

## ADMINISTRATIVE TRIBUNAL

(Item 18 of the Provisional Agenda for the  
Second Part of the First Session.)

## Report of the Secretary-General

1. The General Assembly on 13 February 1946 authorized the Secretary-General "to appoint a small advisory committee, possibly including representatives of the staff, to draft for submission to the Second Part of the First Session of the General Assembly a statute for an administrative tribunal". Pursuant to this resolution, a Committee was appointed which met at Lake Success from 16 to 26 September 1946. The composition of this Committee is indicated in its Report, which, together with a draft of a Statute for the Tribunal, is attached hereto for the consideration of the General Assembly.
2. The principal Specialized Agencies have been approached already in order to ascertain their views on the draft Statute and the Report. The replies so far received suggest that, should the General Assembly establish a United Nations Administrative Tribunal along the lines proposed in the draft Statute, arrangements mutually satisfactory to the United Nations and the Specialized Agencies may be worked out for the extension of the competence of the Tribunal to those Agencies.



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26 September 1946

REPORT OF THE ADVISORY COMMITTEE ON A STATUTE  
FOR A UNITED NATIONS ADMINISTRATIVE TRIBUNAL

On 13 February 1946, the General Assembly adopted a resolution by which it authorized the Secretary-General "to appoint a small advisory committee, possibly including representatives of the staff, to draft, for submission to the second part of the first session of the General Assembly, a statute for an administrative tribunal."

In pursuance of this resolution, the Secretary-General set up an advisory committee under the chairmanship of His Excellency, Mr. Th. Aghnides, Ambassador of Greece in London and formerly Under-Secretary-General of the League of Nations. The following were members of the committee:

Mr. Manley O. Hudson, formerly judge of the Permanent Court of International Justice.

Mr. Joseph Nisot, Counsellor of the Belgian Embassy in Washington, alternate representative of Belgium on the Economic and Social Council, formerly the member of the Legal Section of the Secretariat of the League of Nations who acted as Registrar of the Administrative Tribunal of the League;

Mr. Ladislav Radimsky, Deputy of the Czechoslovak representative to the United Nations;

Mr. Jean Herbert (Chairman of the Permanent Staff Committee), member of the Secretariat; with Mr. Frank Bogley (member of the Permanent Staff Committee), member of the Secretariat, as alternate.

Mr. M. Perez-Guerrero, member of the Secretariat; with Mr. J. G. Stewart, member of the Secretariat, as alternate;

Mr. Marc Schreiber (member of the Permanent Staff Committee), member of the Secretariat; with Mr. E. Ranshofen-Wertheimer (member of the Permanent Staff Committee), member of the Secretariat, as alternate;

Mrs. Isobel Wallace, member of the Secretariat.

Mr. David M. Levitan, of the Secretariat, served as secretary and

The committee held a series of ten meetings at Lake Success from 16 September to 26 September 1946, and it now has the honour to submit to the Secretary-General this unanimous report, together with a draft of a statute of a United Nations Administrative Tribunal.

The nature of the Administrative Tribunal envisaged in the General Assembly's resolution was indicated in the summary record of meetings of Committee 6 of the Preparatory Commission. It was intended to "deal only with questions of the interpretation of an official's contract and with the claims of officials for non-observance of the contract, and not with matters of internal administration which would go before internal bodies within the Secretariat and in which the Secretary-General's decision would be final." The committee has been guided by this indication, and in its deliberations it has held before itself the two objectives of a simple organization and an expeditious procedure. The draft presented is therefore quite short, and it is not burdened with provisions of detail.

For the most part, international organizations in the past have had but small staffs, and therefore they have not felt a need for a special jurisdiction for handling disputes. This was not true, however, of the Secretariat of the League of Nations and the International Labour Office, and since 1927 these organizations have maintained the League of Nations Administrative Tribunal which has functioned with very considerable success. The committee has sought to take full advantage of this experience. The League Tribunal decided twenty-one cases in the period from its organization in 1928 down to 1939, and sixteen cases in 1946. As the staff of the United Nations Secretariat and the staffs of agencies brought into relationship with the United Nations will be much more numerous than the staffs of the League Secretariat and the International Labour Office, it seems necessary to envisage the possibility that a United Nations Tribunal will be more frequently resorted to.

The proposed Tribunal would be competent (Article 2) to adjudicate upon applications alleging non-observance of contracts of employment, including

United Nations and of the Registry of the International Court of Justice. The term "staff regulations" is used in a generic sense, and it is intended to cover generally rules and regulations relating to officials' contractual rights, including their rights to pensions. The Tribunal would be open to officials as well as to persons succeeding to their rights after their death, and to other persons who may be entitled to rights under contracts of deceased officials including pertinent staff regulations. Any dispute as to the Tribunal's competence would be decided by the Tribunal itself.

The creation of a tribunal with such competence would not entail its interference in matters relating to the conduct of administration within the discretion of the Secretary-General. Nor would it preclude the establishment of other procedures for dealing in a preliminary way with complaints which officials may advance. The Tribunal would not serve as a negotiating committee between the staff and the administration. It would confine its activity to adjudication.

The term "official" is used in an all-inclusive sense, and it is intended that the Tribunal would be open to all persons employed in the Secretariat, in positions high or low, under whatever type of contractual arrangement.

The Tribunal would be composed of seven judges of different nationalities, and it is anticipated that they would be selected with due regard for geographical considerations. All of the judges would have equal standing, and for the election of the President and Vice Presidents, as well as for the establishment of the Tribunal's Rules, all of the judges would be convoked to the sessions. In dealing with applications, however, the Tribunal would sit with only three judges present, and the Rules would provide for determining the composition in such instances. Allowing for the possible incapacity of one judge, this would mean that it would still be possible for the Tribunal to be sitting in two divisions at the same time. The place at which sessions would be held would be left to the Tribunal to decide, and in view of the proposed extension of the services of the Tribunal to related agencies, it seems desirable to leave open the possibility of simultaneous sessions at different

The Committee gave protracted consideration to the method of recruiting the judges. It desired to emphasize the judicial character of the Tribunal. While the judges should be persons who would approach their duties with a judicial attitude of mind, it was not deemed essential that all of them should have had previous experience as judges or as juriconsults. Some of the members of the Committee favoured the election of the judges by the General Assembly. A majority of the members favoured an election by the International Court of Justice, "the principal judicial organ of the United Nations."

Provisions of the draft statute would require that an election should be held each year. The judges, in office for three years, would be eligible to re-election. The Registry of the Court would be provided by the Secretary-General of the United Nations, and the necessary administrative arrangements would be made by the Secretariat. The dates of ordinary sessions of the Tribunal would be fixed by the Rules, as a measure of enabling officials to anticipate them; but the President would be empowered to convoke extraordinary sessions when required.

Provision is included that the Tribunal's expenses would be borne by the United Nations. An item of the expenses would be the compensation to be paid to the judges, which might take the form of daily allowances for their attendance.

The Tribunal would establish its own Rules, and indications are given in Article 6 of some of the matters which should be covered in the Rules. It seems appropriate to mention that among those matters is the intervention by persons whose rights may be affected by a judgment in a pending proceeding. The Rules should also provide for the Tribunal's hearing non-parties for purposes of information - this is similar to the practice of some national courts of hearing an amicus curiae. Both the intervention as a party and the appearance of non-parties would be restricted to persons to whom the Tribunal is open. Cases before the Tribunal may be of interest to groups of officials, and as these provisions would enable the Tribunal to have the assistance of persons or groups of persons other than the parties, they may serve to engender confidence in the work of the Tribunal.

An application to the Tribunal would be receivable only when a final decision is contested; and of course, the applicant must have exhausted other means of redress which may be provided by staff regulations. If an official were in doubt as to the finality of a decision, it should be possible for him to interrogate the administration on the point. The draft provides that the failure of the administration to take a decision on a claim may in certain cases be assimilated to a final decision, so as to enable an application to be lodged with the Tribunal.

A general time-limit of ninety days would be fixed for filing applications, but with reference to decisions given before the date when the Tribunal is actually organized, the time-limit would run only from that date. As the purpose of the provision for a time-limit is to avoid the prejudice to an administration which might result from undue delay, it seems necessary to provide for the exceptional cases in which an official might be unable to present a timely application; the draft would therefore empower the Tribunal to decide in a particular case that the application is receivable though filed after the expiration of the time-limit. In no case would the filing of an application suspend the execution of the decision contested.

To prevent burdening the Tribunal with frivolous claims, the applicant would be required to deposit a sum of money within sixty days after filing his application. This sum would not exceed two per cent of the official's annual salary; but to enable officials who are paid very low salaries to prosecute their claims, the Rules of the Tribunal might set a scale under which some deposits might be less than two per cent. A refund of the deposit would be ordered in the judgment, unless the application was found to be frivolous.

The draft Statute includes few provisions as to the procedure to be followed, leaving the Tribunal a wide latitude to prescribe the procedure in its Rules. As a general rule oral proceedings before the Tribunal would be held in public; it is foreseen (Article 9), however, that for reasons of

heard behind closed doors. No provision is made as to the languages to be employed before the Tribunal; it seems clear that any of the official languages of the United Nations might be employed, and the freedom left to the Tribunal would enable it to admit the employment of any other language, if the interests of justice require, under conditions to be fixed.

Having determined that an application is well-founded, the Tribunal could order the rescinding of the decision impugned or the performance of the obligation invoked; if both of these courses would be inappropriate the payment of compensation would be ordered, and the United Nations would have an obligation to pay the compensation awarded.

The Tribunal would take all decisions by majority votes. The judgments would be final and without appeal. A copy of the judgment would be communicated to each of the parties in the case, and copies would also be made available on request to interested persons; this latter provision would serve both to enable officials to be conversant with the work of the Tribunal and to create wider interest in its jurisprudence.

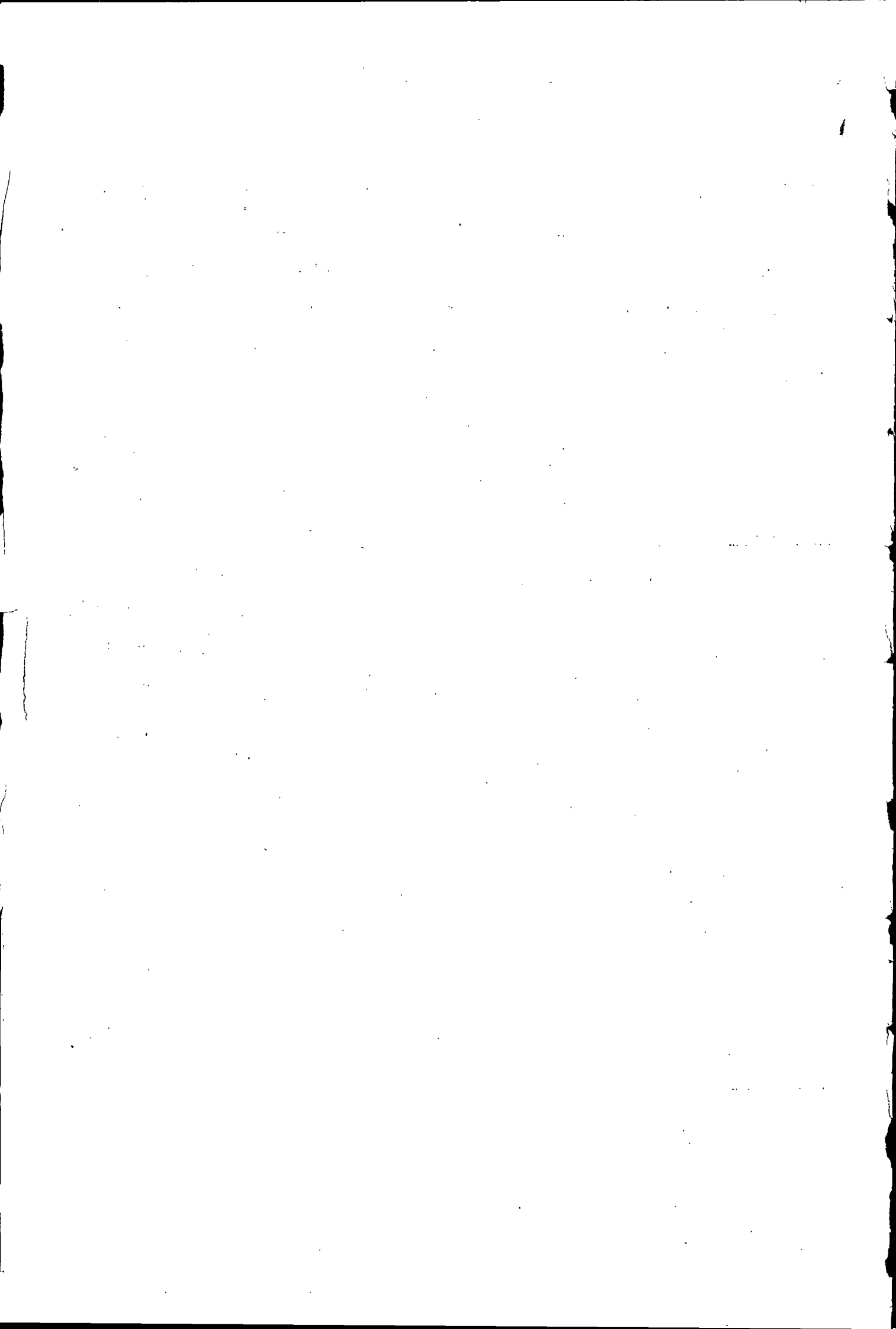
While the Tribunal is envisaged in the draft Statute as a United Nations institution, at the service of the United Nations and its officials, it is contemplated that its services may be made available also to specialized agencies brought into relationship with the United Nations. Indeed on 21 June 1946 the Economic and Social Council (Journal No. 29, 13 July 1946) gave its approval to draft general agreements with the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, and the Food and Agriculture Organization of the United Nations, which provide for co-operation "in the establishment and operation of suitable machinery for the settlement of disputes arising in connection with the employment of personnel and related matters."

The draft provides that the competence of the Tribunal may be extended to such specialized agencies by special agreements to be made with them by the Secretary-General. It is contemplated that these special agreements would



implement provisions in the general agreements such as that quoted in the preceding paragraph. In each case the special agreement should provide that it would be for the agency to pay compensation awarded by the Tribunal in any case to which it is a party, and it should also include provisions for the agency's participation in administrative arrangements and its sharing the expenses, in any such case.

The success of the League of Nations Administrative Tribunal leads the advisory committee to believe that a United Nations Administrative Tribunal, established along the lines proposed, would be a useful body for safeguarding harmony between the United Nations and its officials. Without in any way embarrassing the authorities responsible for the conduct of administration, it would give assurance to officials as to the protection of their contractual rights. The United Nations is not suable in any national court without its consent; nor can it be sued by an official in the International Court of Justice. By creating a tribunal to serve as a jurisdiction open to its many officials of various nationalities, the United Nations will be acting not only in the interest of efficient administration, but also in the cause of justice.



26 September 1946

## UNITED NATIONS ADMINISTRATIVE TRIBUNAL

## DRAFT STATUTE

Article 1

A tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal.

Article 2

1. The Tribunal shall be competent to adjudicate upon applications alleging non-observance of contracts of employment of officials of the Secretariat of the United Nations or of the Registry of the International Court of Justice, including the pertinent provisions of staff regulations.\*

2. The Tribunal shall be open

(a) To any official of the Secretariat of the United Nations or of the Registry of the International Court of Justice, even after his employment has ceased, and to any person who has succeeded to the official's rights on his death;

(b) To any person who can show that he is entitled to rights under the contract of employment of a deceased official, including the provisions of staff regulations upon which the official could have relied.

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

Article 3

1. The Tribunal shall be composed of seven judges of different nationalities, of whom only three shall sit in any particular case.

2. The judges shall be elected by the International Court of Justice for three years, and they may be re-elected; provided, however, that of the judges elected at the first election, the terms of two judges shall expire at the end of one year and the terms of two judges shall

\* In the present Statute, the term "staff regulations" is employed in a generic sense, and it includes inter alia regulations concerning pensions.

expire at the end of two years. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.

3. The Tribunal shall elect its President and two Vice-Presidents from among the judges.

4. The Tribunal shall have as Registrar and as Deputy Registrar members of the Secretariat of the United Nations, who shall be appointed by the Secretary-General. The Registrar and the Deputy Registrar, if unable to act or if the posts are vacant, shall be replaced by officials designated by the Secretary-General.

#### Article 4

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.

#### Article 5

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

2. The expenses of the Tribunal shall be borne by the United Nations.

#### Article 6

1. Subject to the provisions of the present Statute, the Tribunal shall establish its Rules and may amend them from time to time.

2. The Rules shall include provisions concerning:

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

(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 judgment;

(e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of Article 2, even though they are

not parties to the case; and generally

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

#### Article 7

1. An application shall not be receivable unless the decision contested was final, and unless the person concerned has exhausted the means of redress available to him under applicable staff regulations.

2. Where the administration has not notified to the person concerned a decision on a claim within sixty days after the claim was made, an application shall be receivable in the same manner as an application against a final decision.

3. Except as the Tribunal may in a particular case decide otherwise, an application shall not be receivable unless it is filed within ninety days after the notification to the person concerned of the decision contested or, if the decision affects a class of officials, within ninety days after the date of its publication. If the decision contested was notified to the person concerned or published before the date to be fixed by the President as the date of the constitution of the Tribunal, the period of ninety days shall begin to run from that date.

4. The filing of an application shall not have the effect of suspending the execution of the decision contested.

#### Article 8

1. No action shall be taken by the Tribunal upon an application unless the applicant deposits with the administration concerned, within the period of sixty days after the filing of the application, an amount equivalent to such proportion of his annual salary, not to exceed two per cent, as shall be fixed by the Tribunal in its Rules.

2. The Tribunal in rendering judgment shall order the refund of the deposit to the applicant unless it finds that the application was frivolous.

#### Article 9

The Tribunal shall decide in each case as to the extent to which the oral proceedings shall be held in public.

Article 10

If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked; but if such rescinding or specific performance is impossible or inadvisable, the Tribunal shall order the payment to the applicant of compensation for the injury sustained. The compensation awarded shall be paid by the United Nations.

Article 11

1. The Tribunal shall take all decisions by a majority vote.
2. The judgments shall be final and without appeal.
3. The judgments shall state the reasons on which they are based.
4. The judgments shall be drawn up in two originals, which shall be deposited in the archives of the Secretariat of the United Nations.
5. A copy of the judgment shall be communicated to each of the parties in the case. Copies shall also be made available on request to interested persons.

Article 12

The competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Each such special agreement shall provide that the agency concerned shall pay any compensation awarded against it by the Tribunal, and shall include inter alia provisions concerning the agency's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.

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