



SUMMARY RECORD OF THE 28th MEETING

Chairman: Mr. VAN DEN HOUT (Netherlands)

Chairman of the Advisory Committee on Administrative and  
Budgetary Questions: Mr. MSELLE

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

AGENDA ITEM 117: ADMINISTRATIVE AND BUDGETARY CO-ORDINATION OF THE UNITED NATIONS WITH THE SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

(b) HARMONIZATION OF THE STATUTES, RULES AND PRACTICES OF THE ADMINISTRATIVE TRIBUNALS OF THE INTERNATIONAL LABOUR ORGANISATION AND OF THE UNITED NATIONS (A/42/328 and A/43/704)

1. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel) said that the question of the harmonization of the statutes, rules and practices of the administrative tribunals of the International Labour Organisation and of the United Nations had been under consideration since the thirty-third session. Owing to the complexity of the Secretary-General's proposals, the General Assembly had requested that they should first be examined in informal inter-sessional consultations. Document A/43/704 described the conduct of those consultations, to which maximum publicity had been given. Revised texts, drafted at the consultations, were contained in annexes I, II and III. It should be noted that the Secretary-General was not presenting those texts as representing a formal consensus, but rather as a set of proposals, arrived at as a result of the consultations, which, in his view, would best enable the General Assembly to conclude its consideration of the matter at the current session. The changes now being proposed were considerably more limited than those which had been submitted at earlier sessions and which had formed the basis of the consultations (A/42/328, annex I).

2. With respect to the composition of the United Nations Administrative Tribunal, there was a proposal to revise article 3, paragraph 1, of its statute to refer to the qualifications of its members. A proposed new paragraph 2A of article 3 would establish a formal procedure for the appointment by the General Assembly of members of the Tribunal, a procedure similar to that applicable to the ILO Tribunal and to the appointment of members of the International Civil Service Commission (ICSC) and the Joint Inspection Unit (JIU). A proposal that the locus of the appointment should be shifted from the Fifth to the Sixth Committee had been abandoned.

3. Extensions, relatively minor in scope, of the jurisdiction of the Tribunal had been proposed in a new paragraph 2A of article 2 as well as in a proposed new article 2 bis. The additions related to persons appointed by the Assembly to remunerated posts, such as members of JIU; to consultants employed on special service agreements; and to persons employed by certain United Nations related staff enterprises. Under specified restricted circumstances, the Organization would also be enabled to bring a financial claim against an active or former staff member. A new article 2 tres reflected the provisions of article 48 of the Pension Fund Regulations.

4. With regard to the Tribunal's substantive powers, dissatisfaction had long been expressed because the United Nations Tribunal, unlike the ILO Tribunal, could not require specific performance of its judgements - the Secretary-General could always substitute the payment of compensation for any other corrective action deemed appropriate by the Tribunal. A proposed new paragraph 1A of article 9 would

(Mr. Fleischhauer)

enable the Tribunal to require specific performance in all cases except those involving certain important career-related actions, such as reinstatement, reassignment and promotion, in all of which the Secretary-General would have the right to substitute monetary compensation. In connection with that same paragraph, minor changes had been made in the provisions designed to place a ceiling on certain monetary awards. A new paragraph 4 of article 9 would supplement the general provisions relating to award ceilings.

5. Because of concern about the filing of frivolous and other unmeritorious cases, the existing restrictions in article 7, paragraph 3, would be retained, and the Tribunal would be empowered, by a new paragraph 2B of article 9, to penalise applicants whose submissions were found to constitute an abuse of the appeals process.

6. One of the most difficult areas was that of procedures for the review of Tribunal judgements. The existing procedure, which only permitted such review by the Committee on Applications for Review of Administrative Tribunal Judgements and, thereupon, possibly by the International Court of Justice, was awkward and tended to involve the Committee and Court in questions of international administrative law for which neither was particularly well equipped. A proposal for the establishment of an alternative body to review all cases that did not have a major political interest for States had not found favour during the informal consultations and had been dropped. It was now proposed to redraft article 11 so as to clarify its provisions and to introduce certain procedural reforms, set out in paragraphs 9 to 12 of the draft resolution contained in annex III. The possibility of extending the review procedure to include judgements in respect of the Pension Board had been rejected, on the understanding that there would be no circumstances in which the competent organs of the Organisation would refuse to comply with a Tribunal judgement in that area.

7. Lastly, in respect of post-judgement proceedings of the Tribunal, new proposals, to be set out in several paragraphs of article 12 of the statute, would explicitly give the Tribunal the power to interpret its own judgements and would slightly relax the time-limits within which a request for revision on the basis of a newly discovered fact might be made. Another proposal, to give the Tribunal the power to complete a judgement that inadvertently had not answered certain pleas had been eliminated.

8. Certain proposals had been entirely abandoned during the informal consultations. In particular, there had been little support for the proposal to establish a joint panel of the Presidents of the United Nations and International Labour Organisation Administrative Tribunals, with the aim of providing advisory opinions to the Secretary-General in certain circumstances and of carrying out most of the proposed judgement reviews, more simply and with greater expertise, than the Committee for Review or the World Court. Equally, for the time being, no progress was being made on the proposal for the establishment of an assessor to assist the Tribunals in coping with their case-law and to avoid the development of any discrepancies therein.

(Mr. Fleischhauer)

9. The Secretary-General trusted that, as intended at the initiation of the consultation process, it would be possible to complete consideration of the item at the current session.

10. Mr. MUDHO (Kenya) said that, given the importance of the question of the harmonisation of the statutes, rules and practices of the administrative tribunals, his delegation, too, trusted that it would be possible to conclude consideration of the item at the current session. Agreement on the proposals would represent significant progress towards the worthwhile objective of establishing a single tribunal for the United Nations system as a whole. It would be useful for the statement by the Legal Counsel to be made available to members of the Committee.

11. The CHAIRMAN said that the Secretariat would arrange for circulation of the Legal Counsel's statement, and drew the Committee's attention to the draft resolution contained in annex III of document A/43/704.

12. Mr. GUPTA (India) said that the Committee should allow adequate time for statements on the question.

13. Mr. BARABANOV (Union of Soviet Socialist Republics) said that it would be of interest to know how many delegations had participated in the informal consultations referred to by the Legal Counsel, and whether the latter viewed those consultations as an adequate representation of the views of Member States and as providing an adequate basis on which a decision could be taken by the Assembly at the current session.

14. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel) said that although only 15 delegations had participated in the informal consultations, they had played a very active role in the discussions, given which the consultations offered a representative indication of the views of those delegations that had a real interest in the matter and provided the Committee with an adequate basis for a decision.

15. The CHAIRMAN said that delegations would note that the informal consultations had been publicly announced in advance in the Journal in the United Nations, and that all Member States had had an opportunity to participate in them.

16. Mr. MUDHO (Kenya) said that any delegations which had not participated in the informal consultations could state their views in the Committee so that the Assembly would be in a position to take definitive action at the current session.

17. The CHAIRMAN said that delegations were free to raise any points or to suggest any revisions to the document they wished.

AGENDA ITEM 113: FINANCIAL REPORTS AND AUDITED FINANCIAL STATEMENTS, AND REPORTS OF THE BOARD OF AUDITORS (continued) (A/C.5/43/L.4)

18. The CHAIRMAN reminded the Committee that the text of paragraph 4 of the draft resolution contained in document A/C.5/43/L.4 was based on the understanding that paragraph 91 of the report of the Board of Auditors made reference to an evaluation

(The Chairman)

of those aspects of the Multinational Programming and Operational Centres in which the Board of Auditors had competence, and that it was not the intention of the resolution to prejudice the outcome of the evaluation.

19. Draft resolution A/C.5/43/L.4 was adopted.

20. Mr. GOMEZ (Assistant Secretary-General, Controller) emphasized that the qualification of audit opinions referred to in the fourth preambular paragraph of the draft resolution related to outstanding assessed contributions. The auditors' opinion on the financial statements of the United Nations was therefore subject only to the eventual payment of outstanding contributions.

21. The CHAIRMAN said that the Committee had thus concluded its consideration of agenda item 113.

AGENDA ITEM 121: PERSONNEL QUESTIONS (continued) (A/43/659; A/C.5/43/6, 14, 18, 25 and 27)

22. Mr. MONTHE (Cameroon) said that the Fifth Committee must address personnel questions with care and understanding because its decisions affected the fate of a huge number of individuals working to promote the ideals and objectives of the Charter. Such care was all the more necessary during the current period of crisis and change in various organisations of the common system. He paid tribute to the courage and patience shown by the staff under extremely trying circumstances and looked forward to the completion by ICSC of its comprehensive review of the conditions of service of the Professional and higher categories. It was to be hoped, in view of the important role played by staff representatives in the consideration of personnel questions, that the problems between ICSC and the various staff associations could quickly be resolved. The decisions of ICSC, as set forth in paragraph 14 of its report, represented an encouraging start to the solution of such problems and should be further elaborated in the future.

23. The first essential element of an effective personnel policy must be a well-tested method of recruitment and training designed to ensure the highest standards of efficiency, competence and integrity among the staff. His delegation therefore supported the training programme described in paragraphs 41 to 45 of document A/43/659, as well as the standardization of internal and external competitive examinations, with respect not only to their contents but also to the conditions for application and the system of assessment. The programme should benefit from involvement on the part of the United Nations Institute for Training and Research and its modules should be constantly updated and assessed both by internal assessment services and by JIU.

24. The second vital element should be diversification of human resources on the basis of an equitable geographical distribution of posts at all levels. His delegation regretted that implementation of that principle still left much to be desired, particularly with respect to high-level posts. Document A/43/659 indicated that posts tended to be concentrated among certain countries or groups of countries and table 4 of annex II showed how a number of countries were far above

(Mr. Monthe, Cameroon)

the upper limit of their desirable ranges. His delegation would like to know the reasons for such distortions and to receive statistics on the breakdown by nationality of candidates accepted over the past few years for the various competitive examinations. It also wished to know whether some of the categories of posts mentioned in paragraph 8 of the Secretary-General's report (A/43/659) might in future be treated as being subject to geographical distribution and, if so, which. The Office of Human Resources Management should provide assurances that every attempt would be made to avoid any negative effects on the principle of equitable geographical distribution as a result of the implementation of recommendation 15 of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group of 18). It was also necessary to discontinue the practice of basing a country's desirable range on its assessed contribution. With regard to improvement of the status of women, his delegation supported, for the most part, the remarks made by the representative of Canada but stressed that women from developing countries, and from Africa in particular, should be the object of special attention, as should nationals of developing countries employed in the General Service and related categories.

25. The third essential element of personnel policy was the establishment of a dynamic career profile, with horizontal and vertical mobility. His delegation therefore encouraged the Secretary-General to undertake constant assessment of the various occupational groups, the posts involved, their reciprocal relationships and the possibility of establishing grade pairs. If practices such as that of making supplementary payments to international civil servants were to be avoided, Member States must take the measures necessary to ensure acceptable conditions of service. While extending his congratulations to the Office of Human Resources Management on the progress it had achieved in that regard, he stressed that the Office must have at its disposal sufficient resources, as recommended by the Group of 18 and subsequently by the General Assembly, to carry out consistent and effective personnel policy.

26. Mr. MLADENOVIC (Yugoslavia) expressed support for the steps taken to increase the effectiveness and efficiency of the Secretariat. His delegation understood the difficulties and obstacles the Secretary-General was encountering, but it was most important that the main principles of appointments policy should not be jeopardised. Document A/43/659 showed that between July 1987 and June 1988 seven new staff members had been recruited from overrepresented Member States. Nationals of overrepresented Member States were supposed to be recruited only if there were no qualified candidates from unrepresented or underrepresented Member States. Had that been the case? The persistent underrepresentation and unrepresentation of some States needed to be reversed if the principle of equitable geographical distribution in the Secretariat was to be enforced.

27. Developing countries were still underrepresented at the D-1 level and above. That situation must change. One means of reinforcing the principle of rotation in the upper echelons of the Secretariat might be to make appointments at the Assistant Secretary-General level and above for a maximum period of 10 years.

(Mr. Mladenovic, Yugoslavia)

28. His own country was well below the mid-point of its desirable range, as were many other developing countries. One means of solving the problem was recruitment through external examination. Recruitment to the junior levels should not, however, be the only solution for unrepresented and underrepresented States.

29. The proportion of women in the Secretariat was still below the target of 30 per cent, and the number of women in the higher categories was still very low. That, too, needed to change. His delegation could only be encouraged by the optimism of the Assistant Secretary-General for Human Resources Management that the 30-per-cent target could be met by 1990, and by the decision to designate a senior staff member to serve as the focal point for activities to promote the advancement of women in the Secretariat.

30. Mr. ANNAN (Assistant Secretary-General for Human Resources Management) said that the past three years had been a difficult time in the Secretariat. In an overall climate of extreme financial uncertainty, the Organisation had gone through a recruitment freeze, a vast post-reduction and retrenchment operation, then strictly controlled recruitment. Personnel policies and procedures had had to be constantly adjusted to cope with changing conditions. The personnel practices of the United Nations were confusing even to many of the staff; his Office was, however, doing its best to follow the directives of the General Assembly in all their complexity. The fundamental principles governing personnel activities, as formulated in the Charter and subsequent General Assembly resolutions, had remained constant throughout the reform process, and a leaner, more efficient Secretariat was beginning to emerge.

31. It was difficult at present to assess the final impact of staff cuts on geographical distribution within the Secretariat. Since nationality did not govern separations through retirement or resignation, his Office had little control over the composition of the Secretariat following retrenchment. Geographical balance and gender balance were borne in mind, however, in placing staff in vacant posts. Every means available would be used to redress any adverse impact at the end of the retrenchment period, including strict control over recruitment and creative recruitment policies, as called for in General Assembly resolution 42/220 A. Maintaining equitable geographical distribution had never been easy, and current conditions had not made it easier. The situation had not deteriorated; but without the active support of Member States, the Secretariat would not make significant progress towards its mandated goals.

32. The representation of Member States at the higher level had always been a concern of the General Assembly, and was very much a concern of the Secretary-General. The share of developing countries in high-level posts had remained quite steady in recent years; in 1988, developing countries had held 50.8 per cent of the posts at the D-2 level and above.

33. In the period from 1985 to 1988, 13 women had been promoted to the D-1 level and above. Those promotions had constituted 11.2 per cent of all promotions to those levels during that period.

(Mr. Annan)

34. Under the vacancy management system, 109 Professional staff members had taken up new posts; 49 of them, or 44 per cent, had changed duty stations.

35. Concern had been expressed at the high vacancy rates in the regional economic commissions. Updated vacancy figures for all the regional commissions were available in document A/C.5/43/CRP.3. The same document showed that 97 posts at the regional commissions were in the process of being filled. Twenty-four posts were expected to be filled by internal redeployment, and 73 by external recruitment. The posts would be filled over the next few months.

36. A staff member at the D-1 level who had served as principal adviser to the former Co-ordinator for the Improvement of the Status of Women in the Secretariat had been designated to act, on an interim basis, as the focal point for the advancement of women in the Secretariat. The person concerned would have a broad range of functions, including the co-ordination of all activities relating to the status of women, the monitoring of their advancement in the Secretariat, the development of measures to improve their status, and the servicing of the Steering Committee for the Improvement of the Status of Women in the Secretariat. The Steering Committee would continue to carry out its mandate, focusing chiefly on monitoring the implementation of the work programme outlined in annex II to document A/C.5/43/14.

37. According to the figures he had available, vacancy management had been beneficial to women. Since the introduction of the system, 44 women out of a total of 132 staff members had been selected for reassignment, and 33 had been, or would soon be, promoted.

38. From the outset, it had been envisaged that the Steering Committee would develop recommendations on the advancement of women, and the Office of Human Resources Management would be responsible for putting them into effect. That was still the intention. In 1989-1990, his Office would carry out the action programme defined by the Steering Committee, submitting a report to the General Assembly at its forty-fourth session. Progress had also been made on the design and implementation of a career development plan for the General Service and related categories. Benchmark job descriptions for some occupational groups had already been completed, and the definition of a career path was in progress.

39. Over the coming year, his Office would attach top priority to the attainment of equitable geographical distribution at all levels of the Secretariat. An effort would be made to bring the number of women up to 30 per cent of all posts subject to geographical distribution. Another main objective would be the smooth attainment of staff reductions through attrition; another would be to fill vacant posts in organizational units that had high vacancy rates - particularly the regional commissions - through internal staff movements or, if no suitable internal candidates were available, through external recruitment. He also hoped to develop new policies and procedures for vacancy management, career development, staff mobility and rotation, training programmes and the streamlining of personnel information systems. His Office would also focus on improving the status of women and improving staff/management relations. At a time of retrenchment and reform, staff/management relations required particular attention.



(Mr. Annan)

40. He expressed appreciation of the concern voiced by a number of delegations for the conditions of service, safety and security of United Nations staff. The Secretary-General would himself address the Committee on the security and safety of international civil servants. The Administration also intended to continue working closely with ICSC to provide the best possible conditions of service for the staff of the Organization.

41. Mr. COTTON (New Zealand) said he would be obliged if, when the Assistant Secretary-General for Human Resources Management addressed the Fifth Committee again, he could say something about the feasibility of establishing an office of ombudsman within the Secretariat.

42. Mr. ZONGWE (Zaire) and Ms. LI Zongze (China) called for the text of the Assistant Secretary-General's statement to be made available to the Committee.

43. The CHAIRMAN said that the statement would be distributed at the earliest opportunity.

44. Mr. OGURA (Japan) pointed out that his delegation had not yet had an answer to its question about the nationalities of candidates in the internal examinations.

45. Ms. KINGSMILL (Australia) said that, according to the Assistant Secretary-General's statement, the responsibilities of the new focal point for the advancement of women in the Secretariat would include the co-ordination of all activities relating to the status of women. She wondered whether the staff member concerned would have any responsibilities other than those relating to the advancement of women.

46. Mr. ANNAN (Assistant Secretary-General for Human Resources Management) said that the sole responsibility of the staff member concerned would be to monitor and promote the status of women in the Secretariat.

47. Mr. HAMIDA (Libyan Arab Jamahiriya) pointed out that he had not yet had any answer to his question about recruitment from overrepresented countries.

The meeting rose at 12 noon.