



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/C.5/34/31
9 November 1979

ORIGINAL: ENGLISH

Thirty-fourth session
FIFTH COMMITTEE
Agenda item 100

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 by the Secretary-General

A. Background

1. By paragraph 2 of section I of its resolution 33/119 of 19 December 1978, 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 to the Assembly at its thirty-fourth session. The present report is submitted in response to that request.

2. Prior to the adoption of Assembly resolution 33/119, the Consultative Committee on Administrative Questions (CCAQ) had, jointly with the Federation of International Civil Servants' Associations (FICSA), established a Working Group on Recourse Procedures to consider the general problem of improving redress procedures. The establishment of this Working Group had been consequent on an initiative of FICSA, which in 1974 had embarked on a study of the legal remedies available to international civil servants and in 1976 convened a symposium whose extensive report 1/ recommended additional study on the establishment, at some time in the future, of "a single administrative tribunal ... for the organizations of the United Nations system as a whole, the jurisdiction of which could also be recognized by other organizations, with the proviso that the composition, terms of reference and authority of such a tribunal should offer guarantees at least equivalent to those provided by the best current practice". 2/ That report was transmitted to

1/ Federation of International Civil Servants' Associations, "Recourse procedures in the organizations of the United Nations system" (Geneva, 1977).

2/ Ibid., recommendation IV (a).

ACC, which requested CCAQ to consider it, together with FICSA, resulting in the establishment of the joint Working Group that met for the first time in January 1979. Although that Group's mandate was much broader than a study of the operations of the Administrative Tribunals, it decided that in view of the recent adoption of the above-cited General Assembly resolution, it should turn its attention first to a preliminary examination of the question of the feasibility of establishing a single administrative tribunal. As a first step, the Group invited an independent consultant to prepare a detailed discussion paper on the requirements to be met for the more effective administration of justice and alternative ways of meeting them. The study prepared by the consultant, entitled "Administrative tribunal procedures and unification", was considered at the second session of the Working Group (Geneva, 3-4 September 1979), and was thereafter slightly amended by him. 3/ On the basis of that consideration, the Working Group submitted a report 4/ to CCAQ, which transmitted it to the ad hoc meeting of legal advisers referred to below.

3. Immediately on the adoption of the General Assembly's resolution, the Legal Counsel of the United Nations circulated to his colleagues in the specialized and related agencies a "Working paper on the possible amalgamation of the United Nations and ILO Administrative Tribunals". This working paper, together with extensive comments thereon by the legal advisers of several of the agencies, as well as the report of the CCAQ/FICSA Working Group and the revised study of the consultant, were studied at an ad hoc meeting of legal advisers (Geneva, 13-14 September 1979). The report of the meeting, 5/ which was transmitted directly to ACC, provided the basis of the present report.

B. Considerations relating to the establishment of a single tribunal

4. To determine whether it is possible to establish a single administrative tribunal for the entire United Nations common system requires more than a determination whether such a development is constitutionally and administratively possible. Rather, it requires a careful examination of, on the one hand, the potential advantages and possible disadvantages of such a solution, and, on the other hand, the various practical and legal obstacles and the consequently unavoidable delays. All these elements were therefore considered, together with some potential interim or alternative solutions, in the CCAQ/FICSA Working Group and in the meeting of legal advisers.

5. The records of the Fifth Committee leading to the formulation of resolution 33/119 seem to indicate that the request for a feasibility study was largely prompted by concern lest divergent decisions by the two existing Administrative Tribunals, those of the United Nations (UNAT) and of the International Labour Organisation (ILOAT), could adversely affect the unity of the conditions of service in the common system. In particular, a number of references were made 6/ to action

3/ CCAQ/PER/R.107, annex II. Interested delegations can obtain a copy of this report.

4/ CCAQ/PER/R.107.

5/ ACC/1979/70.

6/ A/C.5/33/SR.37, para. 68; SR.40, para. 35; SR.41, paras. 41 and 57; SR.56, para. 71.

in respect of General Service category salaries in Geneva taken, consequent on an advisory opinion by the members of ILOAT, by the Governing Body of ILO, which action was at variance with that taken by the Secretary-General of the United Nations, with the approval of the General Assembly, which was later upheld in a contentious case in a UNAT judgement. 7/

6. However, as the consultant's study makes clear, over the nearly 30 years that the two Tribunals have operated side by side, no real divergence in jurisprudence has arisen. In the particular instance of General Service salaries in Geneva, both Tribunals actually came to very similar conclusions as to the obligation on the part of the administrations to consult with the staff before establishing new salary scales. UNAT, giving a judgement in a contentious case, 7/ drew from those conclusions a decision different from the advisory opinion the ILOAT Judges had previously given in their personal capacity, because it found, on the facts, that within the United Nations there had been adequate consultations or offers of consultations and that those had failed because of the intransigence of the staff; this aspect of the matter had not been included in the agreed statement of facts in relation to ILO submitted to the ILOAT Judges for consideration in formulating their advisory opinion. However, when contentious cases about the same issue of General Service salaries in Geneva were brought before ILOAT by staff members of ICITO/GATT, WHO and WMO, the Tribunal, in the exercise of its statutory competence, applied the Staff Regulations of the defendant organizations and, on the facts of each case, upheld the decisions complained of, 8/ which corresponded to those UNAT had upheld in respect of the United Nations.

7. In this connexion, it should also be noted that, as the Administrative Tribunals are bound to apply in each case before them the rules and regulations of the defendant organization as these apply to the particular factual circumstances, they cannot prevent differences in the resulting judgements to the extent that these rules, regulations, practices or circumstances differ. This is a problem that would have to be faced even by a single tribunal; hence, the existence of two Tribunals does not per se affect the coherence of the common system.

8. Consideration has also been given to those most infrequent instances in which the existence of two Tribunals might lead to a conflict of decisions in relation to a particular matter that falls within the jurisdiction of both Tribunals. This can occur in respect of questions involving decisions of the United Nations Joint Staff Pension Fund (UNJSPF), which are subject to review only by UNAT but which can also raise issues concerning which the employing organizations are subject to ILOAT. However, so far, there has been only a single instance in which an applicant has had to appeal to both Tribunals, and both carefully avoided any substantive conflict. 9/ Thus, while unusual situations might result in inconveniencing an applicant by requiring him to apply simultaneously or in turn to both Tribunals, a denial or distortion of justice is unlikely to occur.

7/ UNAT Judgement No. 236 (Belchamber v. Secretary-General of the United Nations).

8/ ILOAT Judgements Nos. 380 (Bénard and Coffino v. GATT), 381 (Domon Lhoest v. WHO) and 382 (Hatt and Leuba v. WMO), all handed down in June 1979.

9/ Aouad v. UNJSPF, UNAT Judgement No. 224, and In re Aouad (v. WHO), ILOAT Judgement No. 309.

9. It might be expected that the establishment of a single tribunal might involve some administrative efficiencies resulting either in financial savings or greater convenience to the parties in permitting more frequent sessions of a single tribunal and possibly an improved geographic distribution of such sessions and of registry services. However, an analysis made by the consultant of the financial implications indicates that the relatively modest costs of the existing Tribunals are at present closely enough related to their workloads, so that a combination of their operations would result in merely summing their budgets. Also, concern has been expressed that any substantial increase in the current case-load would make it difficult for experienced judges, who serve the Tribunals part-time in addition to their normal functions, to do so.

10. As pointed out in paragraph 4, the other set of issues involved in determining the feasibility of establishing a single administrative tribunal requires a consideration of the obstacles to and the timing of the various steps that would have to be taken to achieve such an objective. Any administrative tribunal, to perform its intended functions effectively, must command, with respect to all the organizations subject to its jurisdiction, the confidence of Member States, of the executive heads and also of the several staffs as represented by their associations and unions. UNAT and ILOAT service a total of 22 organizations (see the annex hereto), of which nine are not in the United Nations system. There are indications that several common system organizations, as well as some of the others that have accepted the jurisdiction of ILOAT, continue to prefer adherence to that Tribunal; this suggests the difficulty in achieving, in order to establish a single tribunal, the complete agreement of all these organizations as to all aspects of the governance of the new tribunal. Consequently, extensive consultations involving all the above-mentioned entities would have to be undertaken, and agreements on many complicated and controversial questions, including the principle of establishing a single tribunal, would have to be reached before the General Assembly, on the one hand, and the International Labour Conference, on the other, could move to abolish or transform the existing Tribunals and to vest jurisdiction in a new tribunal or in a transformed one. This, in turn, would have to be followed by parallel actions by the appropriate organs of each of the other organizations that have recognized the jurisdiction of either existing Tribunal. Both the United Nations and ILO have obligations to these organizations, and neither Tribunal should be abolished or substantially transmuted until the appropriate organs of all the organizations concerned have agreed to accept the jurisdiction of a single tribunal or have made alternative arrangements. In respect of ILO, there are additional practical problems. In particular, ILOAT has jurisdiction over claims against the ILO Staff Pension Fund 10/ and over a substantial number of private law contracts entered into by ILO; the latter, many of which are long-term, cannot be unilaterally altered by ILO.

11. The desirability of achieving a considerable measure of uniformity on as many aspects as possible of the operations of the two existing Tribunals appears

10/ All ILO staff appointed since 1946 are participants in UNJSPF, but the pre-war Staff Pension Fund will remain in existence until the decease of all pensioners belonging to it and of their survivors entitled to benefits.

to be recognized by all the organizations. There are, at present, certain differences in the mode of operation of the two Tribunals that stem from provisions of their respective statutes or rules, or from their institutional practices. These differences, which are fully analysed in the consultant's study, pertain to the method of appointing judges and criteria for their selection, the power of the Tribunals to order specific performance, limitations on the amount of compensation and the review of judgements and their reference to the International Court of Justice. Although these differences have not led to any divergence of jurisprudence, it would seem advisable, pending or in the absence of any decision of the General Assembly on the establishment of a single tribunal, to pursue, primarily through the CCAQ/FICSA Working Group on Recourse Procedures, with the assistance of the legal advisers, a progressive alignment and further development of the statutes, rules and practices of the two Tribunals, which might be accomplished by comparatively simple amendments and decisions and which would also pave the way for further measures of unification.

12. Although recognizing, as indicated above, that the preservation of the common system depends far more on legislative decisions and administrative practices than on judicial ones and that no real divergences in jurisprudence have been identified, consideration might also be given to other ways of ensuring coherence to jurisprudence without embarking on the difficult and lengthy task of establishing a single administrative tribunal. One such device to resolve any potential judicial conflict would be to amend the statutes of the two Tribunals, with a view to creating some type of joint machinery for which different structures can be envisaged and to which, for instance, either Tribunal, on its own initiative or at the request of either party to a case before it, could resort for the resolution of points of law relevant to the common system.

C. Conclusion

13. A careful study of the feasibility of establishing a single administrative tribunal indicates that the concerns that appear to have led the General Assembly to make its request are, in fact, not so compelling as to call for such a step at this time. Moreover, the creation of a single tribunal would require extensive consultation among the executive heads and staff representatives of numerous organizations, including some not within the United Nations system, and the subsequent reaching of agreements among the appropriate organs of all these organizations, as well as other probably unavoidable delays. On the other hand, certain of the advantages that might be hoped for from the establishment of a single tribunal might be achieved more easily by a purposeful harmonization and further development of the statutes, rules and practices of the existing Tribunals. Such a course of action would, in addition to achieving other improvements, in the long run, also facilitate the establishment of a single tribunal should a real need for such a step be felt in the future.

Annex

JURISDICTION OF THE ADMINISTRATIVE TRIBUNALS OF THE
UNITED NATIONS (UNAT) AND THE INTERNATIONAL LABOUR
ORGANISATION (ILOAT)

A. UNAT in respect of all staff disputes

United Nations	(UN)
International Civil Aviation Organization	(ICAO)
Inter-Governmental Maritime Consultative Organization	(IMCO)

B. UNAT in respect of United Nations Joint Staff Pension Fund (UNJSPF) decisions, and ILOAT in respect of all other staff disputes

International Labour Organisation <u>a/</u>	(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 Organisation	(ICITO/GATT)

C. ILOAT in respect of all staff disputes b/

Universal Postal Union	(UPU)
European Organization for Nuclear Research <u>c/</u>	(CERN)
European Organisation for the Safety of Air Navigation <u>c/</u>	(Eurocontrol)
European Patent Organisation <u>c/</u>	(EPO)
European Southern Observatory <u>c/</u>	(ESO)
Intergovernmental Council of Copper Exporting Countries <u>c/</u>	(CIPEC)
European Free Trade Association <u>c/</u>	(EFTA)
Inter-Parliamentary Union <u>c/</u>	(IPU)
European Molecular Biology Laboratory <u>c/</u>	(EMBL)
World Tourism Organization <u>c/</u>	(WTO)

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

b/ These organizations are not members of UNJSPF. The only member organization of the Fund that has not yet agreed to the submission of disputes relating to it to UNAT is the International Fund for Agricultural Development (IFAD), which, so far, has made no arrangements for the submission of staff disputes to any tribunal.

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