) recalled that the Administrative Tribunal, which had been established in 1949, was supposed to settle disputes relating to the work and professional careers of staff of the United Nations and also of the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO), which had accepted its jurisdiction.

2. The work of the Tribunal was indispensable, since it was inconceivable that a dispute arising from relations between United Nations staff members and the Organization could be submitted to a national court without compromising the independence of the international civil service; moreover, if staff members could not seek recourse from an authentic jurisdiction capable of safeguarding their rights, they would be deprived of guarantees that most legal systems conferred on national civil servants.

3. That principle had been acknowledged by the League of Nations, which had set up a Common Administrative Tribunal for the League and the International Labour Office (ILO). After the Second World War, the ILO Administrative Tribunal continued the work of the League of Nations Tribunal, and in 1946 the General Assembly called upon the Secretary-General to establish a committee to draft the statute of a United Nations administrative tribunal; the committee found its work hampered by some Member States who feared that an administrative tribunal would undermine the Secretary-General's authority and, most importantly, could not imagine how the General Assembly could be subject to the dictates of a subsidiary body it had itself created. The Tribunal Statute, adopted in 1949, struck a happy balance between the principle of the Tribunal's authority and a limited notion of its jurisdiction and powers. As early as 1950 the Tribunal's authority had been called into question owing to judgements which had awarded compensation to staff members who had been dismissed on political grounds. The General Assembly had then requested the International Court of Justice to issue an advisory opinion on the legal scope of the Tribunal's decisions; on 13 July 1954 the Court recognized that the Tribunal had full jurisdiction and that its judgements were binding, including on the General Assembly. Since then, there had been no questioning of the Tribunal's authority, and it should be noted that in the 50 years that had elapsed since 1949 every one of the Tribunal's judgements had been implemented without exception.

4. The work of the Tribunal was also difficult. The Tribunal applied its Statute and the Staff Regulations and Rules in the cases submitted to it as well as General Assembly resolutions and administrative instructions. However, those were not the only elements of law applicable to the international civil service in the United Nations. In certain circumstances, the Tribunal had had occasion to refer to the Charter itself, particularly Articles 100 and 101 thereof, which affirmed the independence of the international civil service, and it also applied its own case law, which was characterized by a set of concepts taken from a combination of European administrative law, especially French administrative law, and common law. The Tribunal's case law was also noteworthy from the standpoint of the place it gave to the general principles of law; mention should be made in that connection of the principle of equal treatment, which meant that staff in similar situations enjoyed the same rights, the principle of non-discrimination, which meant, *inter alia*, that women enjoyed the same rights as men in respect of promotion and must be protected from discriminatory practices in the performance of their functions, and the principle of good faith, which meant that staff must not be misled by the administration or denied access to documents that were of interest to them. Respect for due process was always a consideration in the Tribunal's decisions.

5. In fact, by applying general principles, the Tribunal sought, often successfully, to make administrative practice more ethical and, above all, to ensure that justice was done, bearing in mind all the particulars of each case. The Tribunal did not merely try to apply regulations automatically. Judges had to ensure that the law was applied, but they also had to take into account the way in which it was applied. The law operated through general norms, and justice worked on a case-by-case basis, depending on the particulars of each case. Of course it was helpful for judges to have a thorough understanding of the law, but their professional responsibility was made apparent by

their detailed study of the facts, and their talent was measured by the way in which they assessed those facts as they related to the applicable law.

6. Since its establishment 50 years earlier, the Tribunal had issued more than 900 judgements; however, what stood out in its history was that it had generally won the trust of all parties, the staff, the administration and even the States Members of the Organization. The staff's trust was evident in the ever-growing number of appeals lodged, even though the Tribunal had rejected many of them. From 1950 to 1959 the Tribunal had handed down 80 judgements; from 1960 to 1969 it had issued 54; from 1970 to 1979, 118; from 1980 to 1989, 218; and from 1990 to August 1999, 459. The administration, too, had placed its trust in the Tribunal. No judgements had gone unexecuted, and no matter how severe some judgements had been in respect of certain omissions or irregularities committed by the administration, the administration had never raised any objections with the Tribunal. In fact, in proposing a reform of the administration of justice within the Secretariat, criticisms had been directed at the phases of inquiry leading up to the Tribunal's decisions and not against the Tribunal itself.

7. It should also be noted that the Tribunal enjoyed the trust of the Member States, and the revocation of article 11 of the Tribunal's Statute was significant in that regard. After the International Court of Justice issued its opinion in 1954 stating that the General Assembly could not refuse to give effect to obligations arising from the Tribunal's judgements, a review procedure had been instituted which gave Member States the right to question the Tribunal's judgements. Under that procedure, parties and Member States alike could appeal to the Committee for Requests to Review Judgements of the Administrative Tribunal, composed of Member States, which could request an advisory opinion from the International Court of Justice as to the validity of the Tribunal's judgements. That procedure had been applied only three times, in the Fasla (1973), Mortished (1982) and Yakimetz (1987) cases, and in all of them the Court had upheld the Tribunal's judgements, which showed that the review procedure was of little value. Article 11 of the Statute, which referred to that procedure, had been deleted by General Assembly resolution 50/54 of 29 January 1996, with the result that the Tribunal's judgements were now truly final and without appeal. That testified to the trust of Member States, who rejected the right to investigate the Tribunal's judgements by means of a review procedure. Moreover, the aforementioned resolution had been adopted by consensus, which showed that some Member States had moved away from their earlier suspicion. Another sign of confidence in the Tribunal was the fact that the International Court of Justice had recently decided that the Administrative Tribunal would have competence to hear appeals from members of its own secretariat.

8. For half a century the Tribunal had served a purpose and rendered justice. Without disrupting the smooth operation of the administration, it had settled numerous disputes which, while perhaps less pressing than the major problems of the world, were of great importance to the parties concerned, since they affected their situation, the professional careers and, in some cases, their honour.

9. Any institution could be improved, and it was particularly fortunate that the Sixth Committee was to take a decision on certain aspects of the Tribunal's Statute. Some of the proposed reforms could help to improve the functioning of the Tribunal on the basis of experience and enjoyed the support of the Tribunal's members. Such was the case with the proposal to renew the term of office of members with a view to ensuring greater stability in the composition of the Tribunal and allowing it to draw amply on the experience gained by its members in the first years of their terms. Likewise, changing the title of certain posts would be in keeping with the Tribunal's jurisdictional function. Lastly, the procedure whereby the Tribunal could issue a joint statement in the event of disagreement among the members of a panel would prevent judgements from being issued by too small a group of judges. Thanks to those reforms the Tribunal would continue to discharge honourably the mandate it had been given in 1949 for years to come.

10. **Ms. Dickson** (United Kingdom) said that her country attached great importance to the work of the Administrative Tribunal because it was a necessary and valuable part of the United Nations system and because its judgements could have enormous consequences for the system.

11. Given that its Statute should be improved to enable the Tribunal to deal with its ever-heavy workload more effectively, the delegations of France and the United Kingdom, joined now by Ireland, had prepared a draft resolution (A/C.6/54/L.13) which

contained proposals designed to raise the Tribunal's standing and assist its members in their work; none of them radically altered the Tribunal's structure or had any financial implications.

12. The first amendment (para. 1 (a)) corresponded to article 3, paragraph 1, of the Statute and reflected the sponsors' view that the judicial character of the Tribunal would be more evident if the members were titled "judges". In addition, the Statute did not specify qualifications the members should have, but in view of the legal nature and increasing complexity of the issues with which the Tribunal dealt and the importance of its decisions, the wording of the Statute should be brought into line with the statutes of other, similar bodies and stipulate that only persons of high moral character who were qualified for high judicial office in their own countries or who were jurisconsults of recognized competence were eligible for appointment to the Tribunal.

13. Currently, members of the Tribunal were appointed for a three-year period. Paragraph 1 (b) of the draft resolution contained a proposal to increase the term of office to a four-year term that could be renewed once. That would allow members to become fully familiar with the functioning of the Tribunal and would provide for more continuity. Paragraph 2 of the draft addressed the case of existing members of the Tribunal who might be disadvantaged by the new provision and provided that they would be eligible for re-election if they had served not more than six years on the Tribunal and had the relevant legal qualifications.

14. The Statute as currently drafted was silent on the question of the members' independence, their impartiality and their disqualification and recusal from a particular case; the sponsors believed it was appropriate to include such provisions because they conferred on the Tribunal a more judicial and authoritative character.

15. In paragraph 1 (d) of the draft resolution it was proposed that the title of the post of Executive Secretary of the Tribunal should be renamed "Registrar", while in paragraph 1 (e), which partially reflected the existing text, it was proposed that in the exercise of duties under the Statute, the Registrar should act impartially and be responsible to the Tribunal. Those provisions in no way altered the functions or the status of the Executive Secretary.

16. The final amendment proposed to the Statute was contained in paragraph 1 (f) and related to the number of members hearing a case. Currently the Tribunal was required to sit as a panel of three members in each case, pursuant to article 3, paragraph 1, of the Statute. Although that provision was designed to expedite the work of the Tribunal, the sponsors believed that there might be occasions when it would be appropriate for all the members to hear a case, such as when the panel of three judges was of the view that the case raised a significant question of law or when it could not reach a decision by unanimity.

17. **Mr. Alabrune** (France) said that the United Nations Administrative Tribunal, in addition to discharging its duties fully, had won the confidence of Member States, the Secretariat and the staff, and had become a consummate jurisdiction which reflected the contributions of different legal systems. Given that the Tribunal's Statute did not fully correspond to a real jurisdiction, the sponsors of draft resolution A/C.6/54/L.13 were proposing various amendments to that instrument which sought to affirm that jurisdiction.

18. First, to enhance the Tribunal's authority, the draft proposed spelling out in the Statute that Tribunal members would have the title of judge and that the Executive Secretary would be called the Registrar. Second, candidates for judgeships should be persons of high moral character and possess the qualifications required in their respective countries for appointment to high judicial office or be jurisconsults of recognized competence. Third, in order to give the judges time to familiarize themselves with their functions, the sponsors of the draft resolution thought it would be useful for the term of office to be four years, renewable once. Lastly, given that the Tribunal's jurisprudence showed that difficult questions of law or difficulties in reaching a unanimous decision arose frequently, the sponsors believed it would be useful to provide for the possibility of a case being heard by the plenary Tribunal.

19. He hoped that the General Assembly would adopt the amendments during the coming year, which marked the fiftieth anniversary of the Tribunal.

20. **Mr. Kingston** (Ireland) said that he was a firm proponent of increasing the independence and standing of the Administrative Tribunal and, in particular, deleting article 11 of its Statute. Accordingly, he welcomed the draft resolution submitted by France and

the United Kingdom (A/C.6/54/L.13) to that end. In particular, he supported the amendments concerning the qualifications required of judges serving on the Tribunal, the term of office of judges and the possibility of allowing some cases to be heard by the whole Tribunal. Lastly, he requested that both the text of the draft resolution under consideration and the Tribunal Statute itself should use gender-inclusive or gender-neutral language.

21. **Mr. de Saram** (Sri Lanka) said that his delegation was generally supportive of the proposed amendments contained in draft resolution A/C.6/54/L.13 because it believed that the Administrative Tribunal was really an internal court of the United Nations which was necessary because of the immunity from the jurisdiction of national courts enjoyed by the United Nations. That was why the Tribunal had to be vested with the necessary status and safeguards to ensure its impartiality and independence.

22. However, he had reservations concerning the new wording proposed for article 8 of the Statute, since it seemed to imply that it was necessary or useful for Tribunal decisions to be unanimous when, as the case law of other courts showed, divergent opinions were always very valuable. The new article 8 should perhaps be redrafted to address that problem.

23. **Mr. Lavalle-Valdés** (Guatemala) said that in general he supported draft resolution A/C.6/54/L.13, but he wished to make three observations: first, with regard to the proposed wording of article 3, paragraph 3, of the Statute, which prohibited members of the Tribunal from engaging in other activities, the rules of the Tribunal would have to be amended to that end, and that could create practical problems, given that the judges received no remuneration of any kind and so usually had to engage in other activities. With regard to the new paragraph 4, it must be made clear that the right of recusal extended to all parties in a case; lastly, the Tribunal's rules would have to be changed so that the parties to a case could learn which judges were going to hear it sufficiently in advance to be able to exercise their right of recusal with full knowledge of the case.

24. **Mr. Tanzi** (Italy) welcomed the proposed amendments and agreed that the jurisdictional nature of the Administrative Tribunal should be strengthened.

25. **Mr. Tankoano** (Niger) endorsed the remarks made by the representative of Sri Lanka regarding the new text for article 8 of the Statute.

26. **Ms. Telalian** (Greece) said that the proposals by France, Ireland and the United Kingdom were very positive and would help to enhance the functioning of the Administrative Tribunal, the status of its members and the quality of its judgements.

Agenda item 156: Report of the United Nations Commission on International Trade Law on the work of its thirty-second session (*continued*) (A/C.6/54/L.4)

27. **Mr. Marchik** (Austria), introducing the draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-second session" (A/C.6/54/L.4), announced that Armenia, Bolivia, Egypt, Indonesia, Peru, Thailand, Ukraine and Venezuela had joined in sponsoring the draft resolution. The text of the draft was essentially the same as that of the previous year. A new third preambular paragraph had been added in order to take into account the trend towards internationalization in trade relations. Paragraph 7 (a) had been modified to specify the countries in which seminars had been organized and briefing missions held and, in response to the wishes expressed by certain States, the phrase "and enhance" had been added in paragraph 11. His delegation hoped that, as in the past, the draft resolution would be adopted by consensus.

28. **Mr. Al-Baharna** (Bahrain) said that he would have preferred to have paragraph 12 list the conventions emanating from the work of the United Nations Commission on International Trade Law.

29. *Draft resolution A/C.6/54/L.4 was adopted.*

Agenda item 159: Report of the Special Committee on the Charter of the United Nations and on the strengthening of the role of the Organization (*continued*) (A/C.6/54/L.5)

30. **Ms. Flores** (Mexico), introducing the draft resolution entitled "Strengthening of the International Court of Justice" (A/C.6/54/L.5), recalled that the item had been considered by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which had sought comments from States and from the Court with regard

to the increase in the volume of the Court's work. The draft resolution had been adopted by consensus by the Special Committee, and she hoped that it would be adopted in the same manner by the Sixth Committee.

31. *Draft resolution A/C.6/54/L.5 was adopted.*

The meeting rose at 11.30 a.m.