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REPORT OF THE SPECIAL COMMITTEE ON REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS

Report of the Fifth Committee

Rapporteur: Mr. Mauro MENDEZ (Philippines)

1. On the recommendation of the General Committee, the item "Report of the Special Committee on Review of Administrative Tribunal Judgements" was placed on the agenda of the tenth session of the General Assembly and was referred to the Fifth Committee at its 530th Plenary meeting on 30 September 1955.

2. The Fifth Committee had before it the report (A/2909) prepared by the Special Committee pursuant to Section B of resolution 888 (IX) of 17 December 1954 adopted by the General Assembly at its ninth session. The Special Committee recommended to the Assembly for its consideration two new articles to be added after article 10 of the statute of the United Nations Administrative Tribunal.

3. The text of the proposed new article 11 provided, inter alia, for the establishment at United Nations Headquarters of a special committee composed of Member States the representatives of which had served on the General Committee of the most recent regular session of the General Assembly. A Member State, the Secretary-General or a person in respect of whom a judgement had been rendered by the Administrative Tribunal, who objected to the judgement on the ground that the Tribunal had exceeded its jurisdiction or competence, or had erred on a question of law relating to the provisions of the Charter, or had committed a fundamental error in procedure, might make an application to the committee to request an advisory opinion of the International Court of Justice on the matter.

In the event of such application, the committee should decide whether or not there was a substantial basis for the application. If the committee decided that such a basis existed, it should request an advisory opinion of the Court.

4. If no application were made, or if a decision to request an advisory opinion had not been taken within prescribed periods, the judgement of the Tribunal should become final. When the Court had given an advisory opinion pursuant to a request, the Secretary-General should either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it might confirm its original judgement, or render a new judgement, in conformity with the opinion of the Court. If not requested to convene specially the Tribunal should at its next session confirm its judgement or bring it into conformity with the opinion of the Court. In any case in which an award of compensation had been made by the Tribunal in favour of the person concerned and the special committee had requested an advisory opinion, the Secretary-General, if satisfied that such person would otherwise be handicapped in protecting his interests, should make an advance payment to him of one-third of the amount awarded, less such termination benefits as had already been paid.

5. The text of the proposed new article 12 provided that the Secretary-General or the applicant might apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application would have to be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes or errors arising from any accidental slip or omission might at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.

6. In addition to the report of the Special Committee, the Fifth Committee also had before it the views of Member States and specialized agencies, communicated to the Secretary-General pursuant to the same resolution (A/2917 and Add.1 and 2; see also annex III to document A/2909). In addition, the views of

the Staff Council of the United Nations Secretariat at Headquarters were transmitted to the Fifth Committee by the Secretary-General (A/C.5/634).

7. The Secretary-General submitted his comments in an oral statement (A/C.5/635) at the 493rd meeting of the Committee on 17 October 1955. He recalled that at no time had he felt the need for a review procedure with respect to the normal cases coming before the Administrative Tribunal and that, for its part, the Staff Council had stated that it did not consider it necessary to establish a procedure for reviewing judgements of the Administrative Tribunal.

8. With respect to the proposed new article 12, the Secretary-General felt that it would be useful to have an express provision of this kind in the Statute in order to clarify the existing position and to ensure that the limited precedent which already existed should not be too narrowly interpreted.

9. With respect to the question of a procedure for review of Administrative Tribunal judgements, the Secretary-General considered that the following principles were essential to a sound development of the administrative and legal system of the United Nations:

(1) The review should serve only as an outlet in exceptional cases and should not be for regular use;

(2) The review should be truly judicial in character, the tribunal should be a permanent body and its members should have the highest qualifications and stature;

(3) The review should be expeditious and not result in undue complication or delay;

(4) The applicant should have the right to initiate the review and to participate on an equitable basis in any review procedure to be established. He noted that these principles had received considerable general support in the Special Committee and were also supported by the Staff Council.

10. The Secretary-General informed the Fifth Committee that should the General Assembly decide to adopt the system of review recommended by the Special Committee, he would consider it his responsibility to assure as far as possible an equality of rights for the staff member concerned. In transmitting

to the International Court of Justice documents under Article 65 of its Statute, it would be his intention to establish a procedure similar to that devised by the League of Nations for dealing with the claims of former officials of the Saar Commission (see annex II C to the report of the Special Committee, A/2909). The Secretary-General also informed the Committee that it would be his intention to waive any right which he had to further participation in the proceedings before the Court from which the staff member was excluded except as the Court might specifically require further information. He also expressed the hope that Member States might be willing to forego an appearance before the Court in oral proceedings which could not be granted to the staff member.

11. The Fifth Committee considered the item at its 493rd to 501st meetings from 17 to 31 October 1955. At the opening of the general discussion, a draft resolution was proposed jointly by Argentina, Canada, China, Cuba, Iraq, Pakistan, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Under this draft resolution, which with subsequent editorial revision is hereinafter referred to as the revised joint draft resolution (A/C.5/L.335/Rev.1), the General Assembly, recalling Section B of its resolution 888 (IX), in which it accepted in principle judicial review of judgements of the United Nations Administrative Tribunal, and having considered the report of the Special Committee, would decide to amend the statute of the United Nations Administrative Tribunal in accordance with the recommendations of the Special Committee. Following the text of the proposed amendments, the revised joint draft resolution concluded with the recommendation that Member States and the Secretary-General should not make oral statements before the International Court of Justice in any proceedings under the new article 11 of the statute of the Administrative Tribunal.

12. Discussion in the Fifth Committee centred primarily on the proposed new article 11. In favour of this article, it was argued that experience had shown a need for some method of review of the Administrative Tribunal judgements in certain cases. By having a procedure of judicial review available in the event of crisis, the discussion of cases in the General Assembly could be avoided.

It was emphasized in any case, that the question in principle had already been decided by the Assembly at its ninth session.

13. It was pointed out that the recommendations of the Special Committee represented a compromise which its supporters believed contained the essential conditions of a satisfactory review procedure. Alternative proposals had been thoroughly considered in the Special Committee and the texts recommended were those on which there was the broadest basis of agreement. Those members of the Fifth Committee supporting the revised joint draft resolution therefore did not consider it desirable to reopen matters which had been settled in the Special Committee.

14. It was pointed out that the text of the proposed article 11 followed the precedent of article 12 of the statute of the Administrative Tribunal of the International Labour Organisation. As a number of specialized agencies had accepted the jurisdiction of the ILO Tribunal, the Members of the United Nations were in the position of having already recognized the precedent. The fact that the proposed procedure did not conform to national systems of appellate jurisdiction, it was argued, was no reason for rejecting it. International institutions required their own procedures adapted to the needs of the international organizations concerned.

15. The co-sponsors of the revised joint draft resolution explained that the new draft article 11 was intended to limit review to exceptional cases. Two of the grounds for review were those provided in the statute of the Administrative Tribunal of ILO, i.e., questions of competence and of fundamental error in procedure. One additional ground was provided, i.e., errors on "a question of law relating to the provisions of the Charter". The co-sponsors of the revised joint draft resolution referred to the statements which they had made concerning the interpretation of this phrase which were contained in the report of the Special Committee (A/2909). The opinion was expressed in the debate that the grounds provided for review were of a fundamental nature and that as such they could not be ignored, if and when they arose, in the interest of justice.

16. Under the proposed new article 11 application for review might be made by the Secretary-General, the staff member concerned or a Member State. The supporters of the revised joint draft resolution considered that a Member State had a legitimate interest in ensuring the proper application of the Charter and the Staff Regulations, as well as a financial interest in the matter; and it was not reasonable to assume that a Member State, in interceding in a case, would do so solely for political reasons. Furthermore, a Member State was not being given the authority to institute review but only to make an application to a screening committee which would decide whether or not an advisory opinion should be requested from the International Court of Justice. It was argued that reference to the Court of a point of law involved in a judgement of the Administrative Tribunal could not be considered contrary to the obligation in Article 100 of the Charter to respect the international character of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

17. With respect to the screening committee, it was pointed out by the supporters of the revised joint draft resolution that the function of this body was only to decide whether or not there was a substantial basis for the application. It was understood that its duties would be strictly limited to ascertaining whether there was a genuine application within the specified scope of review. The idea of a screening committee was borrowed from the statute of the Administrative Tribunal of ILO, under which the Governing Body of that organization was authorized to request advisory opinions. The composition of the committee found an even closer parallel in the composition of the executive boards of the specialized agencies using the Tribunal of ILO. The membership of the screening committee was to be based on that of the most recently elected General Committee, as that would ensure equitable geographical representation and would also furnish a convenient and automatic method of constituting the committee without special elections. States and not individuals were named as members in order that representatives would be available at Headquarters at all times. Many delegations expressed the view that States members of the screening

committee should appoint qualified jurists as their representatives in order to invest the committee with a judicial character. Some suggested that the representatives might be either jurists or administrative experts.

18. Under the proposed new article 11, the review of substantive legal issues was to be made by the International Court of Justice which had been selected because it was an independent, impartial judicial body of the highest standing. Supporters of the revised joint draft resolution further considered that the Court was the appropriate organ to be the final judicial arbiter on questions of Charter law and that no organ would be more competent to settle other issues arising from the grounds specified for review. Since only exceptional cases would come to the Court, it would not be over-burdened with trivial questions. It was further argued that it would be neither necessary nor economically justifiable to set up new appellate machinery. While the contentious proceedings of the International Court of Justice were limited to disputes between States, advisory opinions upon legal questions might be requested under article 96 of the Charter by authorized organs of the United Nations.

19. It was also believed by supporters of the revised joint draft resolution that complete equality for the staff member concerned would be assured by paragraph 2 of the proposed article 11 and by the final paragraph of the draft resolution. Paragraph 2 of the proposed article 11 provided that the Secretary-General should arrange to transmit to the Court the views of the individual concerned. It was the intention of the co-sponsors that written requests and replies of the individual concerned would be laid before the Court on a completely equal footing with those of the Secretary-General and Member States. Furthermore, it was pointed out by some representatives that the Court itself would be a guardian of due process and would not give an opinion if it considered that one of the parties was at a disadvantage. The Court could itself require the evidence necessary for its opinion.

20. Against the proposed new article 11 it was argued that there was no need for a review of judgements of the Administrative Tribunal. Several representatives recalled that, although voting for resolution 888 (IX) at the ninth session,

their delegations had reserved their position in future discussions, and had declared that they would not consider themselves under an obligation to adopt in all events a review procedure, even if it would not have proved possible to devise a scheme which they considered satisfactory. In this connexion it was also pointed out that resolution 888 (IX) did not imperatively prescribe that the Special Committee should submit a scheme for a review procedure. The Tribunal had functioned satisfactorily and impartially and there had been no reason for criticism. The Secretary-General and the staff had not requested the establishment of a review procedure. Furthermore the General Assembly, at the time it had established the Administrative Tribunal, had made no provision for review since it had been feared that a further delay would adversely affect staff morale. There were already a number of stages through which a case went before it reached the Tribunal, which was therefore in effect a court of appeal. Moreover, the expense, the delay and the constitutional and practical difficulties involved rendered it undesirable to have a review procedure which might also impair the prestige of the Tribunal.

21. There were a number of objections to the specific procedure provided in the proposed new article 11. With respect to the scope of review, some representatives considered that the provision concerning "a question of law relating to the provisions of the Charter" was ambiguous and opened the possibility of review on almost any question. On the other hand, other representatives thought that the scope of review provided in the proposed article was too narrow.

22. It was considered by those opposed to the revised joint draft resolution that the procedure provided in the recommendations of the Special Committee was not truly judicial. The principal objections to the proposed procedure involved the following three points: (a) the right of a Member State to make an application for review, (b) the composition of the screening committee, and (c) the use of the advisory proceedings of the International Court of Justice.

23. With respect to the right of a Member State to make an application, it was argued that in a truly judicial review only the parties should have a right of initiating the review. A Member State had no interest in the proceedings which

would entitle it to become a party to the review and, in its individual capacity, it could not act for the Organization. The provision granting the right to a Member State to make an application was not only contrary to sound judicial principles but infringed the rights of the Secretary-General as Chief Administrative Officer, violated Article 100 of the Charter and was contrary to the principle of separation of powers. It was feared that this provision might create undesirable relations between Member States and staff members and might adversely affect the conduct and morale of staff members. Moreover, it introduced a political element in a judicial procedure.

24. With respect to the screening committee, it was also argued that its composition also introduced a political element into the review, since its membership was based on that of the General Committee, which was a political organ of the General Assembly. Furthermore, the proposed article 11 provided for a judicial determination by a body which was not a judicial organ. Its members were not independent experts but representatives of States who must make their decisions in accordance with the policies of their Governments. Furthermore, the representatives were not required to have legal training, and there would be no continuity of membership.

25. It was also pointed out that the proposed screening committee differed essentially from the Governing Body of ILO, which was the executive committee of that agency and had tripartite membership, consisting of representatives of Governments, workers and employers. Moreover, a staff member would be in a position of inequality before the screening committee, since the Member State making an application might in some cases be a member of the committee. In any case the opponents of the joint draft resolution believed it would be easier for a Member State to induce the committee to support its application than it would for a staff member to do so. They also considered it doubtful whether the screening committee could be considered an organ entitled to request an advisory opinion under Article 96 of the Charter. Article 96 provided that an organ of the United Nations might be authorized by the General Assembly to request advisory opinions of the International Court of Justice on legal

questions arising within the scope of its activities. The proposed committee, however, would have no other activity than to request advisory opinions and therefore, they believed, could not be considered to come within the meaning of Article 96.

26. Some of those opposed to the joint draft resolution also considered that the Court was not an appropriate body for review of judgements of the Administrative Tribunal. The contentious jurisdiction of the Court was limited by Article 34 of its Statute to disputes between States, and it was doubtful if it was intended that the advisory proceedings could be used in the way contemplated in the recommendations of the Special Committee. Furthermore, judgements of the Tribunal were binding, whereas advisory opinions were intended by the Charter to be advisory only. The relationship of such opinions to judgements of the Tribunal would thus be anomalous.

27. It was also believed by opponents of the revised joint draft resolution that there would be an inherent inequality between the staff member on the one hand and the Secretary-General and Member States on the other. They considered that personal appearance was an essential feature of due process of law. Since only States and international organizations were entitled, under Article 66 of the Statute of the Court, to submit statements to the Court, an expression of hope by the General Assembly that Member States and the Secretary-General would forego their right to an oral hearing was not in their view a sufficient guarantee. Nor did they consider it appropriate that an individual should be dependent on another party to the dispute for the presentation of his views to the Court.

28. It was further considered that the proposed procedure was unduly cumbersome and lengthy and would involve additional expense. It was feared that it would seriously affect the status of international civil servants and the existing judicial safeguards for the staff.

29. One representative considered that the provision in the final paragraph of the proposed article 11 for the advance to the staff member of one-third of the total amount of compensation was administratively unsound and should be deleted from the draft article. If this provision were to be retained, he expressed the

hope that it would be restrictively applied. It was suggested by a second representative that a provision of this kind might be more appropriate in the applicable rules rather than in the statute of the Tribunal.

30. There was little discussion in the Fifth Committee of the proposed new article 12. It was pointed out that this text was based on Article 61 of the Statute of the International Court of Justice and that it confirmed an inherent right of the Tribunal to correct its own judgements in the event of a discovery of a mistake of fact. Some members who were opposed to the proposed new article 11 stated that they would vote in favour of the proposed article 12 if a separate vote were taken.

31. Some representatives considered that those aspects of the revised joint draft resolution which were of a legal nature should be referred for advice to the Sixth Committee in accordance with General Assembly resolution 684 (VII) of 6 November 1952, concerning methods and procedures of the General Assembly for dealing with legal and drafting questions (annex II to the rules of procedure of the General Assembly). On the other hand it was argued that the question before the Fifth Committee was basically one of administrative policy and that therefore the matter was properly before that Committee which in the past had always been seized of questions relating to the statute of the Administrative Tribunal. Moreover, the legal aspects involved had already been examined by the Special Committee, on which the representatives had been mostly lawyers.

32. At the 497th meeting on 24 October 1955, India proposed the following amendment (A/C.5/L.339) to the revised joint draft resolution:

(1) In paragraph 1 of the proposed article 11, after the word "if" omit the words "a Member State".

(2) After the words "has exceeded its jurisdiction or competence", insert the words "or that the Tribunal has failed to exercise jurisdiction vested in it".

(3) After the words "fundamental error in procedure", insert the words "which has occasioned a failure of justice".

(4) Omit the words "such Member State".

(5) For the words beginning with "the Committee established by paragraph 4 etc.", and ending with "International Court of Justice on the matter", substitute "the President of the Administrative Tribunal".

(6) For paragraphs 2, 3, 4 and 5 of the proposed article 11, substitute the following:

> "(2) Within thirty days of the receipt of an application under paragraph 1 of this article, the President of the Administrative Tribunal shall constitute a chamber of the Tribunal composed of three members who had not taken part in the original judgement to decide whether or not there is a substantial basis for the application. If the chamber decides that such a basis exists, it may grant such stay of operation of the award as it deems fit. The President of the Tribunal shall then constitute a Full Bench of all the members of the Tribunal. The Full Bench shall hear and dispose of the application in accordance with the rules framed in this behalf."

(7) For paragraph (c) after the proposed article 12 substitute the following: "Subject to articles 11 and 12, the judgement of the Tribunal shall be final".

(8) Omit operative paragraph on page 3 of the draft resolution - "Recommends the .....this resolution".

33. Those representatives supporting the amendment submitted by India were of the view that it removed the principal objections which they had raised with respect to the revised joint draft resolution, and would establish a truly judicial system of review. Under the amendment, the right to make an application for review would be limited to the parties to the original proceedings and would not be granted to a Member State; a chamber of the Administrative Tribunal would be substituted for the proposed screening committee; and the full panel of the Tribunal would be substituted for the International Court of Justice. It was believed that the use of the existing facilities of the Tribunal would be less expensive and less complicated than the establishment of a new appellate tribunal.

34. Those representatives opposing the Indian amendment considered that it removed the basis of compromise in the Special Committee's recommendations. The right of a Member State to make an application for review was an essential element of this compromise, and the elimination of the right would defeat the main purpose of the establishment of a judicial review which was to provide some recourse to meet the concern of Member States. It was further considered that the full panel of the Administrative Tribunal could not act as independently in reviewing judgements as could the International Court of Justice. Furthermore, there would be difficult problems in ensuring a full panel and in voting. Finally there would be expense and delay in convening a plenary session of the Tribunal.

35. At the request of the representative of India, the representative of the Secretary-General after consultation with the Secretary of the Administrative Tribunal furnished certain information to the Committee concerning the application of the revised joint draft resolution and of the Indian amendment. He pointed out that sessions of the screening committee proposed in the revised joint draft resolution would not entail extra costs other than those involved in the servicing of meetings since the committee would be composed of States whose representatives would not receive subsistence allowance or reimbursement for travel expenses. With respect to meetings of the Administrative Tribunal under the amendment submitted by India there would be additional costs since the Tribunal was composed of experts living in different parts of the world. The cost would vary in accordance with the place of meeting and the place of residence of the participating members. A session in which three members took part was estimated to cost between $1,900 and $3,700; and a plenary session between $7,000 and $12,000. He also said that past experience indicated that there would be some difficulty in convening a full panel of the Administrative Tribunal at short notice.

36. The Fifth Committee also had before it the following draft resolution (A/C.5/L.337) submitted by Australia which related to the award of compensation by the Administrative Tribunal:

"The General Assembly

"Decides to amend article 9 of the statute of the United Nations Administrative Tribunal as follows:

"(a) Insert after the words 'provided that such compensation' in the second sentence of paragraph 1, the words 'including normal termination indemnities'.

"(b) Delete the sentence in paragraph 1 commencing 'The Tribunal may, however, in exceptional cases...'.

"(c) Insert the following at the end of paragraph 1:

"'In fixing the amount of compensation to be paid in any case, the Administrative Tribunal shall have regard to the following principles:

"' (i) Where employment is for an indeterminate period, the amount of compensation should be related to the period which might be regarded as reasonable notice of termination of employment and,

"'(ii) Where employment is for a determinate period, compensation should not exceed the applicant's salary for the unexpired portion of such period.'"

37. The representative of Australia explained that paragraph (a) was proposed as a clarification of the intent of the General Assembly in adopting the present text of Article 9 of the statute of the Administrative Tribunal. Paragraph (b) was intended to give full effect to the limitation of compensation to the equivalent of two years' net base salary. Finally, paragraph (c) was intended to specify principles to be observed by the Tribunal in assessing awards of compensation.

38. During the discussion of the Australian proposal, the question was raised whether the Committee could consider the matter under its agenda. This question was not settled, but it was agreed that the Australian draft resolution should be referred to the Secretary-General and to the Advisory Committee on Administrative and Budgetary Questions for consideration and report at the twelfth session of the General Assembly in connexion with the item to be considered at that session - "Review of the Staff Regulations and of the principles and standards progressively applied in their implementation".

39. The individual views of each member with respect to the various draft resolutions and amendments before the Fifth Committee are to be found in the records of the meetings at which the item was discussed (A/C.5/SR.493-501) and the positions of members are indicated in the roll-call votes which are recorded in the following paragraphs of the present report.

40. The Committee at its 499th meeting on 25 October 1955, proceeded to vote on the revised joint draft resolution (A/C.5/L.335/Rev.1), and on the amendment thereto submitted by India (A/C.5/L.339).

41. The second and third paragraphs in the amendment submitted by India were accepted by the co-sponsors of the revised joint draft resolution.

42. The representative of India requested separate votes on each of the paragraphs of the revised joint draft resolution and on the Indian amendments thereto. The representative of the United Kingdom, supported by the representative of Cuba objected to a separate vote and requested that the document submitted by India should be voted on as a whole, since he considered that the various paragraphs formed part of a single proposal. The representatives of Poland and of the Union of Soviet Socialist Republics were of the view that the various paragraphs in the document submitted by India were separate amendments.

43. The Fifth Committee, under rule 130 of the rules of procedure of the General Assembly, decided by a roll-call vote of 27 to 25, with 5 abstentions to vote separately on the paragraphs of the amendment submitted by India. The voting was as follows:

In favour: Afghanistan, Belgium, Byelorussian Soviet Socialist Republic, Colombia, Czechoslovakia, Denmark, Egypt, Guatemala, India, Indonesia, Iran, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Peru, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Brazil, Canada, Chile, China, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Ethiopia, Haiti, Honduras, Iraq, Israel, Pakistan, Panama, Paraguay, Philippines, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Australia, Bolivia, Burma, Greece, Lebanon.

44. Paragraphs 1 and 4 of the Indian amendment were rejected by a roll-call vote of 27 to 25, with 5 abstentions. The voting was as follows:

In favour: Belgium, Byelorussian Soviet Socialist Republic, Colombia, Czechoslovakia, Denmark, Egypt, Ethiopia, Greece, Guatemala, India, Indonesia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Bolivia, Brazil, Canada, Chile, China, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Haiti, Honduras, Iraq, Lebanon, Liberia, Pakistan, Panama, Paraguay, Peru, Philippines, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Afghanistan, Australia, Burma, Iran, Israel.

45. Paragraph 5 of the Indian amendment was rejected by a roll-call vote of 29 to 19, with 9 abstentions. The vote was as follows:

In favour: Afghanistan, Belgium, Byelorussian Soviet Socialist Republic, Czechoslovakia, Egypt, Guatemala, India, Indonesia, Luxembourg, Mexico, Netherlands, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Haiti, Honduras, Iraq, Israel, Liberia, New Zealand, Pakistan, Panama, Paraguay, Peru, Philippines, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Australia, Burma, Denmark, Ethiopia, Greece, Iran, Lebanon, Norway, Sweden.

46. The representative of India, in view of the result of the vote on paragraph 5, did not request a vote on paragraphs 6 and 8 of the amendment.

47. Paragraph 7 of the Indian amendment was rejected by a roll-call vote of 27 to 19, with 11 abstentions. The vote was as follows:

In favour: Afghanistan, Belgium, Byelorussian Soviet Socialist Republic, Czechoslovakia, Egypt, Guatemala, India, Indonesia, Luxembourg, Mexico, Netherlands, Poland, Saudi Arabia, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Against: Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Haiti, Honduras, Iraq, Israel, Liberia, Pakistan, Panama, Paraguay, Philippines, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Australia, Burma, Denmark, Ethiopia, Greece, Iran, Lebanon, New Zealand, Norway, Peru, Sweden.

48. Operative paragraph 1 of the revised joint draft resolution, with the amendments accepted by the co-sponsors (paragraph 41 above), was approved by a roll-call vote of 27 to 19, with 11 abstentions. The vote was as follows:

In favour: Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Honduras, Iraq, Israel, Lebanon, Liberia, Pakistan, Panama, Paraguay, Philippines, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Against: Belgium, Byelorussian Soviet Socialist Republic, Czechoslovakia, Denmark, Egypt, Guatemala, India, Indonesia, Netherlands, Norway, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Abstaining: Afghanistan, Australia, Burma, Ethiopia, Greece, Haiti, Iran, Luxembourg, Mexico, New Zealand, Peru.

49. The revised joint draft resolution, with the amendments accepted by the sponsors, was approved as a whole by a roll-call vote of 27 to 18, with 12 abstentions. The voting was as follows:

In favour: Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Honduras, Iraq, Israel, Lebanon, Liberia, Pakistan, Panama, Paraguay, Philippines, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Against: Belgium, Byelorussian Soviet Socialist Republic, Czechoslovakia, Denmark, Egypt, India, Indonesia, Netherlands, Norway, Poland, Saudi Arabia, Sweden, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Yemen, Yugoslavia.

Abstaining: Afghanistan, Australia, Burma, Ethiopia, Greece, Guatemala, Haiti, Iran, Luxembourg, Mexico, New Zealand, Peru.

50. The Fifth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

REPORT OF THE SPECIAL COMMITTEE ON REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS

The General Assembly,

Recalling section B of its resolution 888 (IX) of 17 December 1954 in which it accepted in principle judicial review of judgements of the United Nations Administrative Tribunal,

Having considered the report (A/2909) of the Special Committee on Review of Administrative Tribunal Judgements submitted pursuant to that resolution,

1. Decides to amend the statute of the United Nations Administrative Tribunal as follows, effective as from the date of adoption of the present resolution, with respect to judgements rendered by the Tribunal thereafter:

(a) Add the following new articles 11 and 12:

"ARTICLE 11

"1. If a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including any one person who has succeeded to ~~his~~ that person's rights on his death) objects to the judgement on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise

jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgement, make a written application to the committee established by paragraph 4 of this article asking the committee to request an advisory opinion of the International Court of Justice on the matter.

"2. Within thirty days from the receipt of an application under paragraph 1 of this article, the committee shall decide whether or not there is a substantial basis for the application. If the committee decides that such a basis exists, it shall request an advisory opinion of the Court, and the Secretary-General shall arrange to transmit to the Court the views of the person referred to in paragraph 1.

"3. If no application is made under paragraph 1 of this article, or if a decision to request an advisory opinion has not been taken by the committee, within the periods prescribed in this article, the judgement of the Tribunal shall become final. In any case in which a request has been made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it shall confirm its original judgement, or give a new judgement, in conformity with the opinion of the Court. If not requested to convene specially the Tribunal shall at its next session confirm its judgement or bring it into conformity with the opinion of the Court.

"4. For the purpose of this article, a committee is established and authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. The Committee shall be composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. It shall meet at United Nations Headquarters and shall establish its own rules.

"5. In any case in which award of compensation has been made by the Tribunal in favour of the person concerned and the Committee has requested an advisory opinion under paragraph 2 of this article, the Secretary-General, if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one-third of the total amount of compensation awarded by the Tribunal less such termination benefits, if any, as have already been paid. Such advance payment shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 3 of this article, such person shall pay back to the United Nations the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the opinion.

"ARTICLE 12

"The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

(b) Renumber the former articles 11 and 12 as articles 13 and 14 respectively, and in paragraph 3 of article 9 substitute the words "article 14" for "article 12";

(c) Amend paragraph 2 of article 10 to read: "Subject to the provisions of articles 11 and 12, the judgements of the Tribunal shall be final and without appeal";

2. Recommends that Member States and the Secretary-General should not make oral statements before the International Court of Justice in any proceedings under the new article 11 of the statute of the Administrative Tribunal adopted under the present resolution.
