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REPORT OF THE SPECIAL COMMITTEE ON REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGMENTS

Rapporteur: Mr. ERIK DONS (Norway)

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Chapter I

INTRODUCTION

1. The General Assembly of the United Nations, at its 515th meeting on 17 December 1954, adopted resolution 888 (IX). Part B of this resolution reads as follows:

> "2. Accepts in principle judicial review of judgments of the United Nations Administrative Tribunal;
>
> "3. Requests Member States to communicate to the Secretary-General before 1 July 1955, their views on the establishment of procedure to provide for review of the judgments of the Administrative Tribunal and to submit any suggestions which they may consider useful;
>
> "4. Invites the Secretary-General to consult on this matter with the specialized agencies concerned;
>
> "5. Establishing a Special Committee composed of Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, El Salvador, France, India, Iraq, Israel, Norway, Pakistan, Syria, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to meet at a time to be fixed in consultation with the Secretary-General to study the question of the establishment of such a procedure in all its aspects and to report to the General Assembly at its tenth session;
>
> "6. Requests the Secretary-General to notify all Member States of the date on which the Special Committee shall meet;"

2. In pursuance of paragraph 5 of the above resolution, and following a consultation on 7 February 1955 between representatives of members of the Committee and the Secretary-General, the Special Committee on Review of Administrative Tribunal Judgments (hereinafter referred to as the "Committee") convened at United Nations Headquarters on 4 April 1955. It held twelve meetings between 4 and 21 April and concluded its session with the adoption of the present report at a thirteenth meeting held on 31 May 1955.

3. With the exception of the Union of Soviet Socialist Republics, which did not send a representative, all the States members of the Committee were represented

at the session. The following is a list of representatives and alternate representatives:

ARGENTINA	
Representative	Mr. Leonardo Cafiero
Alternates	Mr. Carlos F. Cooke Mr. Carlos Alberto Cortinas
AUSTRALIA	
Representative	Mr. T.W. Cutts
BELGIUM	
Representative	Mr. Paul Bihin
BRAZIL	
Representative	Mr. José Osvaldo de Meira-Penna
Alternate	Mr. J.F. da Costa
CANADA	
Representative	Mr. J.S. Nutt
Alternate	Mr. D.R.C. Bedson
CHINA	
Representative	Mr. Chiping H.C. Kiang
CUBA	
Representative	Mr. Carlos Blanco
EL SALVADOR	
Representative	Mr. M. Rafael Urquia
Alternate	Mr. Carlos Serrano-Garcia
FRANCE[1/]	
Representative	Mr. Philippe Monod

1/ At the final meeting of the Committee, France was represented by Mr. Pierre Ordonneau.

INDIA[2/]	
Representative	Mr. P.N. Sapru
IRAQ[2/]	
Representative	Mr. Adnan Pachachi
ISRAEL[2/]	
Representative	Mr. Arthur C. Liveran
NORWAY	
Representative	Mr. Erik Dons
PAKISTAN	
Representative	Mr. Viqar Ahmed Hamdani
SYRIA[2/]	
Representative	Mr. Salah Eddine Tarazi
Alternate	Mr. Muhammad H. El-Farra
UNITED KINGDOM	
Representative	Mr. W.V.J. Evans
Alternates	Mr. P.E. Ramsbotham Mr. A.M.W. Platt
UNITED STATES OF AMERICA	
Representative	Mr. Albert F. Bender, Jr.
Alternate	Mr. Charles Runyon

4. At its first meeting the Committee elected the following officers:

Chairman:	Mr. Carlos Blanco (Cuba)
Vice-Chairman:	Mr. Viqar Ahmed Hamdani (Pakistan)
Rapporteur:	Mr. Erik Dons (Norway)

2/ At the final meeting of the Committee, India was represented by Mr. M.E. Chacko; Iraq by Mr. Ata Abdul Wahab; Israel by Mr. Mordecai R. Kidron; and Syria by Mr. Rafik Asha.

5. The Committee, under rule 62 of the rules of procedure of the General Assembly, decided, by 13 votes to 3 with one abstention, that, since the work of the Committee was of a technical character, its meetings should be private; with the understanding that, within the limits of the conference room's capacity, persons having a special interest in the Committee's proceedings would be admitted. The Chairman of the United Nations Staff Committee or his representative was invited by the Committee to be present at its meetings as observer in order that the Committee might have the opportunity to request clarification of the views of the Staff Council if specific questions should arise on which such clarification would be desired. The Government of the Netherlands had an observer present at the meetings and the United Nations Educational, Scientific and Cultural Organization and the World Health Organization also had observers present.

6. The Committee at the beginning of its session had before it a working paper (A/AC.78/L.1, see annex II A), prepared by the Secretary-General pursuant to a suggestion of representatives of the members of the Committee made at a consultation on conference arrangements held on 7 February 1955. Subsequently, memoranda concerning the members of the Permanent Court of Arbitration (A/AC.78/L.9/Rev.1, see annex II B) and participation of individuals in proceedings before the International Court of Justice (A/AC.78/L.10, see annex II C) were prepared by the Secretary-General at the request of the Committee. The Committee also had before it a document (A/AC.78/L.3 and Adds. 1, 2 and 3, see annex III) containing preliminary views of Member States and observations of the specialized agencies concerned which had been consulted by the Secretary-General. The views of the Staff Council of the United Nations were also transmitted to the Committee by the Secretary-General (A/AC.78/L.4, see annex IV). The views of the Staff Council were further explained by its representatives at the request of the Committee during the course of its meetings.

7. The Committee was informed that the Secretary-General, pursuant to paragraph 3 of General Assembly resolution 888 (IX), had requested all Member States to communicate to him, before 1 July 1955, their views on the establishment of a procedure to provide for review of judgments of the Administrative Tribunal and to submit any suggestions which they might consider useful. The Committee was also informed that the Secretary-General had notified all Member States,

pursuant to paragraph 6 of the resolution of the date of the Committee's meeting and had suggested that Member States desiring to submit preliminary views for the consideration of the Committee should do so before 25 March 1955.

8. Only the Governments of New Zealand, Sweden and Ethiopia submitted preliminary views. The Governments of Belgium, Thailand and Haiti informed the Secretary-General that they did not intend to submit preliminary views. Observations were also received from the Food and Agriculture Organization, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the World Meteorological Organization and the International Civil Aviation Organization.

9. The Committee at its first meeting considered its terms of reference and noted that the General Assembly, by paragraph 2 of resolution 888 (IX), had accepted in principle judicial review of judgments of the United Nations Administrative Tribunal. The Committee noted that there was a difference in meaning between the words "accepts in principle" in the English text which was the language of the original English draft and the words "accepte le principe" in the French text of the resolution. The representative of Norway recalled the position of his delegation in the General Assembly that acceptance in principle of judicial review could not be considered final and binding on it for the future discussion of the problem. The representatives of France, Norway and Syria considered that there was no need for any procedure to review judgments of the Administrative Tribunal. The representative of France pointed out, in particular, that in his view the General Assembly had not given the Committee imperative terms of reference and there was no reason to exclude the possibility that the Committee's work might result in a negative conclusion. The representatives of France, India and Norway noted that the Committee was to study the question in all its aspects and believed that the advisability of establishing any procedure for judicial review could be discussed in considering general principles. The representatives of China, Iraq, Pakistan and the United States of America believed that the question of need had been settled by the General Assembly and that the Committee was bound to limit its study to ways and means of applying the principle of judicial review. The representatives of Australia and the United Kingdom, while believing the Committee could not re-open the question decided in principle by the General Assembly,

considered that a procedure which they could agree to recommend must satisfy certain conditions and that, failing the satisfaction of such conditions, they would consider themselves free to oppose the recommendation of any procedure to the General Assembly. The representative of Syria believed that, while members of the Committee were bound by the terms of the General Assembly resolution, their delegations retained full freedom to support the basic views of their Governments in the Fifth Committee and other organs of the United Nations. It was agreed that, while members would be free to discuss general principles, the object of the Committee's study was to recommend to the General Assembly a procedure which would give effect to the Assembly's acceptance in principle of judicial review.

Chapter II

GENERAL PRINCIPLES AND PRIMARY ISSUES

10. The Committee devoted its first meetings to a discussion of the general principles involved in the establishment of a procedure for judicial review of judgments of the Administrative Tribunal. Part III of the working paper submitted by the Secretary-General (annex II A) served as a basis for the discussion.

A. Meaning of "judicial review"

11. With respect to the meaning of "judicial review" as used in General Assembly resolution 888 (IX), two possible interpretations were mentioned. On the one hand, it might be considered that the phrase referred only to an appeals procedure in which the parties to the original action could seek a reconsideration of the case, or certain of its aspects, before an appellate body. On the other hand, it might be considered that "judicial review" could also refer to a procedure other than an appeals procedure in the technical sense of the term. It was pointed out that the draft resolution which had been proposed by the Fifth Committee had been amended in the plenary meeting of the General Assembly (515th plenary meeting) by replacing the words "appeals against" by the words "review of". The intention of the sponsors of the amendment had been to use a broader term which included appeals and other judicial procedures. It was the view of the majority of the members that the Committee could consider as judicial review either an appeals procedure in the narrow sense of the term or some other kind of review procedure which satisfied judicial requirements such, for example, as review of legal questions through the advisory procedure of the International Court of Justice.

B. Primary issues in the establishment of a review procedure

12. The Committee based its general discussion on the three principal issues discussed in part III of the working paper on judicial review of Administrative Tribunal judgments submitted by the Secretary-General (annex II A). These issues were: (1) what should be the scope of review? (2) what should be the reviewing body? and (3) who should have a right to initiate the review?

13. In the course of the general discussion, the representative of the Secretary-General outlined the following principles which the Secretary-General considered fundamental for any review procedure that might be adopted. These principles were: (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 the members of the review tribunal 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 a right to initiate the review and to participate in the review procedure.

14. The representative of the Secretary-General directed attention to the fact that, in the working paper submitted to the Committee, it was stated that at no time had the staff expressed nor had the Secretary-General felt the need for a review or appellate procedure with respect to the normal cases coming before the Administrative Tribunal (annex II A, paragraph 46). The Staff Council had also stated that it had not been convinced of the necessity of establishing a review procedure (annex IV, paragraph 23). However, he noted the statement of some members of the Committee that the history of both the League of Nations and the United Nations had shown that in exceptional circumstances, in the absence of such review procedure, certain difficult questions had arisen. He considered that a review procedure should not be one devised for regular use, but should only serve as a "fire escape" or "safety valve" in exceptional cases. It should not be a procedure which would invite unnecessary and unwarranted appeals, and its success might in fact be measured by the infrequency of its use.

15. The Secretary-General noted that the International Court of Justice in its advisory opinion had indicated, and the General Assembly in resolution 888 (IX) had decided, that a procedure for review of Administrative Tribunal judgments must be judicial. He considered it of the utmost importance that a review should be by a permanent independent body consisting of highly respected jurists, and that the procedure should be truly judicial in character. The reviewing tribunal, he believed, should be a permanent rather than an ad hoc body, not only to ensure its independence and freedom from political pressures, but also to ensure the continuity of decisions and the development of a consistent jurisprudence.

The reviewing body should have the highest standing in order, inter alia, not to lower the authority and stature of the Administrative Tribunal.

16. The Secretary-General also considered that any procedure to be adopted should be simple and expeditious in order not to result in undue complication or delay. He recalled the procedures already existing for the consideration of personnel cases under the staff regulations and staff rules, and emphasized that any additional steps should not prolong the procedure more than absolutely necessary.

17. The Secretary-General also believed it important that the staff member or other applicant before the Administrative Tribunal should have a right to initiate and to participate on an equitable basis in any review procedure to be established. Such procedure should ensure substantial equality.

18. The general principles enunciated by the Secretary-General received considerable general support in the Committee. The particular views of the members of the Committee as they relate to these principles will be found in the following sections of the present report.

1. Scope of the review

19. The members of the Committee were in general agreement that review should be limited to exceptional cases. There was also general agreement that there should be no complete review of all aspects of the case and that, in particular, there should not be a review of questions of fact as such. There was considerable variation of opinion, however, among the members of the Committee as to the exact grounds for which a review should be provided. On the one hand there was the view that review should be on all questions of law while on the other hand there was the view that it should be confined to the two grounds specified in article 12 of the Statute of the Administrative Tribunal of the International Labour Organisation, i.e., questions of jurisdiction and questions of fundamental defect in procedure. Positions in between these two views were also suggested.

20. The representative of Australia considered that there should be a review of all legal questions but that the exceptional nature of the review should be maintained by providing that appeal should lie at the discretion of the reviewing body, which would grant leave to appeal only if the application disclosed substantial grounds.

21. Some members of the Committee considered that the review should only extend to certain important legal issues. The representatives of China, Cuba, Iraq and the United States of America considered that the review should be on all important legal questions and that there was no necessity for defining these further in an amendment to the Statute of the Administrative Tribunal. The representative of Belgium considered that the review should only be based on disregard for rules of law concerning, inter alia, competence, procedure, interpretation and application of existing regulations. The representative of India considered that there should be a review only on the grounds that there was involved a substantial question of law, a jurisdictional error or a gross violation of principle of natural justice or material irregularity. The representative of Canada, while at first considering that review might lie on all questions of law, was prepared to accept the prevailing view that it should be limited to important legal questions.

22. The representatives of Brazil, France, Pakistan, Syria and the United Kingdom believed that the review should be limited to grounds similar to those in article 12 of the Statute of the International Labour Organisation, namely, the questions of jurisdiction and fundamental fault in procedure. The representatives of Argentina, El Salvador and Norway considered that the grounds should be strictly limited. It was believed by many members of the Committee that too broad a scope of review would invite unwarranted appeals and would add an unnecessary burden to the already rather lengthy and involved procedure for handling personnel cases.

2. The reviewing body

23. Members of the Committee were in agreement that the revising organ should be an independent, permanent, judicial body composed of highly respected jurists. There was a difference of opinion, however, whether the reviewing organ should be the International Court of Justice through its advisory procedure, a new tribunal of the highest stature created specifically for the purpose of reviewing Administrative Tribunal judgments, or a panel within the framework of the Administrative Tribunal itself.

24. The representatives of Brazil, Canada, China, Cuba, France, Iraq, Israel, Pakistan, the United Kingdom and the United States expressed themselves in favour of a review which would utilize the advisory procedure of the International Court

of Justice. The Statute of the Administrative Tribunal of the International Labour Organisation provided for this type of review[3/] and it was pointed out by the representatives of Brazil, Cuba, Iraq, Pakistan and the United States that the jurisdiction of this Tribunal was accepted by a number of specialized agencies the membership of which was in many instances very similar to the membership of the United Nations. They emphasized their belief that existing review bodies should be utilized to the utmost before the creation of a new organ should be considered, and that the machinery in effect in other organizations should serve as a model unless demonstrated to be defective.

25. The members of the Committee who favoured the use of the International Court of Justice pointed out that it was the principal judicial organ of the United Nations and, therefore, the organ of highest possible standing. The representatives of China, Israel and the United States considered it undesirable to create a new organ which would compete with the International Court of Justice as the final arbiter on questions of United Nations law. The representative of France thought that a new tribunal whose members might, for example, be elected by the General Assembly would not have a higher standing than the Administrative Tribunal. He further believed that, since few review cases were to be anticipated, the establishment of a new review body would be burdensome and expensive and should be rejected for budgetary reasons. The representative of Cuba thought that, while there might have been reasons for establishing a new tribunal if there were to be appeals on all questions of law, there was no need for such procedure if it would be applicable to only a few limited grounds.

3/ Article 12 of the Statute of the Administrative Tribunal of the International Labour Organisation is as follows:

"In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges the decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question as to the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.

"The opinion given by the Court shall be binding."

26. The representatives of Argentina, Australia, Belgium, El Salvador, India and Syria, however, considered that the creation of a new organ would be desirable. The representative of Syria considered that the International Court of Justice, which had been established to decide questions of international law in disputes between States, should not be asked to adjudicate between the Secretary-General and a staff member. He pointed out that, under Article 34 of the Statute of the International Court of Justice, only States may be parties in cases before the Court, and considered that an attempt to use the advisory procedure for review of Administrative Tribunal judgments would be contrary to the spirit of the Statute. Furthermore, the representatives of El Salvador and Syria considered that the use of the term "advisory opinion" in the Charter and Statute clearly indicated that such an opinion was not binding on the organs concerned. They believed that the use of an advisory procedure to review binding judgments would be an anomaly.

27. Finally, the use of the advisory procedure of the International Court of Justice would present a difficult problem as to how a staff member might participate on a basis of equality with the Secretary-General or Member States. The representative of Syria said that a staff member had no locus standi before the Court, and it would be inequitable to deny a party the right to appear before the reviewing body. While methods might be devised by which the written views of staff members might be brought to the attention of the International Court, the representative of Belgium did not believe that any way could be devised under Article 66, paragraph 2, of the Statute to permit their representation at oral hearings. The representative of India stated that, while he had at first considered favourably a proposal to utilize the advisory procedure of the International Court of Justice, after more careful study he was of the opinion that there were serious constitutional and practical difficulties. He also believed that, in spite of assurances which might be given to staff members, they would never be convinced that equality of rights could be fully guaranteed.

28. Those members favouring a new tribunal believed that it should be a judicial body of the highest standing before which the status of the parties would be completely equal. The representatives of Australia and Syria thought that the members of the review tribunal could be appointed from among members of the International Court of Justice by the President of the Court. This would assure

the high standing of the tribunal and might also have practical and budgetary advantages, since the members of the Court would be together in The Hague. However, there appeared to be some question whether the President of the Court could exercise such a function with respect to members of the Court, and there might also be a question of the compatibility of such a function under Article 16 of the Statute, although this latter point, in view of precedents, did not seem to raise insurmountable difficulties. The possibility was also suggested that the President of the Court might be asked to appoint a review tribunal from among other jurists of highest standing.

29. In answer to the foregoing objections to the use of the International Court of Justice, those members favouring the use of the Court pointed out that, under the Charter, the General Assembly and other organs so authorized could request opinions of the Court on legal questions. The representative of France believed that the Statute of the Court was fully compatible with a request for an advisory opinion on legal questions which might be raised by a judgment of the Administrative Tribunal. It would be an advisory opinion and not an indirect means of settling a question in dispute. The representative of Israel expressed agreement with this general approach to utilizing the advisory procedure of the International Court of Justice. Furthermore, it was believed that, if the review were confined to exceptional cases and important questions of law, it would not be an imposition on the Court. The representative of the United Kingdom considered that, though there were difficulties in using the advisory procedure of the International Court, these would not in practice prove substantial if the grounds of review were kept within narrow limits such as those in article 12 of the Statute of the ILO Tribunal, but that if the scope of review were enlarged it might then be necessary to establish a new tribunal.

30. The representatives of China, Cuba, France and the United States also considered that provision could be made for acceptance in advance of advisory opinions. The representatives of China and Cuba also referred to the authoritative character and moral force of advisory opinions of the Court.

31. With respect to the position of the staff member before the Court, those favouring the use of the International Court of Justice believed that no injustice would result from the lack of complete formal equality. Adequate arrangements

could be made for the presentation of written memoranda of staff members to the Court as had been proposed by the Council of the League of Nations in a case concerning former officials of the Governing Commission of the Saar Territory (see annex II C). The representative of France further believed that there would always be at least one State prepared to support the position of a staff member before the Court. The representative of Canada suggested that the review procedure might be restricted to the consideration of documents and written briefs. The representative of the United States pointed out that no one had objected to the staff members' position under the procedure provided in article 12 of the Statute of the Administrative Tribunal of ILO, or to the fact that staff members had not been able to participate in the proceedings when an advisory opinion had been requested by the General Assembly in 1953 on questions directly affecting staff members of the United Nations.

32. As a third alternative to the use of the International Court of Justice or the creation of a new tribunal, the possibility was suggested by the representative of India that some procedure within the framework of the Administrative Tribunal itself might be used for review of judgments. The representative of Australia considered that, if those suggestions were to be adopted, the size of the panel of the Administrative Tribunal should be increased from seven to possibly ten members, and the statute should specifically require that members should have prior judicial experience.

3. Initiation of review

33. With respect to the initiation of the review, it was generally agreed by members of the Committee that the Secretary-General and the staff members concerned should have the right to initiate the review. An important difference of opinion, however, existed as to whether Member States or an organ of the General Assembly on which Member States were represented should also have the right to initiate the review.

34. The representatives of Australia, Belgium, El Salvador, France, India, Norway, Syria and the United Kingdom considered that only the Secretary-General and the staff member concerned should have this right of initiation. They considered that the right should not be extended to a Member State, a group of

ber States or a political organ of the United Nations. The representatives of gium and India believed that a right of initiation by Member States might ogate from the international character of the Secretariat, since staff members ld look to their Governments for protection in disputes with the Secretary- eral. Nothing should be done that would tend to undermine the authority of Secretary-General or cause a feeling of insecurity among the staff. The resentative of Syria considered that to authorize Member States to intervene the review procedure would be contrary to both paragraphs of Article 100 of Charter. He further considered that the power of a deliberative body to ablish judicial organs did not entitle members of such an assembly to appear ore the organ established.

Some members of the Committee considered that to permit Member States to iate a review would introduce a new party which had not participated in the ginal proceedings before the Administrative Tribunal and would be contary to erally accepted judicial principles. It was also believed that this would oduce a political element into what should be a strictly judicial procedure. representative of Australia did not consider it possible to reconcile a right itiation by a Member State with a proper system of appeals. The esentative of Norway considered that, since a Member State could not act for rganization as a whole, there was no interest in the proceedings before the nistrative Tribunal which could properly be represented by a Member State. staff member acted in his own interest, and the Secretary-General acted in the rest of the Organization as a whole. The intervention of a Member State d indicate a lack of confidence in the Secretary-General and would lower his tige. The representatives of India and Norway suggested that a State could the attention of the Secretary-General to a case which it considered to affect nterest of the Organization as a whole, and the Secretary-General could take he considered warranted.

[redacted] hand, the representatives of Argentina, Brazil, China, Cuba, tan and the United States of America considered that Member have some part in the initiation of review. They believed had legitimate and important interests which should be given epresentative of Brazil believed that the review could be

initiated by the General Assembly, one of its subsidiary organs, a Member State a group of Member States, or a small committee elected by the General Assembly. The representative of China believed that the General Assembly should be entitl to initiate review where the interests of the United Nations were involved. T representative of Cuba was of the opinion that the Member States, perhaps thro a small committee of the General Assembly, should have the right to initiate review. The representative of Canada suggested that the Secretary-General should be authorized to request the Court for an advisory opinion if a number States, perhaps five, requested him to do so. The representative of Iraq, Pakistan and the United States of America thought that a procedure analogous t that of article 12 of the Statute of the Administrative Tribunal of ILO might followed with some organ of the General Assembly acting in place of the Govern Body of ILO. The representative of Brazil suggested that the function of the Governing Body of ILO could be exercised by a committee which would have the t of screening requests for an advisory opinion and preserving the exceptional character of the procedure.

37. The representative of the United States of America said that, while the legitimate interests of a staff member and the position of the Secretary-Gene had to be safeguarded, those were not the only considerations involved and th review procedure would fail in its purpose if those considerations only were taken into account. Cases which had arisen in the League of Nations, in the specialized agencies and recently in the United Nations indicated a need for a judicial review procedure on occasions when a representative organ of the Uni Nations believed that the interests of the Organization demanded such a revi Certain interests of the Organization could be represented only by sovereign Member States. On important questions involving the interpretation or application of the Charter or the staff regulations, the views of Mem rs sh receive a full hearing and consideration. The provisions of the Char the United Nations and the Statute of the International Court o indicated that it was not inappropriate for a political body t body for a ruling on legal questions. Since, under the Statu Administrative Tribunal of ILO the executive bodies of special could request advisory opinions from the International Court c

concerning questions arising out of judgments of that Tribunal, a judicial review procedure governed by analogous provisions could be devised for the United Nations.

38. The representative of Brazil believed that the whole question had arisen from political considerations and, that in any case requiring review, the principal party concerned was the Organization itself as represented by Member States. The representatives of Brazil and Iraq believed that, if Member States were not considered interested parties, a review of judgments of the Administrative Tribunal would be superfluous since such review had not been sought by the Secretary-General or the staff.

39. The representative of Iraq was of the opinion that a right of initiation by Member States would not be contrary to Articles 100 and 101 of the Charter. The representative of Brazil considered that the Secretary-General, for reasons of internal Secretariat policy, might not wish to ask for a review in cases where Member States having legitimate interests desired such review. The question could only be settled by an opinion of the International Court of Justice. The representative of Cuba believed that a right of initiation by Member States could not impair the position of the Secretary-General.

40. The representative of Israel considered that, while discretionary power to bring about the reference of a case to the International Court of Justice should not be granted to States, it could be given to an impartial judicial organ. He pointed out that the International Court of Justice in its advisory opinion of 13 July 1954 (ICJ Reports 1954, page 53) had said that "the parties to a dispute before the Administrative Tribunal are the staff member concerned and the United Nations Organization represented by the Secretary-General". He believed that, since the Organization itself was one of the parties, the Organization could be represented in the review procedure by other organs than the one which had represented it before the Administrative Tribunal and that this would not introduce a new party to the proceedings. The representatives of Belgium, India, Syria and Norway, however, considered that under the Charter only the Secretary-General could properly represent the Organization in personnel cases.

41. With respect to the initiation of review, the possibility was also suggested by the representatives of India and Pakistan that the Secretary-General and the staff member concerned might make an application to the Administrative Tribunal

itself to refer a question of law to the International Court of Justice. The full panel of the Tribunal, perhaps excluding the members who had originally heard the case, would decide whether the point was a proper one to refer to the International Court of Justice and, if it so decided, to frame a question which would be put to the Court. The representative of Cuba thought that this suggestion deserved consideration but that the Administrative Tribunal should also be able to act upon the petition of one or more Member States as well as of the Secretary-General and the applicant. The representative of France thought it would be a delicate matter to ask the Administrative Tribunal to play a part in the review of its own judgments. The representative of the United Kingdom also pointed out that it would be difficult and expensive to convene the entire panel of the Administrative Tribunal in order to consider whether a request for review should be granted.

C. Other questions

1. Execution of judgments

42. The representative of Belgium considered that it would be contary to staff interests if the lodging of an appeal from the judgments of the Administrative Tribunal were to stay the execution of a judgment. An appeal, followed perhaps by reference back to the Tribunal, would take considerable time and the very purpose of the award - to provide living expenses for the staff members who sought other employment - would be defeated. The representatives of France and Syria were also of the opinion that the institution of the review should not suspend judgments of the Tribunal. The representative of India considered that though an appeal did not automatically operate as a stay if the time limit for a review were short, the suspension of judgments would not necessarily give rise to serious difficulties.

2. Qualifications and election of members of the Administrative Tribunal

43. The representatives of Australia, Brazil, China and India also believed that consideration should be given to the inclusion in the Statute of the Administrative Tribunal of an express provision to the effect that members of the Administrative

Tribunal should have certain judicial qualifications such as a number of years of experience in judicial office in their respective States. The representative of Australia considered that this would be particularly true if the Administrative Tribunal itself were to act as a reviewing body. In such case he thought that the size of the panel should also be increased.

44. The representative of China believed that the method of nomination and election of members of the Administrative Tribunal should be reviewed, and that a different process for such nomination and election should be developed. He thought it might be desirable for nominations to be submitted at least three months prior to the election, for certain judicial standards to be specifically provided for candidates and, perhaps, for the nominations to be made by the President of the International Court of Justice.

3. Principles governing compensation

45. The representative of Australia also considered that the Administrative Tribunal had in the past failed to apply proper principles in fixing the quantum of awards, particularly when it had taken into account punitive elements and expectations of future employment. In fact, he believed that this failure to apply proper principles was the main reason which had given rise to the present consideration of the question of review of Administrative Tribunal judgments. He believed that the Statute of the Administrative Tribunal should be amended to specify the principles to be observed in fixing the amount of an award. In cases of indeterminate periods of employment, compensation should be based on the principle of "reasonable notice" while, in cases of fixed term contracts, compensation should not exceed the salary for the unexpired period of the term. He also believed that the limits of the Administrative Tribunal's authority to fix compensation should be more clearly defined by eliminating the general exception to the ceiling of two years' salary provided in article 9 of the Statute of the Tribunal, and by making it clear that this ceiling included normal termination benefits. He considered that provisions of this character would reduce the possibility of future awards of compensation which were manifestly inadequate or manifestly excessive and would to that extent partly obviate the need for a review procedure.

Chapter III

DRAFT AMENDMENTS TO THE STATUTE OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

A. Proposals and suggestions

46. During the first part of its discussion of specific texts, the Committee had before it the following proposals or suggestions which are reproduced in full in annex I to the present report:

1. A draft amendment to the Statute of the United Nations Administrative Tribunal submitted by France (A/AC.78/L.7/Rev.1, annex I A) [this amendment was later withdrawn];
2. A draft amendment to the Statute of the United Nations Administrative Tribunal submitted by China, Iraq and the United States of America (A/AC.78/L.6/Rev.1, annex I B);
3. Suggestions by the Secretary-General concerning judicial review of Administrative Tribunal judgments (A/AC.78/L.8, annex I C);
4. A proposed addition by India (A/AC.78/L.11, annex I D) to the suggestions of the Secretary-General (later made as an amendment to the proposal of Australia);
5. A draft proposal on judicial review of Administrative Tribunal judgments submitted by Australia (A/AC.78/L.12, annex I E);
6. A draft amendment submitted by India (A/AC.78/L.13, annex I F) to the draft proposal of Australia.

47. The points of agreement and the principal differences in these proposals are described in paragraphs 48 to 66 which follow. In an effort to achieve a wider basis of agreement a new joint proposal was introduced by China, Iraq, Pakistan, the United Kingdom and the United States of America (A/AC.78/L.14, see paragraph 67). Amendments to this joint proposal were submitted by the representative of France (A/AC.78/L.15, see paragraph 91) who withdrew his Government's proposal. The explanations and positions of members of the Committee with respect to the joint proposal are described in paragraphs 67 to 107 of the report, and the views of the representative of the Staff Council are described in paragraphs 108 to 109.

1. Analytic comparison of proposals and suggestions considered during the first part of the discussion of specific texts

(a) Scope of the review

48. The proposal of France (annex I A) and the suggestions of the Secretary-General (annex I C) would limit the grounds for review to those provided in article 12 of the Statute of the Administrative Tribunal of the International Labour Organisation. The proposal of France provided that, in any case in which the Secretary-General or any other party to a dispute before the Administrative Tribunal should challenge a decision of the Tribunal regarding its jurisdiction, or consider that a decision of the Tribunal was vitiated by a fundamental fault in the procedure, the question as to the validity of the decision might be the subject of a request for an advisory opinion of the International Court of Justice. The suggestions of the Secretary-General provided that the scope of review should be limited to questions of law involving only questions of jurisdiction or fundamental defect in procedure as was provided in article 12 of the Statute of the ILO Tribunal, and that there should be no retrial of the facts, nor of points of law generally.

49. The proposal of China, Iraq and the United States of America (annex I B), defined the scope of review as "important legal questions raised by the judgment" but provided a committee to decide whether the questions were of such importance as to warrant judicial review (see paragraph 55 below). The proposal of Australia (annex I E) provided that an appeal should lie on all substantial questions of law including (1) questions of jurisdiction; (2) fundamental defect of procedure; (3) misinterpretation of the Statute of the Administrative Tribunal or of the staff regulations or rules; (4) want of evidence to support a finding on which judgment is based; and (5) manifest inadequacy or manifest excessiveness of compensation fixed by the Tribunal having regard to the principles properly applicable.

50. The fundamental difference in these proposals with respect to the scope of review was, on the one hand, the proposal that the review should be strictly limited to the two grounds specified in the Statute of the ILO Tribunal and, on the other hand, the proposal that it should cover all important questions of law.

(b) The reviewing body

51. The proposal submitted by France (annex I A) and the proposal submitted jointly by China, Iraq and the United States of America (annex I B) both proposed that the advisory procedure of the International Court of Justice should be used. The suggestions of the Secretary-General (annex I C) and the proposal of Australia (annex I E) on the other hand provided for the creation of a new review tribunal to be appointed by the President of the International Court of Justice from a list containing the names of (1) members of the Permanent Court of Arbitration who had been selected by Members of the United Nations; and (2) not more than four persons having the same qualifications as members of the Permanent Court of Arbitration notified to the President of the International Court of Justice by each Member of the United Nations not represented in the Permanent Court of Arbitration.

52. The representatives of India and Pakistan expressed doubt whether the appointment of a tribunal based on the membership of the Permanent Court of Arbitration would provide complete equality for Members of the United Nations. Those Members of the United Nations which were not represented in the Permanent Court of Arbitration would, on the one hand, have more freedom in submitting names to the President of the International Court of Justice but, on the other hand, their nominations, they feared, might not be considered on a basis of equality with the members of the Permanent Court of Arbitration. The representative of India submitted an amendment proposing that the reviewing body should be composed of three members appointed by the President of the International Court of Justice from a list of persons who are or have acted as judges of a superior court in their respective States or who are jurists of recognized standing in their respective States, or who are or have been members of the Permanent Court of Arbitration (annex I F).

(c) Initiation of review

53. The proposal of France (annex I A), and the proposal of Australia (annex I E), provided that only the Secretary-General and the staff member concerned should have the right to initiate the review. On the other hand, the draft amendment submitted jointly by China, Iraq and the United States of America (annex I B),

provided that a Member State as well as the Secretary-General and the staff member might initiate the review. The suggestions of the Secretary-General (annex I C), while proposing that only the Secretary-General and the staff member concerned should initiate the review, referred to a possibility that a group of five Member States might also be given this right if it were considered desirable.

(d) Procedures for initiation of review

54. The proposals also provided different procedures for initiation of review. The proposal of France (annex I A) and the proposal of China, Iraq and the United States of America (annex I B) each provided for a request for an advisory opinion from the International Court of Justice. The proposal of France provided that the Secretary-General should make the request for such an opinion either on his own initiative or at the request of the other party to a dispute before the Administrative Tribunal. In the text as originally introduced (A/AC.78/L.7) the Secretary-General could refuse to refer the case to the International Court only in accordance with the concurrent and motivated opinion of the Chairman of the Special Advisory Board provided for in staff regulation 9.1 (a).

55. The proposal submitted jointly by China, Iraq and the United States of America as originally introduced (A/AC.78/L.6) provided that the request for an advisory opinion should be made by a committee to be composed of Member States the representatives of which had served on the General Committee of the most recent regular session of the General Assembly. The committee would consider a written proposal for reference to the International Court of Justice made by a Member State, the Secretary-General or the staff member concerned and request an advisory opinion on questions raised by the judgment of the Administrative Tribunal which it considered to be of such importance as to warrant judicial review. The representative of the United States of America explained that it had not been suggested that the General Assembly itself should perform this function since it was normally in session only once a year and, besides, the Assembly had indicated that it did not wish to concern itself with details of

specific cases. A committee constituted on the basis of the General Committee was proposed because it could be automatically set up without the need of a special election or appointment, and was at the same time as representative a body as could be devised. He drew attention to the fact that it was not the General Committee itself which was proposed, but a committee of those Member States the representatives of which had served on the General Committee.

56. A fundamental difference between the procedure proposed by France and that proposed by China, Iraq and the United States of America was that, in the former proposal the Secretary-General, and in the latter proposal a committee of Member States, was to make the request for an advisory opinion of the International Court of Justice.

57. In an effort to narrow the margin of disagreement, the representative of France amended his proposal to accept the idea of a committee in place of the Chairman of the Special Advisory Board as he had previously suggested. He believed, however, that the committee should be a technical rather than a political body. He proposed, therefore, that it should be composed of five members appointed respectively as follows: one each by (1) the Secretary-General; (2) the staff members of the Organization; (3) the members of the Fifth Committee; and (4) the members of the Sixth Committee. The four members thus appointed would then designate the fifth member who should act as Chairman. The sponsors of the proposal submitted jointly by China, Iraq and the United States of America, likewise in an effort to reduce the margin of difference, amended their proposal to include in the membership of the committee proposed in their draft amendment, the Secretary-General and a representative of the Staff Council of the Secretariat of the United Nations. The main difference in the two committees was that the proposal of China, Iraq and the United States of America provided a committee which, although having a representative of the Secretary-General and of the staff, consisted primarily of Member States broadly representative of the General Assembly, whereas the proposal of France provided for a small committee of representatives appointed for two years and chosen in their individual capacities so that they would, on the contrary, be independent of Member States.

58. Both the proposal of France and the draft amendment submitted jointly by China, Iraq and the United States of America provided that the advisory opinion should be binding. The proposal of France further provided that in any case where the application of an advisory opinion required the amendment of the Administrative Tribunal judgment, the Tribunal should, at the request of the Secretary-General and not later than three months after the opinion was given, amend the judgment accordingly. The proposal of China, Iraq and the United States of America provided that the opinion should be given effect by the Administrative Tribunal.

59. The proposal of Australia (annex I E) provided that either the Secretary-General or the applicant might make written application for leave to appeal against a judgment of the Administrative Tribunal. The review tribunal would grant leave to appeal and proceed to hear the appeal only if it should find that the application disclosed the existence of a substantial question of law. The Australian proposal and the suggestions of the Secretary-General (annex I C) each provided that the review tribunal should have the authority, where possible, to render a final judgment in the case, and only when it was impossible on the existing record to render such final judgment should the review tribunal be authorized to refer the case back to the Administrative Tribunal.

(e) Time limits for review

60. The proposal of Australia (annex I E) and the suggestions of the Secretary-General (annex I C) also provided that only a relatively short time period of one or two months should be allowed in which the review might be instituted and that the procedure should ensure the disposition of the case by the review tribunal within an additional two months. The proposal of France (annex I A) provided that the review must be initiated by the party within one month and that the committee must decide whether to approve the reference to the Court within one month. If it did not take a decision within one month the case was to be referred to the Court by the Secretary-General without further delay. Where a modification of the judgment of the Administrative Tribunal was required in the application of the advisory opinion, this should be done within three months.

61. The proposal submitted jointly by China, Iraq and the United States of America (annex I B) provided that the proposal for review by a Member State, the Secretary-General or a staff member must be made within thirty days of judgment and that the committee might establish an additional period not to exceed seventy days from the date of judgment for its consideration of the matter. If at the end of a period of thirty days or such extended period, if any, a decision to request an advisory opinion had not been taken, the judgment of the Administrative Tribunal would become final and without appeal.

62. Neither the proposal of France nor the proposal submitted jointly by China, Iraq and the United States of America, of course, attempted to provide the period within which the International Court of Justice should give its advisory opinion. The proposal of China, Iraq and the United States of America also did not specify the period within which the Administrative Tribunal was to give effect to the opinion.

(f) Revision of judgments in case of discovery of mistake of fact

63. The proposal of Australia (annex I E) and the suggestions of the Secretary-General (annex I C) also contained a draft amendment to the Statute of the Administrative Tribunal providing for revision of a judgment by the Tribunal itself in the event of a discovery of some fact of such a nature as to be a decisive factor which fact was, when the judgment was given, unknown to the Tribunal, and also to the party claiming revision, always provided that such ignorance was not due to negligence. This text was based on Article 61 of the Statute of the International Court of Justice and it was understood to cover both the discovery of a material mistake of fact or of a new material fact and it was further understood that the reference to "negligence" related to negligence of the party claiming revision.

64. It was noted that the Administrative Tribunal had in one case revised the amount of an award which was computed on the basis of a date submitted by both parties and recognized by both after the judgment as erroneous. It was further noted that the International Court of Justice, in its advisory opinion of 13 July 1954, referred to the right of the Tribunal itself to revise a judgment when new facts of decisive importance had been discovered. An express provision

in the Statute of the Administrative Tribunal might, therefore, not be absolutely necessary in the light of existing precedent and authority. However, the Secretary-General considered it desirable to include an express provision in the Statute in order to ensure that the existing precedent would not be too narrowly interpreted, and the majority of the committee concurred in this view. The representative of the United Kingdom, however, considered that such a provision was superfluous and inadvisable since he believed it might invite unnecessary requests for revision. The representatives of India and Pakistan pointed out that in the judicial systems of their countries express provision was made for revision of judgments and they therefore supported the proposal. India proposed an amendment to provide that clerical or arithmetical mistakes in judgments 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 (annex I D).

(g) Principles governing compensation

65. The proposal of Australia (annex I E) also contained a provision for the amendment of article 9 of the Statute of the Administrative Tribunal with regard to principles governing compensation. This proposal would have added to paragraph 1 of article 9 the provisions underlined and would have deleted the provisions in parentheses:

"1. 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. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgment, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation including normal termination indemnities shall not exceed the equivalent of two years' net base salary of the applicant. (The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.) 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."

66. The representative of Australia explained that the proposed addition to the second sentence was intended to make clear the intention of the General Assembly when it amended article 9 at its eighth session. The deletion of the sentences at the end of the paragraph was intended to remove the illusory effect of that amendment, and the addition of the new final sentence was intended to define some of the principles which should be applied in fixing the amount of compensation. The proposal of Australia was supported by the representative of Iraq. On the other hand, the representatives of Belgium, France, India, Syria and the United Kingdom stated that the Committee, in view of its terms of reference, had no competence to decide the question.

2. Joint draft proposal of China, Iraq, Pakistan, the United Kingdom and the United States of America

67. The discussion of the foregoing draft amendments and proposals indicated a wide divergence of views among members of the Committee. In an effort to achieve a wider basis of agreement, a new joint draft amendment to the Statute of the Aministrative Tribunal (hereinafter referred to as the "joint proposal") was introduced by China, Iraq, Pakistan, the United Kingdom and the United States of America (A/AC.78/L.14).[4/]

68. The joint proposal 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 judgment had been rendered by the Administrative Tribunal, who objected to the judgment on the ground that the Tribunal had exceeded its jurisdiction or competence, or had erred on a question of law

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4/ The text of this joint proposal is identical with article 11 of the draft amendment to the Statute of the Administrative Tribunal adopted by the Committee, see paragraph 116.

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.

69. If no application was made, or if a decision to request an advisory opinion had not been taken within prescribed periods, the judgment 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 judgment, or render a new judgment, in 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.

70. The representative of the United Kingdom, on behalf of the co-sponsors of the joint proposal, explained the understanding which the co-sponsors had with respect to the interpretation of the joint proposal. The joint proposal represented the highest common factor of agreement and the co-sponsors proposed that the Committee should recommend it to the General Assembly for consideration. The joint proposal was generally based on the proposal previously submitted jointly by China, Iraq and the United States of America (A/AC.78/L.6), in that it utilized the advisory procedure of the International Court of Justice and provided for a screening committee composed of Member States the representatives of which had served on the General Committee of the most recent session of the General Assembly.

71. There were important differences, however. One of these was the provision concerning the scope of review, which represented a compromise between the position that review should be strictly limited to the grounds prescribed in article 12 of the Statute of the Administrative Tribunal of the International Labour Organisation and the position that review should be permitted on any important question of law. The joint draft amendment provided three precise grounds on which review would be permitted. First, any question of jurisdiction or competence of the Tribunal; second, any question of law relating to the provisions of the Charter; and third, any allegation that the Tribunal had committed a fundamental error in procedure. The first and third grounds were substantially the same as those specified in article 12 of the Statute of ILO Administrative Tribunal.

72. The second ground was in addition to those. The co-sponsors intended by this phrase "a question of law relating to the provisions of the Charter" not only to provide for a case where the Administrative Tribunal might be considered to have misinterpreted the Charter, but also to cover a case where the Tribunal in interpreting and applying some of the Staff Regulations might do so in a manner which might be considered inconsistent with the provisions of Chapter XV of the Charter.

73. With respect to the right of a Member State to initiate review under the joint proposal, it was pointed out by the representative of the United Kingdom, on behalf of the co-sponsors, that a screening committee had the final decision whether the application of a Member State for a review would be granted. It was, therefore, not the Member State which actively requested review but a committe of the Organization itself which was one of the parties to the original proceeding. The representative of the United Kingdom, speaking for his own Government, expressed the view that this safeguard would be further strengthened by requiring the screening committee to ask for review only by a two-thirds majority vote. The joint proposal provided that the screening committee should establish its own rules and the United Kingdom believed that the question of the required majority might be considered further by the General Assembly.

74. With respect to the use of the advisory proceedings of the International Court of Justice, the representative of the United Kingdom, speaking on behalf of the co-sponsors, said that the joint proposal tried to meet the difficulty that the staff member would not have the same rights of representation before the International Court as Member States or the Organization. It included an express provision that "the Secretary-General shall arrange to transmit to the Court the views of persons referred to in paragraph 1." The co-sponsors recognized that, while this provision made adequate arrangements for presentation of a staff member's views in written proceedings, it did not cover their participation in oral proceedings. While it was not believed that a real injustice could result from this apparent disadvantage, the General Assembly might consider the possibility of adopting a resolution expressing the hope that the Member States and the Secretary-General should not exercise their rights before the Court in a manner that would take undue advantage of a staff member or other person interested in the case.

75. With respect to the jurisdictional question which had been raised concerning the use of the advisory procedure of the International Court of Justice, the representative of the United Kingdom suggested that the Secretary-General should prior to the tenth session of the General Assembly, transmit the joint draft to the President of the International Court for his views on whether the Court would be prepared to exercise the functions which would be conferred upon it by the provisions of the joint proposal, and, having regard to the provisions of paragraph 2 of the joint proposal, the Court could give effect to them in a manner completely fair to the parties concerned. It was suggested that on this basis members of the Committee who entertained doubts about the provisions for use of the advisory procedure of the Court might feel able to accept it provisionally, leaving the General Assembly to reconsider the position in the light of the President of the Court's reply.

76. With respect to the provisions in paragraph 2 of the joint proposal that "the Committee shall decide whether or not there is a substantial basis for the application", it was intended that the screening committee should decide only whether or not there was a genuine application within the grounds specified in paragraph 1 of the joint proposal. The committee would have no further discretion and could not decide for itself whether it was desirable to request an advisory opinion. If the committee found that there was a genuine application within the grounds specified, then it would be under an obligation to request an advisory opinion in accordance with the application. Under this provision the co-sponsors of the joint proposal believed that the influence of political considerations would be reduced to a minimum and, at the same time, the committee would afford a safeguard against the excessive use of the International Court of Justice.

77. The representative of the United Kingdom further pointed out that the third paragraph of the joint proposal dealt with the finality of judgments. If no application for review was made the judgment would become final in thirty days. If an application was made, but the committee decided not to request an advisory opinion, or if it took no decision within thirty days from the receipt of the application, the judgment would become final. When an advisory opinion was given it might be of such a character that it would be quite clear what action must be taken in order to give effect to it. In these circumstances, the Secretary-General was authorized to immediately give effect to the advisory opinion. In cases where this was not possible in view of the terms of the advisory opinion, or where the Secretary-General had doubts as to the action required, he would have to request the Tribunal to convene specially in order that it should confirm its judgment or give a new judgment in conformity with the opinion of the Court. It was also provided that, when the Tribunal was not requested to convene specially, it should at its next session take whatever formal action was necessary either to confirm its judgment or to make any formal adjustments in the judgment which were necessary in order to conform with the opinion of the Court.

78. With respect to the composition of the committee, the co-sponsors considered that it would be difficult and expensive to convene a committee in New York if it were composed of individual experts who would not all live within a convenient distance of United Nations Headquarters. The co-sponsors therefore considered that the Committee should be composed of Member States which would always be represented at United Nations Headquarters. However, they considered it desirable that, so far as possible, Member States should appoint qualified experts, either jurists or persons having administrative experience. They suggested that the General Assembly might consider the adoption of a resolution expressing this wish.

79. The representative of the United Kingdom added that the final paragraph of the joint proposal had been drafted in view of the question raised by the representative of Belgium concerning the status of judgments of the Administrative Tribunal pending the review proceedings. The co-sponsors felt that the only practical question was whether or not any compensation which had been awarded by the Tribunal should be paid pending the opinion of the International Court of Justice. Paragraph 5 of the joint proposal provided that, if the Secretary-General was satisfied that the person concerned would otherwise be handicapped in protecting his interests in the review proceedings, he should within fifteen days make an advance payment to the person concerned of an amount which would be equivalent to one-third of the total compensation awarded by the Tribunal less the amount of any termination benefits which had already been paid to him. This sum would be repayable by the person concerned if the International Court of Justice eventually gave an opinion which established that he was not entitled to the whole or any part of the sum which had been paid him.

80. The representative of the United States of America said that the adequacy of the joint proposal with respect to the scope of the screening committee's authority to call for an advisory opinion had been a matter of serious doubt to his delegation. Besides, his Government was still of the opinion that there was great merit in the arguments in favour of the possibility of review of legal questions generally and of excessive awards, regardless of particular grounds or merit. However, in a spirit of compromise and in order to meet the

views of the majority - and further in the light of the language finally adopted in the "scope of review" formula, his Government had decided to co-sponsor the joint proposal. The Government of the United States had the following understanding of this formula contained in the joint proposal. The draft proposal set forth three categories of questions which were the basis for judicial review.

81. The first category of questions related to the power of the Tribunal and to the steps required for invoking its jurisdiction.

82. The second category covered legal questions that related to provisions of the Charter. It would include a question such as whether the Secretary-General's judgment should be upheld in regard to the conduct of a staff member under United Nations standards of efficiency, competence, and integrity prescribed in accordance with Article 101 of the Charter; or a question whether the Secretary-General's action should be sustained in giving directions to a staff member or taking disciplinary action against him, in view of the Secretary-General's position as Chief Administrative Officer of the Organization under Article 97; or a question involving the staff member's duty to refrain from any action which might reflect on his position as an international official, responsible only to the Organization under Article 100, paragraph 1.

83. The third category of questions for review had been adopted from the Statute of the ILO Administrative Tribunal and covered serious procedural defects.

84. The representative of the United States pointed out that, like the other Governments represented in the Committee, his Government reserved the final position that it would take in the General Assembly on this and various other points in the proposal. Final positions to be taken in the Assembly would have to await fuller study of the language of the proposal itself and of the attitudes which had been expressed in the Committee - and of comments submitted by Governments pursuant to General Assembly resolution 888 (IX). For example, his Government would give further consideration to certain suggestions and proposals made in the Committee which might be of possible usefulness in meeting some of the difficulties of this problem. These were: (1) the suggestion made by the representatives of India and Australia that the Statute of the Administrative

Tribunal should contain an express provision requiring its members to possess judicial qualifications; and (2) the proposal of Australia to remove the illusory element of the amendment to article 9, paragraph 1, of the Administrative Tribunal's Statute adopted in 1953. In addition, the United States would attach equal importance to the clarification respecting the competence of the Administrative Tribunal proposed jointly by Argentina and the United States at the ninth session of the General Assembly (A/AC.5/L.317).

85. The representative of China, also a co-sponsor of the joint proposal, said that his delegation associated itself with the interpretation of the provision of the joint proposal concerning "an error of law relating to the provisions of the Charter" given by the representative of the United States. In particular, his Government attached, in this connexion, great importance to Article 101, paragraph 3, of the Charter. The representative of Iraq stated that his Government had co-sponsored the joint proposal although it would have preferred a broader scope of review. The understanding of his Government concerning the meaning of the phrase "relating to the provisions of the Charter" was similar to that of the United States and China, particularly as it related to Article 101.

86. The representative of Pakistan, also one of the co-sponsors of the joint proposal, expressed the view of his Government that paragraph 1 of the joint proposal concerning the scope of review should be construed strictly, in a way consistent so far as possible with article 12 of the Statute of the Administrative Tribunal of the International Labour Organisation. He further believed that the General Assembly should adopt a resolution inviting Member States to exercise their rights before the International Court of Justice in a manner that would ensure the equality of the parties. He also believed that it would have been preferable if a way had been found for the members of the screening committee to be appointed for a term of three years in order to ensure the continuity of its work.

87. The representative of Cuba supported the joint proposal because he favoured both the limitations on the scope of review and the grant of the right to interveme to Member States. The representative of Brazil also supported the joint proposal. He believed that it provided safeguards to protect the interests of all the parties concerned, including the staff members of the United Nations. A Member State could apply to the screening committee but not to the International

Court of Justice directly. He believed that the screening committee would ensure that applications of a purely political character or of a provocative or frivolous character would not be entertained.

88. The representative of Canada stated that, although his Government would support the joint proposal as a whole, it could not support its second paragraph because of the inclusion of the word "substantial." In the opinion of his Government the word conferred a wider discretion upon the screening committee than was consistent with the exercise of its functions in a completely judicial manner.

89. The representative of Argentina stated that he supported the joint proposal. He reserved, however, the position of his Government with respect to future discussions in the General Assembly. The representative of El Salvador declared that he abstained on the joint proposal while reserving the position of his Government with respect to future discussions in the General Assembly.

90. The representative of France, while admitting that the joint proposal resembled the French proposal in one fundamental detail, i.e., the provision concerning recourse to the advisory jurisdiction of the International Court of Justice, stated that he could not accept it for two basic reasons. First, the provision relating to intervention by Member States appeared to him unacceptable. The Secretary-General alone was qualified to intervene in the interest of the United Nations as a whole and, if that interest was at stake, there was no reason to believe that the Secretary-General would be indifferent to it. Member States, on the other hand, could not rely on any private interest for the purpose of justifying their intervention. Second, the screening committee composed of fifteen Member States would be political in character and this would aggravate the effect of the right granted to Member States to initiate the review. His Government had accepted the principle of a screening committee because such a committee would be an answer to the argument that the Secretary-General would otherwise be in a difficult position when asked to request an advisory opinion. The Secretary-General would know that if some States would favour such request other States would oppose it. However, his Government could not agree to the principle of a screening committee unless it were formed on a basis comparable with that underlying his proposal.

91. The representative of France at the tenth meeting of the Committee withdrew his draft amendment to the Statute of the Administrative Tribunal (A/AC.78/L.7/Rev.1, annex I A) and introduced the following amendment (A/AC.78/L.15) to the joint proposal:

"1. Paragraph 1: delete the words 'a Member State' and 'such Member State'.

"2. Delete paragraph 2 and substitute the following:

'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 authorize the Secretary-General to request an advisory opinion of the Court and the Secretary-General shall, in submitting the case to the Court, see to it that the rights of the persons mentioned in paragraph 1 are adequately safeguarded.'

"3. Delete the second sentence of paragraph 3 and substitute the following:

'If the Court has given an advisory opinion, the Secretary-General shall give effect to that opinion, which shall be binding. The Secretary-General may, if necessary, request the Tribunal to convene specially in order that it shall either confirm its original judgment or give a new judgment in conformity with the opinion of the Court.'

"4. Delete paragraph 4 and substitute the following:

'A special committee is established consisting of five members appointed, respectively, by (1) the Secretary-General; (2) the staff members of the United Nations; (3) the members of the Fifth Committee; and (4) the members of the Sixth Committee. The four representatives appointed as aforesaid shall then appoint the fifth member to act as chairman. The members of the committee shall be appointed for a term of two years and shall be eligible for re-election.'

"5. Paragraph 5, first sentence: delete the words '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...' and substitute the following: 'after taking that person's circumstances into account, may within fifteen days after the decision to request an advisory opinion make an advance payment to him...'."

92. The representative of the United Kingdom, on behalf of the co-sponsors, said that they were unable to accept these amendments. He pointed out that the deletion of the references to Member States would remove one of the main elements of compromise from the joint draft proposal, which did not give to Member States the right to request an advisory opinion, but only the right to invite the committee to make the request. The amendment to paragraph 2 introduced a new and unnecessary step in the review procedure. As regards the amendment to paragraph 3, the joint draft proposal had not included a provision to the effect that the Court's advisory opinion would be binding because some members of the Committee objected to saying expressly that an "advisory opinion" was "binding". A further objection to the French amendment to paragraph 3 was that it might not always be practicable for the Secretary-General to give effect to the opinion of the Court. In some cases it might be necessary for the Administrative Tribunal to issue a new judgment or even to rehear the case; the Secretary-General would then give effect to the Tribunal's new judgment. The committee proposed by the French representative in his fourth amendment would be difficult and expensive to convene. The amendment to paragraph 5 would not give the Secretary-General a sufficiently definitive directive.

93. The representative of the United Kingdom added that his Government, like other members of the Committee, would wish before the tenth session of the General Assembly to reconsider the joint draft proposal in the light of comments received from other Governments and the interpretations put upon it. The United Kingdom might then wish to suggest amendments and would of course be glad to discuss any proposals for amendments put forward by other Governments.

94. The representative of Australia said he would not press the Committee to vote on or to take a position in respect to part II of the proposal of Australia which related to the same ground covered by the new joint proposal. He did not, however, withdraw the proposal nor retreat from the principles on which it was based. He reserved the right of his Government to return to any or all of the provisions of this proposal in the General Assembly.

95. Regarding the joint proposal, the representative of Australia could not accept it for the following reasons. In the first place, judicial review, he believed, should take the form of appeal open on wide rather than narrow grounds. It should include all questions of law, and while some narrowing of the scope of review might have been accepted to achieve compromise, Australia considered that the scope of review as provided in the joint proposal was entirely too narrow.

96. In the second place, Australia had considerable doubt regarding constitutional aspects of a procedure which would make use of the advisory procedure of the International Court of Justice. In accordance with the suggestions of the co-sponsors of the joint proposal, this question might be decided by the Court itself before the report of the Committee was considered in the General Assembly. In addition, the representative of Australia stated that his Government did not consider it in keeping with the dignity of the Court that the advisory procedure designed to deal with questions of an entirely different kind should be used to determine rights between the Organization and an individual.

97. Finally, the representative of Australia stated that his Government could not accept the provision which gave to a Member State the right to initiate review proceedings even though the exercise of this right was filtered through a committee of the General Assembly. While the Organization was a party in such cases, Member States were not, and Australia considered that the interests of the Organization should be left in the hands of the Secretary-General, who was the appropriate organ to deal with these matters.

98. The representative of Belgium was unable to support the joint proposal. Paragraph 1 was unsatisfactory because it gave a Member State a right to apply for the review of Aministrative Tribunal judgments in proceedings to which it had never been a party. Paragraphs 2, 3 and 4 provided for a committee which did not have a judicial character, but was entrusted with an essentially judicial function. This committee was given the judicial power to reject without appeal applications for review, although it lacked the qualifications to perform this judicial function.

99. The representative of Belgium further considered that the provisions of the joint proposal relating to the International Court of Justice were unsatisfactory. According to paragraph 3, the advisory opinion of the Court would be binding and the procedure would, therefore, have a contentious character. The contentious function of the Court, however, was strictly limited by its Statute to disputes between States. Furthermore, the joint proposal did not provide satisfactory equality between the parties in a proceeding before the Court. By virtue of Article 66 of the Statute of the Court, Member States and the Secretary-General would have the right to deposit written statements and to make oral statements. Such a right was much broader than that given to staff members under paragraph 2 of the joint proposal, which provided only that the Secretary-General should arrange to transmit to the Court the views of the staff member concerned.

100. Finally, the representative of Belgium stated that he would abstain on paragraph 5 of the joint proposal. While this paragraph partially met the point raised by his delegation, it maintained the principle of a stay of execution of the judgment and only slightly mitigated its consequences. Furthermore, the mitigation was left to the discretion of the Secretary-General who was a party to the dispute.

101. The representative of India stated that he was opposed to the joint proposal for the following reasons. Paragraph 1, which permitted a Member State to apply for a review of a judgment in a proceeding to which it was not a party, introduced a new principle contrary to the established rules of law. A Member State, he declared, could at any time communicate its view to the Secretary-General, but could not do more than this since only the Secretary-General was entitled to represent the Organization in these cases. Furthermore, under paragraph 4, the task of drafting the request for an advisory opinion would be entrusted to a committee which lacked the necessary legal qualifications. The committee would have purely judicial functions similar to those exercised by a British court in granting leave to appeal or by the chambre des requêtes in French law. He, therefore, considered it preferable that the function assigned to a committee by the joint proposal should be performed by a panel of the Administrative Tribunal composed of those members who had not participated in the initial

judgment. The representative of India also believed that paragraph 3 of the joint proposal would place the Secretary-General in a delicate position.

102. The representative of India considered, however, that the primary difficulty with the joint proposal was that the International Court of Justice could not become a review tribunal competent to settle a dispute between the United Nations and a staff member under either the letter or the spirit of the United Nations Charter and the Statute of the Court. He also thought that it would be impossible to convince the staff that the equality of the parties would be ensured under the procedure outlined in the joint proposal.

103. The representative of Norway stated that his Government was also opposed to the joint proposal. He considered that the procedure outlined in the joint proposal was not fully in conformity with paragraph 2 of General Assembly resolution 888 (IX). It did not provide for a truly judicial review, but for a combination of what closely resembled a political review and a judicial review. The first stage was somewhat political in character and the second stage was judicial.

104. With respect to the first stage, the representative of Norway considered that it was obvious, in the light of the proposed procedure and the situations in which a Member State might feel inclined to ask for review, that the Member State in question would have largely political motivations for its request. Furthermore, he did not consider that the parties would be on an equal footing in the first stage. While, in a formal sense, the committee would have to apply basically legal criteria, there would be considerable room for arbitrary decision in determining whether there was a substantial basis for the application. He considered that it would be more difficult for a staff member who requested a review to convince the committee that there was a substantial basis for his application than it would be for a Member State which might even be represented on the committee itself.

105. The representative of Syria also stated that he could not support the joint proposal. For the legal considerations which he had previously set forth (see paragraphs 26 and 27), the International Court of Justice should not, he believed, be the reviewing body. Furthermore, a right to initiate the review procedure should not be granted to a Member State. It was a universally accepted judicial principle that the right to apply for a review could not be exercised by a party which had not been involved in the proceedings in the lower court.

106. The representative of Syria agreed with the representative of France that a screening committe should be a small technical body composed of experts, and not a committee of Member States such as that defined in the joint proposal. Furthermore, the representative of Syria considered that paragraph 5 of the joint proposal was not clear. The fact that the Secretary-General would have the right to make an advance payment of one-third of the total amount of compensation should indicate, he believed, that the review procedure would not suspend the judgment. If this were so, however, he considered it inappropriate that only one-third of the full amount should be paid. He considered it inadmissible that a review should operate as a partial stay, or that the decision whether to make the advance should be left to one of the parties. The representative of Syria stated that he would, therefore, abstain on paragraph 5 of the joint proposal.

107. The representative of Israel agreed with the provisions of the joint proposal which defined the scope of review and which accepted the International Court of Justice as the reviewing body. He believed, however, that the screening committee should be a technical body composed along the lines suggested by France and he was not satisfied with the provisions of the joint proposal concerning the initiation of review.

108. The representative of the Staff Council, who was requested by the Committee to explain the views of the Staff Council, considered that the review procedure contemplated in the joint proposal could not properly be termed a "judicial review" within the meaning of General Assembly resolution 888 (IX). The committee which would be established by paragraph 4 of the joint proposal, although charged with the function of deciding whether there was a substantial

basis for an application, was not a judicial body. He believed that the non-judicial character of the proceedings was further confirmed by the fact that Member States could participate as third parties. A staff member might be placed in the difficult position of either opposing the views of Member States including his own, or of not participating in the procedure. The representative of the Staff Council thought that for a staff member to challenge the views of Member States might not be considered consistent with the provisions of the Charter governing the character, duties and responsibilities of staff members as international civil servants. He also believed that questions of morale, prestige and publicity would be involved.

109. The Staff Council also was of the view that the advisory procedure of the International Court of Justice should not be used with respect to questions arising between the Secretary-General and a staff member which were strictly internal and administrative. The representative of the Staff Council also considered that the provisions of paragraph 5 concerning an advance of funds which might have to be repaid were impractical, and thought that a different arrangement, perhaps involving temporary reinstatement, should be worked out.

B. Decisions of the Committee

110. The representative of Norway proposed orally that the Committee should not vote on any of the drafts before it but that all the texts should be annexed to the report of the Committee which should present a complete, faithful and objective picture of its work. This proposal was supported by the representatives of Belgium, El Salvador, France, Syria and India. The representatives of Syria and India considered that, under General Assembly resolution 888 (IX), the Committee was not expected to make a proposal to the General Assembly but merely to study the question of the establishment of a review procedure in all its aspects. Since there was no general agreement on any one proposal, the representative of Belgium considered that it would not be desirable to crystallize the positions of delegations until they had had the advantage of receiving the view of Member States and the advice of the President of the International Court of Justice.

111. The representatives of Argentina, Australia, Pakistan, the United Kingdom and the United States of America believed that the Committee would not be fulfilling its mandate unless it made every effort to provide the General Assembly with a basis for discussion and that it could only indicate the areas of agreement and disagreement by taking a vote. The representative of Pakistan felt that if a solution could not be found in the Committee it would be even more difficult for the sixty Members of the General Assembly to reach a solution.

112. The representative of Israel said that his delegation did not take a position on the proposal of Norway since the procedural question of how the Committee should take into account the comments of Member States and the reply of the President of the International Court of Justice had not been settled.

113. The Committee rejected by 10 votes to 6, with one abstention, the proposal of the representative of Norway not to vote on any of the drafts before it.

114. After the conclusion of the debate on the specific proposal and suggestions before it, the Committee proceeded to the vote.

115. The results of the vote were as follows:

Voting first paragraph by paragraph on the French amendment (A/AC.78/L.15) to the proposal submitted jointly by China, Iraq, Pakistan, the United Kingdom and the United States of America (A/AC.78/L.14 and Corr.1) the Committee rejected:

(1) The first paragraph by 9 votes to 6, with 1 abstention;[5/]

(2) The second paragraph by 10 votes to 1, with 6 abstentions;

(3) The third paragraph by 8 votes to 2, with 7 abstentions;

(4) The fourth paragraph by 9 votes to 2, with 6 abstentions;

(5) The fifth paragraph by 8 votes to 3, with 6 abstentions.

The Committee then voted paragraph by paragraph on the joint proposal (A/AC.78/L.14 and Corr.1) and adopted:

(1) The first paragraph by 9 votes to 5, with 3 abstentions;

(2) The second paragraph by 8 votes to 4, with 5 abstentions;

5/ The representative of Syria, who had been absent during the vote on the first paragraph of the French amendment, stated that had he been present he would have voted in favour of this paragraph.

(3) The third paragraph by 9 votes to 4, with 4 abstentions;

(4) The fourth paragraph by 9 votes to 5, with 3 abstentions;

(5) The fifth paragraph by 9 votes to none, with 8 abstentions.

The Committee voted by roll-call on the joint proposal as a whole. The voting was as follows:

In favour: Argentina, Brazil, Canada, China, Cuba, Iraq, Pakistan, United Kingdom and the United States of America;

Against: Belgium, India, Norway, Syria;

Abstaining: Australia, El Salvador, France, Israel.

The joint proposal as a whole was adopted by 9 votes to 4, with 4 abstentions.

Finally, the Committee voted paragraph by paragraph on the Australian proposals.[6] (A/AC.78/L.12, annex I E)

It adopted the first paragraph[7] with an addition proposed by India[8] (A/AC.78/L.11, annex I D) by 13 votes to none, with 4 abstentions. It rejected:

(1) Point (a) of the third paragraph by 6 votes to 5, with 5 abstentions;

(2) Point (b) of the third paragraph by 6 votes to 4, with 6 abstentions;

(3) Point (c) of the third paragraph by 7 votes to 3, with 7 abstentions.

6/ The second paragraph of the Australian proposals was not voted upon after the representative of Australia stated that he would not press for a vote upon it.

7/ The representative of Australia, in order to conform more nearly with the text of Article 61 of the Statute of the International Court of Justice, replaced the words "a mistake or fact" by the words "some fact" the first time they appear in the paragraph and deleted the words "mistake or" the second and third time they appear.

8/ The representative of India deleted the words "or orders" in his proposed addition since there is no reference to "orders" in the Statute or in the practice of the Tribunal.

Chapter IV

RECOMMENDATIONS

116. The Committee, therefore, recommends to the General Assembly for its consideration the following draft amendments to the Statute of the Administrative Tribunal of the United Nations:

Add the following two new articles after article 10 of the Statute of the United Nations Administrative Tribunal and renumber subsequent articles accordingly:

Article 11

1. If a Member State, the Secretary-General or the person in respect of whom a judgment has been rendered by the Administrative Tribunal (including any person who has succeeded to his rights on his death) objects to the judgment on the ground that the Tribunal has exceeded its jurisdiction or competence, or has erred on a question of law relating to the provisions of the Charter, or has committed a fundamental error in procedure, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgment, 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 judgment 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 judgment or give a new judgment, in conformity with the opinion of the Court. If not requested to convene specially the Tribunal shall at its next session confirm its judgment or bring it into conformity with the opinion of the Court.

4. For the purpose of this article, a special 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, 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 judgment on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment 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 judgment. Clerical or arithmetical mistakes in judgments, 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.

ANNEX I

PROPOSALS AND SUGGESTIONS CONSIDERED BY THE SPECIAL COMMITTEE ON REVIEW OF ADMINISTRATIVE TRIBUNAL JUDGMENTS

A. France: revised draft amendment to the Statute of the Administrative Tribunal of the United Nations 9/

(A/AC.78/L.7/Rev.1
13 April 1955
ORIGINAL: FRENCH)

I. In any case in which the Secretary-General or any other party to a dispute before the Tribunal challenges a decision of the Tribunal regarding its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure, the said party shall be entitled, in the month following the delivery of the judgment, to submit or to request the Secretary-General to submit the question as to the validity of the decision given by the Tribunal to the International Court of Justice for an advisory opinion.

II. The case may be referred to the Court only with the approval of the special committee set up in accordance with paragraph IV of this article; however, if the special committee gives its approval, reference to the Court shall thereupon become obligatory. The case shall be referred to the Court without further delay if the committee fails to give its opinion within one month of being called upon by the Secretary-General to do so.

9/ The original French proposal (A/AC.78/L.7) which was distributed as a Conference Room paper to members of the Committee on 7 April 1955 contained the following second paragraph in place of paragraphs I and IV of the revised draft:

> "II. Whenever he is so requested by another party to a dispute, the Secretary-General may refuse to refer the case to the Court only in accordance with the concurrent and motivated opinion of the Chairman of the Special Advisory Board provided for in Staff Regulation 9.1(a). That opinion must be given in the month following the party's request."

III. The opinion given by the Court shall be binding. In any case where its application requires the amendment of the judgment given, the Administrative Tribunal must, at the request of the Secretary-General and not later than three months after the opinion was given, amend its judgment accordingly.

IV. A special appeals committee shall be set up, composed of five members appointed respectively by (1) the Secretary-General; (2) the staff members of the Organization; (3) the members of the Fifth Committee; (4) the members of the Sixth Committee; the four representatives thus appointed then designating the fifth member, who shall act as Chairman of the committee. The members of the committee shall hold office for two years and shall be eligible for re-appointment.

B. China, Iraq, United States of America: revised draft amendment to the Statute of the United Nations Administrative Tribunal 10/

(A/AC.78/L.6/Rev.1
14 April 1955
ORIGINAL: ENGLISH)

Add the following new article 11 after article 10 and renumber subsequent articles accordingly:

Article 11

1. A Committee for the Initiation of Judicial Review of Judgments of the United Nations Administrative Tribunal, herein referred to as the Committee, is established to meet at United Nations Headquarters when a proposal is made under paragraph 2 of this article. It shall be composed of the Secretary-General, of the Member States whose representatives have served on the General Committee of the most recent regular session of the United Nations General Assembly and of a representative of the Staff Council of the Secretariat of the United Nations. It shall establish its own rules.

2. Within thirty days of judgment a Member State, the Secretary-General or the staff member may propose in writing to the Committee the reference to the International Court of Justice of important legal questions raised by the judgment. In such cases the Committee may establish an additional period not to exceed seventy days from date of judgment for its consideration of the matter. If at the end of the period of thirty days or such extended period, if any, a decision to request an advisory opinion has not been taken, the judgment of the Administrative Tribunal shall become final and without appeal.

10/ In the original proposal of China, Iraq and the United States of America (A/AC.78/L.6, 12 April 1955) the first paragraph of the draft amendment was as follows:

> "1. A Committee on Judicial Review of Judgments of the United Nations Administrative Tribunal, herein referred to as the Committee on Review, is established to meet from time to time as it shall determine at United Nations Headquarters. It shall be composed of Member States whose representatives have served on the most recently constituted General Committee of the United Nations General Assembly. It shall establish its own rules."

3. If reference to the International Court of Justice has been proposed, the Committee is authorized to submit to the International Court of Justice for advisory opinion legal questions raised by the judgment of the Administrative Tribunal which the Committee on Review considers to be of such importance as to warrant judicial review. Such advisory opinions shall be binding upon and given effect by the Administrative Tribunal.

(NOTE: A consequential amendment of article 10, paragraph 2, would read:

"Subject to Article 11, the judgments shall be final and without appeal.")

C. Suggestions by the Secretary-General on judicial review of Administrative Tribunal judgments 11/

(A/AC.78/L.8
12 April 1955
ORIGINAL: ENGLISH)

In the first place, the Secretary-General believes that it might be desirable to have an express provision in the Statute of the Administrative Tribunal for revision of judgments by the Tribunal itself in the event of the discovery of a material mistake of fact or new material fact. For this purpose an article might be added to the Statute along the following lines:

> The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgment on the basis of the discovery of a mistake or fact of such a nature as to be a decisive factor, which mistake or fact was, when the judgment 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 mistake or fact and within one year of the date of the judgment.

In the second place it is suggested that the most satisfactory review procedure might be based on the following points:

(a) The scope of review should be limited to questions of law involving only questions of jurisdiction or fundamental defect in procedure as is provided in Article 12 of the Statute of the Administrative Tribunal of the International Labour Organisation. There should be no retrial of the facts, nor of points of law generally.

(b) The reviewing Tribunal should have the authority, where possible, to render a final judgment in the case. Only when it is impossible on the existing record to render such final judgment, should the reviewing Tribunal be authorized to refer the case back to the Administrative Tribunal.

(c) The reviewing body should be composed of three (or five) members appointed by the President of the International Court of Justice from a list containing the names of (1) the members of the Permanent Court of Arbitration who have been selected by Members of the United Nations and (2) not more than four persons having the same qualifications as

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11/ The following is a modified text of the suggestions originally distributed to members of the Committee on 11 April 1955 as a Conference Room paper.

members of the Permanent Court of Arbitration notified to the President of the International Court of Justice by each Member of the United Nations not represented in the Permanent Court of Arbitration.

(d) The review might be initiated by either the Secretary-General, the applicant or, if it were considered desirable, by any five Member States.

(e) Only a relatively short time period of one or two months should be allowed in which the review may be initiated, and the procedure should ensure the disposition of the case by the Review Tribunal within an additional two months.

D. India: proposed addition to suggestions by the Secretary-General on judicial review of Administrative Tribunal judgments 12/

(A/AC.78/L.11
13 April 1955
ORIGINAL: ENGLISH)

Add the following sentence to the draft article on revision suggested in the first paragraph of the suggestions by the Secretary-General (A/AC.78/L.8, Annex I C):

> Clerical or arithmetical mistakes in judgments, or orders, 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.

12/ This text, with the deletion of the words "on order", was subsequently proposed by India as an amendment to part I of the draft proposal of Australia on judicial review of Administrative Tribunal judgments (A/AC.78/L.12, annex I E).

E. Australia: draft proposal on judicial review of Administrative Tribunal judgments

(A/AC.78/L.12
13 April 1955
ORIGINAL: ENGLISH)

I. Revision on discovery of mistake of fact

It would be desirable to have an express provision in the Statute of the Administrative Tribunal for revision of judgments by the Tribunal itself in the event of the discovery of a material mistake of fact or new material fact. For this purpose an article might be added to the Statute along the following lines:

> The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgment on the basis of the discovery of a mistake or fact of such a nature as to be a decisive factor, which mistake or fact was, when the judgment 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 mistake or fact and within one year of the date of the judgment. 13/

II. Review on questions of law

1. The review should take the form of an appeal.

2. The reviewing body should be composed of three members appointed by the President of the International Court of Justice from a list containing the names of (1) the members of the Permanent Court of Arbitration who have been selected by Members of the United Nations; and (2) not more than four persons having the same qualifications as members of the Permanent Court of Arbitration notified to the President of the International Court of Justice by each Member of the United Nations not represented in the Permanent Court of Arbitration.

13/ Australia orally amended this text by replacing the words "a mistake or fact" by the words "some fact" the first time they appear, and by deleting the words "mistake or" the second and third time they appear.

3. Appeal should lie on all substantial questions of law including:

(a) Questions of jurisdiction;

(b) Fundamental defect of procedure;

(c) Misinterpretation of Statute of Administrative Tribunal or of staff regulations or rules;

(d) Want of evidence to support finding on which judgment is based;

(e) Manifest inadequacy or manifest excessiveness of compensation fixed by Administrative Tribunal having regard to the principles properly applicable.

4. It should be open to either the Secretary-General or the applicant to submit to the review tribunal a written application for leave to appeal against a judgment of the Administrative Tribunal. Only if the review tribunal should find that the application disclosed the existence of a substantial question of law, might it grant leave to appeal and proceed to hear the appeal.

5. The reviewing tribunal should have the authority, where possible, to render a final judgment in the case. Only when it is impossible on the existing record to render such final judgment, should the reviewing tribunal be authorized to refer the case back to the Administrative Tribunal.

6. Only a relatively short time period of one or two months should be allowed in which the review may be initiated, and the procedure should ensure the disposition of the case by the review tribunal within an additional two months.

III. Principles governing compensation

Article 9 of the Statute of the Administrative Tribunal should be amended 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."

F. India: draft amendment to part II of the draft proposal of Australia on judicial review of Administrative Tribunal judgments

(A/AC.78/L.13
14 April 1955
ORIGINAL: ENGLISH)

Substitute the following for paragraph 2 of part II of the Australian draft proposal (A/AC.78/L.12, annex I E):

"The reviewing body should be composed of three members appointed by the President of the International Court of Justice from a list of persons who are or have acted as judges of a superior court in their respective States or who are or have been members of the Permanent Court of Arbitration".

G. China, Iraq, Pakistan, United Kingdom and the United States of America: draft amendment to the Statute of the United Nations Administrative Tribunal

(A/AC.78/L.14 and Corr.1
20 April 1955
ORIGINAL: ENGLISH)

Add the following new article 11 after article 10 and renumber articles accordingly:

(Note: The text of the draft article 11 is the same as the draft article 11 recommended for consideration to the General Assembly. See paragraph 116 of the report of the Committee.)

H. France: amendment to the draft amendment to the Statute of the United Nations Administrative Tribunal proposed by China, Iraq, Pakistan, United Kingdom and the United States of America

(A/AC.78/L.15
21 April 1955
ORIGINAL: FRENCH)

(Note: For text of the amendment proposed by France see paragraph 91 of the report of the Committee.)

ANNEX II

MEMORANDA AND WORKING PAPERS SUBMITTED TO THE COMMITTEE BY THE SECRETARY-GENERAL

A. Judicial review of Administrative Tribunal judgments: working paper submitted by the Secretary-General

(A/AC.78/L.1 and Corr.1
22 March 1955
ORIGINAL: ENGLISH)

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INTRODUCTION

1. The General Assembly of the United Nations at its 515th meeting on 17 December 1954 adopted resolution 888 (IX). Part B of this resolution which concerns the judicial review of judgments of the United Nations Administrative Tribunal provided as follows:

"B

2. Accepts in principle judicial review of judgments of the United Nations Administrative Tribunal;

3. Requests Member States to communicate to the Secretary-General before 1 July 1955, their views on the establishment of procedure to provide for review of the judgments of the Administrative Tribunal and to submit any suggestions which they may consider useful;

4. Invites the Secretary-General to consult on this matter with the specialized agencies concerned;

5. Establishes a Special Committee composed of Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, El Salvador, France, India, Iraq, Israel, Norway, Pakistan, Syria, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to meet at a time to be fixed in consultation with the Secretary-General to study the question of the establishment of such a procedure in all its aspects and to report to the General Assembly at its tenth session;

6. Requests the Secretary-General to notify all Member States of the date on which the Special Committee shall meet."

2. The present working paper has been prepared for the Special Committee established by the above resolution pursuant to a suggestion of representatives of the members of the Special Committee at a consultation held on 7 February 1955. This working paper consists of three parts. Part I contains a historical survey of the question of judicial review of Administrative Tribunal judgments in the League of Nations, the International Labour Organisation and the United Nations. The scope of this survey is narrowly confined to the aspect of judicial review and is in no way a history of the Administrative Tribunals themselves. Part II describes the procedures available for the consideration

of a case prior to its submission to the Administrative Tribunal. Part III of the working paper consists of an analysis of some of the more important questions involved, namely, the review tribunal, the initiation of review, the scope of review and the powers of the reviewing body. Some alternative possibilities which might be considered by the Committee with respect to each of these questions is mentioned.

PART I - HISTORICAL SURVEY OF THE QUESTION OF JUDICIAL REVIEW OF JUDGMENTS OF ADMINISTRATIVE TRIBUNALS

A. The Administrative Tribunal of the League of Nations

3. The Administrative Tribunal of the League of Nations was established by a resolution of 26 September 1927 of the League Assembly (League of Nations, Official Journal, 9th Year, No. 5, May 1928, p. 751, Annex 1). Article VI of the Statute provided that "judgments shall be final and without appeal".

4. There was no provision for review of judgments in the Statute. It appears that during the drafting of the Statute, the only reference which was related to the subject of review was a statement in the Report of the Supervisory Commission made in connexion with its explanation of remedies which could be given by the Tribunal. The Report of the Supervisory Commission stated:

> "No provision for the revision of judgments of the Tribunal is inserted in the Statute. It is considered that, in the interests of finality and of the avoidance of vexatious proceedings, the Tribunal's judgments should be final and without appeal, as is provided in Article VI, paragraph I." (League of Nations, Official Journal, Special Supplement No. 58, Records of the Eighth Assembly, Meetings of Committees, Minutes of the Fourth Committee, page 254).

5. After the establishment of the Tribunal the question of judicial review of its judgments does not appear to have been raised. However, at the final session of the Assembly of the League, the Assembly decided not to pay awards of compensation in cases which involved eleven former employees of the League of Nations and two former employees of the International Labour Office. Certain members expressed strong reservations to this decision. The circumstances in which the Assembly reached this decision and the arguments advanced in favour and against are described in the statement submitted by the Secretary-General to the International Court of Justice in the advisory proceedings concerning the effect of Awards of Compensation made by the United Nations Administrative Tribunal (International Court of Justice, Pleadings, United Nations Administrative Tribunal, pp. 221-226).

B. Administrative Tribunal of the International Labour Organisation

6. Until the dissolution of the League of Nations in 1946 the jurisdiction of the Administrative Tribunal of the League was available to officials of the International Labour Office and upon the dissolution of the League the Tribunal was taken over and maintained by the International Labour Organisation. The jurisdiction of the Tribunal is at present accepted by WHO, UNESCO, ITU, WMO and FAO.

7. As noted in paragraph 5 above, two former officials of the International Labour Office were in the same position as the eleven former officials of the League of Nations with respect to whom the Assembly of the League decided not to pay judgments of the Administrative Tribunal rendered in 1946. When the matter of the payments of the awards in these two cases came before the Governing Body of the International Labour Office, some members expressed disagreement with the decision of the League and suggested that the International Labour Organisation should execute the judgments. The Chairman of the Governing Body called attention to the decision of the League Assembly and said that there was nothing that the Governing Body could do except take note of the Assembly's decision. Only the International Labour Conference had authority to authorize an expenditure to give effect to the awards. He added that the important thing was to look to the future, and in this respect he thought all members of the Governing Body were agreed in wanting to avoid a situation of that sort arising again.

8. The Chairman therefore proposed that "the arrangements concerning the functioning of the Administrative Tribunal" be considered by the Staff Questions Committee of the Governing Body "in order, to the fullest extent possible, to secure that no difficulty may arise in the future as regards the execution of any judgment the Tribunal may hand down". The Chairman suggested that provision might perhaps be made for "a court of appeal", for example the International Court of Justice (see memorandum submitted by the International Labour Organisation to the International Court of Justice, International Court of Justice, Pleadings, United Nations Administrative Tribunal, p. 71).

9. Representatives who had proposed the execution of the judgments agreed to withdraw their draft resolution with the understanding that in the report to be adopted by the Governing Body a paragraph would be inserted indicating, in effect, that the Governing Body could only take note of the decision of the Assembly with regard to judgments of the Administrative Tribunal, but that "the Governing Body felt that steps must be taken to prevent a situation which everybody regretted arising again in the future". The Staff Questions Committee was asked "to consider the arrangements concerning the functioning of the Administrative Tribunal in order to secure to the fullest degree possible that no difficulty might arise in the future as regards the execution of any future judgment the Tribunal might hand down". (ibid, p. 72).

10. In accordance with this decision of the Governing Body, the International Labour Office, in a paper submitted to the Staff Questions Committee, took the position that some organ apart from the Administrative Tribunal "should have the competence to reconsider the Tribunal's decisions". The power to reconsider should logically belong to the highest existing tribunal - namely, the International Court of Justice. The Office therefore proposed "that the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund might be enabled to appeal to the International Court of Justice against decisions of the Tribunal on the grounds that it had exceeded its jurisdiction or where the procedure followed had been vitiated by a fundamental fault". (ibid, pp. 72-73).

11. In the discussion in the Staff Questions Committee, one representative said that he felt that the proposed article would tend to weaken the authority of the Governing Body. The Chairman pointed out in reply that the Governing Body was committed to the adoption of a provision on these lines, an undertaking having been given at the last session. Another representative said that he felt that the clause would give rights to litigation to one party and not to the other. The Director of the International Labour Office explained that the article did not propose that the International Court of Justice should retry a case, but merely that it could be asked to define the jurisdiction of the Tribunal.

The International Court of Justice had no jurisdiction to hear private persons. (Ibid., p.73).

12. A new article (Article XII) to be added to the text of the Statute of the Administrative Tribunal, as suggested by the International Labour Office, was approved by the Staff Questions Committee and by the Governing Body. On 9 October 1946 the text was adopted by the International Labour Conference without discussion. This amendment was as follows:

> "In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges the decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question as to the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.
>
> "The opinion given by the Court shall be binding."

13. A summary of the actions and discussions of organs of the International Labour Organisation in adopting the above procedure will be found in the memorandum submitted by the International Labour Organisation to the International Court of Justice in the written proceedings in the Advisory Opinion. See pp.71-73.

14. An Annex to the Statute adapts this Article to provide that the Executive Board of those agencies (WHO, UNESCO, ITU, WMO and FAO) which have accepted the jurisdiction of the Tribunal may challenge its decisions in the same way as the Governing Body of the International Labour Office.

15. The Governing Body is the executive council of the International Labour Organisation. It is composed of 40 members: 10 representing employers, 10 representing workers, and 20 representing government. The Governing Body appoints the Director-General and supervises the work of the International Labour Office and of the various committees and commissions of the International Labour Organisation. The Executive Boards of the other specialized agencies, while not

having the same composition or identical functions, are similar to the Governing Body in that they serve as executive councils to the agencies.[1/]

16. Since the Administrative Tribunal has been maintained by the International Labour Organisation, eleven cases, not counting arbitrations, have come before it (three cases involving officials of the League of Nations, three ILO staff cases, one ILO Pensions Fund case, one WHO case, one UNESCO case and two FAO cases). Of the judgments in these eleven cases four have been in favour of the applicant and seven in favour of the agency concerned. In no case to date has the provision permitting a request for an advisory opinion to the International Court of Justice been applied.[2/]

1/ The Executive Boards of the specialized agencies concerned may be described as follows: FAO: the Council is composed of eighteen Member Governments elected by the Conference. The Council supervises the work of the Organization between sessions. UNESCO: the Executive Board consists of twenty individuals elected by the General Conference. Under the authority of the General Conference it is responsible for the execution of the programme adopted by the Conference. WMO: the Executive Committee is composed of the President and Vice-President of WMO, the Presidents of Regional Associations, and an equal number of directors of meteorological services of Members. It is the executive body of the Organization and supervises the carrying out of resolutions of the Congress. ITU: the Administrative Council is composed of eighteen Members elected by the Plenipotentiary Conference. It supervises the Union's administrative functions between sessions of the Plenipotentiary Conference, reviews and approves the annual budget, appoints the Secretary-General and the two Assistant Secretaries-General and co-ordinates the work of ITU with other international organizations. WHO: the Executive Board is a technical and non-political organ composed of eighteen persons designated by as many Member States elected by the Health Assembly. It gives effect to decisions of the Assembly.

2/ Since the date of the present working paper the Administrative Tribunal of the International Labour Organisation has decided four additional cases (three UNESCO and one relating to claims against the International Institute of Intellectual Cooperation).

C. Administrative Tribunal of the United Nations

1. Discussion during drafting of Statute

17. The legislative history of the establishment of the United Nations Administrative Tribunal will be found in the statement submitted by the Secretary-General to the International Court of Justice in the advisory proceedings concerning the effect of Awards of Compensation made by the United Nations Administrative Tribunal (International Court of Justice, pleadings, United Nations Administrative Tribunal, pp. 226-246). The Statute of the Administrative Tribunal provided in Article 10 that the judgments should be final and without appeal. No provision was made in the Statute for any review of judgments.

18. The only discussion of the subject during the drafting of the Statute appears to have occurred at the 25th meeting of the Fifth Committee on 15 November 1946 when the representative of Belgium asked the Rapporteur of the Fifth Committee whether the decisions of the Administrative Tribunal would be final or whether they would be subject to a revision by the General Assembly. The Rapporteur (Mr. Aghnides of Greece, who had served as Chairman of the Advisory Committee on a statute for a United Nations Administrative Tribunal) replied that, according to the Draft Statute as prepared by the Advisory Committee, there could be no appeal from the judgment of the Administrative Tribunal. The Advisory Committee feared an adverse effect on the morale of the staff if an appeal beyond the Administrative Tribunal delayed the final decision in a case which had already been heard before organs within the Secretariat created for that purpose.

2. Question of judicial review of Administrative Tribunal judgments subsequent to adoption of Statute

19. Prior to 1953 there was no case decided by the Administrative Tribunal in which the question of any further review was even considered. In one series of cases involving the power of the Secretary-General to terminate temporary appointments, the Secretary-General sought a clarification of the intention of the General Assembly with regard to the principle involved, and the text of

Staff Regulation 9.1(c) was adopted in its present form pursuant to his suggestion. No question was raised, however, with respect to its application to those cases already decided.

20. In one case in 1953 a request was made by Counsel for the Secretary-General for the revision of an award based on the correction of an error of fact. This error related to the age of the applicant, a factor which had been taken into account in determining the amount of compensation. The question of error was not in dispute but was in fact recognized by both parties. The Tribunal in correcting the award rested its decision on a finding that it was entitled to rectify figures computed on the basis of a date submitted by both parties and recognized by both after the judgment as erroneous.

21. Also in 1953 a number of cases were decided by the Administrative Tribunal which resulted in a lengthy discussion in the General Assembly. Certain Members of the United Nations questioned the correctness of the judgments and proposed that the awards made by the Tribunal should not be paid. The General Assembly at its eighth session requested an advisory opinion from the International Court of Justice on the questions whether the General Assembly had the right on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal in favour of a staff member of the United Nations whose contract of service had been terminated without his consent, and, if so, what were the principal grounds on which the Assembly could lawfully exercise such a right. (Resolution 785 A (VIII) of 9 December 1953)

22. The International Court of Justice in its advisory opinion of 13 July 1954 (A/2701) held by nine votes to three that the General Assembly had no right on any grounds to refuse to give effect to an award of compensation.

23. Relevant to the question of judicial review, the Court in its opinion pointed out that the Statute of the Administrative Tribunal of the United Nations, as well as the Statute of the Administrative Tribunal of the League of Nations, contained no provision for a review of judgments and that the absence of such provision in each case was the result of a deliberate decision (A/2701, International Court of Justice, Reports 1954, pp. 54-55). The Court also stated, however, that the rule contained in Article 10, paragraph 2 of the Statute to the effect that judgments shall be final and without appeal,

could not be considered as excluding the Tribunal itself from revising a judgment in special circumstances when new facts of decisive importance have been discovered. The Court noted that the Tribunal had already exercised this power. Such a strictly limited revision by the Tribunal itself, the Court said, cannot be considered as an appeal within the meaning of that article and would conform with rules generally provided in statutes and laws issued for Courts of Justice, such as, for instance, Article 61 of the Statute of the International Court of Justice. (Ibid., p.55)

24. The Court added:

> "In order that the judgments pronounced by such a judicial tribunal could be subjected to review by any body other than the tribunal itself, it would be necessary, in the opinion of the Court, that the statute of that tribunal or some other legal instrument governing it should contain an express provision to that effect. The General Assembly has the power to amend the Statute of the Administrative Tribunal by virtue of Article 11 of that Statute and to provide for means of redress by another organ. But as no such provisions are inserted in the present Statute, there is no legal ground upon which the General Assembly could proceed to review judgments already pronounced by that Tribunal. Should the General Assembly contemplate, for dealing with future disputes, the making of some provision for the review of the awards of the Tribunal, the Court is of opinion that the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ - considering the arguments of the parties, appraising the evidence produced by them, establishing the facts and declaring the law applicable to them - all the more so as one party to the disputes is the United Nations Organization itself." (Ibid., p.56)

25. During the consideration of the Court's advisory opinion at the ninth session of the General Assembly, Argentina and the United States introduced a draft resolution for the amendment of the Statute of the United Nations Administrative Tribunal to provide for the review of judgments (A/C.5/L.317). There was general agreement among a large majority of members of the Fifth Committee that the proposals raised complex questions which could not be adequately considered at the ninth session.

26. After some discussion in the Fifth Committee and in the Assembly itself, resolution 888 (IX) was approved by the General Assembly. (See paragraph 1 of this paper for the text of the relevant part of this resolution.) For a summary of the consideration and recommendation of the Fifth Committee see the Report

of that Committee (A/2883) and for the consideration and amendment in the General Assembly see the Official Record of the 515th Plenary Meeting of 17 December 1954, paragraphs 6 - 105.

27. It may be noted that it was in the Plenary Meeting that the acceptance in principle of judicial review was approved and that the draft resolution proposed by the Fifth Committee was further amended inter alia to replace the words "appeals against" by the words "review of". Supporters of this amendment expressed the opinion that the word "review" was a broader term which would include appeals and other judicial procedures. (Statements of the representatives of Canada, paragraph 11, and Ecuador, paragraph 56). Certain other representatives, in accepting the amendment, emphasized that they considered that the word "review" could only mean an appellate consideration of judgments of the Tribunal on the appeal of the parties concerned. (Statements of the representatives of India, paragraph 43, Norway, paragraph 22, and France, paragraph 52).

PART II - PROCEDURES AVAILABIE PRIOR TO SUBMISSION OF CASE TO ADMINISTRATIVE TRIBUNAL

28. It may be of interest to note the procedures which are available for the settlement of personnel questions prior to an appeal to the Administrative Tribunal. Some of these procedures are applicable in the period before the Secretary-General forms an opinion. Others involve a review of or an appeal against the Secretary-General's decision. These procedures which are available prior to the submission of a case to the Administrative Tribunal are of an advisory character, whereas the judgments of the Administrative Tribunal are binding on the Secretary-General.

A. Advisory procedures prior to decision by Secretary-General

29. Prior to the making of a decision on personnel questions, the Secretary-General receives advice from Secretariat officials of the Office of Personnel as well as of the department of the staff member concerned. In some instances the Office of Legal Affairs and the Office of the Controller may also be consulted. Moreover, in deciding many cases the Secretary-General has before him the recommendations of one of several boards which have been set up by the Staff Regulations and Staff Rules to consider and advise him on staff matters. These boards, which make recommendations prior to the Secretary-General's decision, include the following: (1) The Appointment and Promotion Board, (2) The Review Board, (3) The Joint Disciplinary Committee, and (4) The Special Advisory Board.

1. The Appointment and Promotion Board

30. The Appointment and Promotion Board, established by Staff Rule 104.9, is composed of seven officials of the Secretariat appointed by the Secretary-General and of the Director of Personnel as a non-voting Chairman. The function of the Appointment and Promotion Board is to make recommendations to the Secretary-General in respect of the following:

(i) All proposed Probationary Appointments and other proposed appointments of a probable duration of one year or more, at or above the intermediate level of the General Service category at

Headquarters and equivalent levels at other duty stations, excluding however the appointment of persons recruited specifically for service with a mission and appointments at level of Director and above.

(ii) The type of appointment to be offered in all cases falling under paragraph (i).

(iii) All promotions below the Director level.

2. The Review Board

31. The Review Board was established under Staff Rule 104.13 (III). It is composed of a Chairman appointed by the Secretary-General, three members appointed by the Secretary-General from among senior officials of the Secretariat, and one member appointed by the Secretary-General from among staff members nominated by the Staff Council. The functions of the Board are:

(i) To consider the suitability of staff members for Permanent Appointment, except those at the Director level and above, and to recommend to the Secretary-General in each case the granting of a Permanent Appointment, the granting of one additional year of probation or separation from the service.

(ii) To review every five years the appointments of staff members holding Permanent Appointments and, where necessary, of staff members holding Regular Appointments and to inform the Secretary-General, after consideration of the conduct and performance of each staff member, whether it is of the opinion that during the period under review the staff member concerned has maintained the standards of efficiency, competence and integrity established in the Charter.

3. The Joint Disciplinary Committee

32. Pursuant to Staff Regulation 10.1 which authorizes the Secretary-General to establish administrative machinery with staff participation which will be available for advising in disciplinary cases, Staff Rule 110.1 sets up a Joint Disciplinary Committee which is available to advise the Secretary-General, at his request, in disciplinary cases involving staff members serving at Headquarters. A comparable committee was established in the European Office. In cases referred to it, the Committee is to advise the Secretary-General what disciplinary measures, if any, should be taken. Except in cases of summary

dismissal, no staff member serving at Headquarters is subject to disciplinary measures until the matter has been referred for advice to the Joint Disciplinary Committee provided that such referral may be waived by mutual agreement of the staff member concerned and the Secretary-General (Rule 110.3).

33. The Joint Disciplinary Committee at Headquarters consists of three members: a Chairman selected from a panel appointed annually by the Secretary-General after consultation with the Staff Committee, one member appointed annually by the Secretary-General, and one member elected by the staff.

4. The Special Advisory Board

34. Pursuant to Staff Regulation 9.1(a), a Special Advisory Board is appointed to consider and report to the Secretary-General concerning the application of sub-paragraphs (i) and (ii) of that Staff Regulation. These paragraphs provide that the Secretary-General may, giving his reasons therefor, terminate the appointment of a staff member who holds a permanent appointment if the conduct of the staff member indicates that he does not meet the highest standards of integrity required by Article 101, paragraph 3 of the Charter, or if facts anterior to appointment and relevant to his suitability come to light which, if they had been known at the time of appointment, should under the standards established in the Charter, have precluded the appointment. Staff Rule 109.1 provides that the Special Advisory Board shall be composed of a Chairman appointed by the Secretary-General on the nomination of the President of the International Court of Justice and of four members appointed by the Secretary-Gereral in agreement with the Staff Council.

B. Appeal procedures

35. Chapter XI of the Staff Regulations provides for two different types of appeal procedure, one of an advisory and the other of a binding character. Regulation 11.1 provides that the Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations

and rules, or against disciplinary action. Staff Rule 111.1 establishes a Joint Appeals Board pursuant to the foregoing regulation.

36. Staff Rule 111.2 provides that the Board shall consist of three members as follows: a Chairman selected from a panel appointed annually by the Secretary-General after consultation with the Staff Committee; one member appointed annually by the Secretary-General; and one member elected annually by ballot of the staff. In the European Office a Joint Appeals Board, generally comparable to that at Headquarters, is also established. In the case of any appeal under Regulation 11.1 by a staff member serving elsewhere than at Headquarters or at the European Office, the Secretary-General secures the advice either of the Joint Appeals Board at Headquarters or at the European Office or of an appropriate ad hoc committee. (Staff Rule 111.4)

37. Staff Rule 111.3 provides in detail the procedures to be followed with respect to the Joint Appeals Board. A staff member at Headquarters who wishes to appeal an administrative decision, as a first step, addresses a letter to the Secretary-General through the Director of Personnel requesting that the administrative decision be reviewed. Such a letter must be sent within one month from the time the staff member received notification of the decision in writing.

38. If the staff member wishes to make an appeal against the answer received, he submits his appeal in writing to the Secretary of the Joint Appeals Board within two weeks from the date of the receipt of the answer. If the staff member has received no reply from the Director of Personnel within two weeks of the date the letter was sent to him, the staff member must, within the two following weeks, submit his appeal in writing to the Secretary of the Joint Appeals Board. An appeal against the Secretary-General's decision on disciplinary action must be addressed to the Secretary of the Joint Appeals Board within two weeks from the time the staff member received notification of the decision in writing. The Board may waive any of these time limits however, in exceptional circumstances.

39. The Board submits its report to the Secretary-General within three weeks after undertaking consideration of an appeal. The Board may, however, extend this time limit in exceptional circumstances. The final decision in the matter taken by the Secretary-General after the Board has forwarded its report is

notified to the staff member and at the same time a copy of the Board's recommendation is transmitted to him.

40. Staff Regulation 11.2 provides that the United Nations Administrative Tribunal shall, under conditions prescribed in its Statute, hear and pass judgment upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules. Under Article 7 of the Statute of the Administrative Tribunal an application is not receivable unless the person concerned has previously submitted the dispute to the Joint Appeals Board and the latter has indicated its opinion to the Secretary-General except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.

41. A case before it reaches the Administrative Tribunal may therefore have gone through several stages of review. It may in the first instance have been examined by one of the Secretariat Boards established to consider and make recommendations to the Secretary-General prior to his decision in a case. It will then have been subject to a decision by the Secretary-General, to review by the Secretary-General of that decision pursuant to a request of the staff member under Staff Rule 111.3(a), to consideration by the Joint Appeals Board, and to a new decision by the Secretary-General following the recommendation of the Appeals Board.

42. As of 1 March 1955 sixty-six cases had been considered by the Joint Appeals Board at Headquarters. Of these there were seventeen recommendations of the Board favourable to the applicant, forty-seven negative recommendations, one case in which no recommendation was made, and one case which was withdrawn. Of the favourable recommendations four were rejected by the Secretary-General. Seven cases had been considered by the Joint Appeals Board at the European Office of which there were six recommendations favourable to the applicant and one negative recommendation. Five of the favourable recommendations were rejected by the Secretary-General.

43. The total number of cases dealt with by the Administrative Tribunal to date are fifty-nine. Of these twenty-four were cases on which the Joint Appeals Board at Headquarters had made recommendations and three were cases on which recommendation had been made by the Joint Appeals Board at the European Office.

In thirty-two additional cases the staff members preferred not to make use of their right to prior consideration by the Joint Appeals Board, and these cases were submitted directly to the Administrative Tribunal pursuant to agreement with the Secretary-General under Article 7 of its Statute. Of the fifty-nine cases before the Administrative Tribunal, there were thirty-two decided in favour of the applicants and twenty-six judgments favourable to the Administration, and one withdrawn prior to judgment. Presented by years, these judgments are as follows:

	For applicant	For Administration
1950	16 *	-
1951	2	3
1952	2	2
1953	11	18
1954	1	3
Total:	32	26

* The sixteen cases decided in 1950 involved a single situation and were the subject of a common judgment.

PART III - ANALYSIS OF PRINCIPAL ISSUES

44. In this final part of the working paper it is proposed to examine certain alternative possibilities with respect to three points which will require decisions of principle by the Committee. These points are:

A. The Scope of Review and the Powers of the Reviewing Body.

B. The Reviewing Body.

C. The Initiation of the Review.

45. The above points are in many respects closely related to one another, and the decision with respect to one may well depend on the answer to the others. There are also other questions of detail and procedure which will not be considered in this paper, but may perhaps best be examined as questions of drafting subsidiary to the decisions on the principal points at issue.

46. The Secretary-General, in enumerating possible alternatives, is doing so in the hope that it may facilitate the work of the Committee. In examining these possibilities there are several considerations which should be borne in mind. In the first place it may be noted that at no time has the staff expressed nor has the Secretary-General felt the need for a review of appellate procedure with respect to the normal cases coming before the Administrative Tribunal. As has been seen in the preceding part of this paper, considerable procedure exists to ensure full development of the issues prior to consideration by the Administrative Tribunal, and it would seem neither necessary nor reasonable to complicate or prolong further the procedure in normal cases. In the light of experience, the Secretary-General believes that a review procedure should be limited to unusual and exceptional circumstances and that care should be taken to devise a procedure which will not increase the burden of litigation or prolong the final settlement in normal situations. Furthermore, the procedure should ensure promptness in the disposal of cases which are reviewed. It would also appear essential that the procedure should ensure the independence and the judicial character of the reviewing body, and the continuity and consistency of decisions which can best be obtained by a permanent rather than by an ad hoc body.

A. Scope of review and powers of the reviewing body

1. Scope of review

47. Since the choice of the reviewing body and the question of who may initiate the review may depend on the scope of the review to be undertaken and the powers of the reviewing body, it would seem logical to consider the latter points first. A study of review procedures in national judicial systems suggests a great variety in the scope of review running the gamut from, at one extreme, a complete retrial of the case to, at the other extreme, a review of only certain special issues of law. In between these extremes there are any number of possible degrees and combinations. For present purposes, however, it is believed that the possibilities may be summarized as follows: (a) the review of all aspects of the case, (b) the review of the law only, and (c) the review of certain legal issues, such for example as the question of lack of jurisdiction or fundamental defect in procedure. A related matter would be the revision of a judgment in the event of the discovery of a mistake of fact or of a new material fact.

(a) The review of all aspects of the case

48. The broadest scope which the review could take would be that of a complete review of the case in all its aspects including both the law and the facts. In reviewing the findings of fact certain national procedures provide for an examination by the reviewing tribunal of the evidence gathered by the lower court, but do not permit the taking of new evidence by the reviewing body. On the other hand some procedures, usually at an intermediate stage, give to the reviewing tribunal the power to hear new evidence, or perhaps even to retry the case ab initio. Ordinarily, however, facts are not reviewed in the highest review tribunals, and the findings of fact of the lower tribunals are conclusive.

49. A review of all aspects of a case would without doubt lead to a great number of unwarranted appeals, and thus would needlessly increase the burden of litigation. There would seem to be no good reason why the findings of fact by the Administrative Tribunal should not be conclusive.

(b) The review of the law only

50. A second possibility with respect to the scope of review would be a review of errors of law only. Such a limitation of the scope of review would be consistent with the practice in many national systems particularly as applied by the highest review tribunals. A review of the law would include the interpretation of the Staff Regulations and the Staff Rules as well as other provisions of the contract and general principles of law which might be involved. It would include the interpretation of relevant provisions of the United Nations Charter. It would also include the interpretation of the Statute of the Tribunal if such interpretation should be at issue as well as of the Rules of the Tribunal and other questions of procedure.

51. A review of questions of law so far as they related to interpretation might be utilized with respect to important questions of principle. On the other hand such review could also be utilized with respect to a large number of cases involving points of limited applicability where no important question of principle existed.

(c) The review of certain legal issues

52. Finally, there is the possibility of providing only for the review of certain important legal issues. Article XII of the Statute of the Administrative Tribunal of the International Labour Organisation is an example of this alternative. Under this article the International Court of Justice may be asked for an advisory opinion with respect to two types of questions (1) lack of jurisdiction of the Tribunal, and (2) fundamental fault in the procedure followed.

53. The grounds for annulment of arbitral awards set forth by the International Law Commission in its draft Convention on Arbitral Procedure (A/2456, p. 11) may be noted as another example of possible questions for review. These embody a convenient summary prepared by an organ of the United Nations of international jurisprudence on the subject of the annulment of arbitral awards. The questions suggested by this draft are: first, whether the Tribunal has exceeded its powers; second, whether there has been corruption on the part of a member of the

Tribunal; and third, whether there has been a serious departure from a fundamental rule of procedure, including failure to state the reasons for the award.

54. Other examples of special grounds of review may be found in various national systems. Many of these grounds may not be considered appropriate in the present context. On the other hand, there might be some which the Committee would desire to consider. In deciding on certain questions which might be included in the scope of review, some of the following might be considered: lack of jurisdiction; excess of power; fundamental defect in procedure; arbitrary action; insufficiency of evidence; improper motive; or other error which might be considered by the reviewing tribunal as involving an important principle.

55. It might be possible also to limit the questions to those which involved an important principle of general application and, therefore a precedent of considerable significance for the future.

(d) Revision of judgment for discovery of mistake or material fact

56. Another question is that of revision of a judgment in the event of the discovery of a mistake of fact or of a new material fact. As has been pointed out (paragraph 20) the Administrative Tribunal has itself revised the amount of an award which was computed on the basis of a date submitted by both parties and recognized by both after the judgment as erroneous. The International Court of Justice in its advisory opinion refers to the right of the Tribunal itself to revise a judgment when new facts of decisive importance have been discovered.

57. Article 61 of the Statute of the International Court of Justice presents an example of an express provision for such revision. The text of this Article is as follows:

Article 61

"1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

"2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

"3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

"4. The application for revision must be made at latest within six months of the discovery of the new fact.

"5. No application for revision may be made after the lapse of ten years from the date of the judgment."

58. A similar provision is found in the draft Convention on Arbitral Procedure prepared by the International Law Commission (A/2456, p. 11) which recognizes as a ground for revision of the award the discovery of some fact of such a nature as to have a decisive influence on the award, provided that when the award was rendered the fact was not known to the Tribunal and to the party requesting revision and that such ignorance was not due to the negligence of the party requesting revision. The draft convention further provided that the Arbitral Tribunal itself, or, if impossible for the Tribunal, then the International Court of Justice, should consider such revision.

2. Powers of the reviewing body

59. With respect to the powers of the reviewing body, national systems of law suggest two basic and quite different patterns - one of cassation and the other of revision. In the former case the reviewing body may only decide whether or not the judgment of the tribunal of origin is valid. If it decides in the negative it quashes or annuls the judgment, but does not give a new judgment. Such a decision may in some cases settle the case. This might be true if the judgment were annulled for lack of jurisdiction. In other cases, however, as for example where there is a fault in procedure, the case must be retried in the lower court.

60. In the case of revision, the reviewing body may itself revise the judgment or render a new judgment. Thus the case is finally settled by the decision of the reviewing tribunal. It would seem that under this system the reviewing

tribunal might revise the award should such revision come within the scope of the review.

61. There are also examples where combinations of these basic patterns are followed. The reviewing tribunal may have the power either to render a new judgment, or if it finds some reason why it does not believe it can render such judgment (for example, insufficient facts), it may send the case back for reconsideration to the tribunal of origin. It order not to prolong unduly the procedure, it would probably be desirable that wherever possible the reviewing tribunal should have the power to render a final judgment in the case.

B. The reviewing body

1. Review or reconsideration by the Administrative Tribunal itself

62. The Committee may desire to consider whether the Administrative Tribunal might serve a review function, either directly or upon reference back from some other reviewing body. National systems often permit a motion for a new trial in the court of origin, and also provide that appellate courts may send a case back for retrial.

63. In considering the possibility of the Administrative Tribunal itself serving as the reviewing body, it should be recalled that the Statute of the Tribunal provides for the election of seven members, but also provides that only three shall sit in any particular case. If a true reviewing function were to be considered for the Administrative Tribunal itself, it might be possible to provide that a panel of five, or even the full panel of seven, should sit when reviewing a case. It would also be possible to provide that a reconsideration of a case, either by decision of the Administrative Tribunal itself or on direction of another reviewing body, might be made either by the original members or by three other members.

64. Independently of how the above possibilities may be viewed, it would seem appropriate that, if express provision is to be made for a revision of a judgment in the event of a discovery of a mistake of fact or of a new material fact, such reconsideration should be by the Administrative Tribunal itself. Such express provision in the Statute may not be absolutely necessary since, in the light of existing precedent and authority, it would seem that the

Tribunal already has the power of revision in such cases. However, it may be desirable to amend the Statute to include an express provision for revision in order to ensure that the existing precedent will not be too narrowly interpreted.

2. Review by the International Court of Justice

65. During the consideration of the question at its ninth session, several representatives in the Fifth Committee suggested the possibility that the International Court of Justice or one of its Chambers established under Article 26 of its Statute might be asked to serve as the reviewing body. It has already been observed that the Statute of the Administrative Tribunal of the International Labour Organisation provides that the Governing Body or the Administrative Board of the Pensions Fund may request an advisory opinion with respect to the validity of a decision of the Administrative Tribunal in certain cases.

66. If it should be desired to ask the International Court of Justice to serve as the reviewing body, only the advisory proceedings would be available. Under Article 34, paragraph 1, of the Statute of the International Court of Justice only States may be parties in cases before the Court, and this provision is equally applicable to cases before the full Court or before one of its Chambers. The contentious proceedings could, therefore, not be used in the review of judgments of the Administrative Tribunal where the parties are not States but a staff member on the one hand and the United Nations represented by the Secretary-General on the other.

67. Under Article 65 of the Statute of the Court, the International Court of Justice may give an advisory opinion on any legal question at the request of any organ of the United Nations or specialized agency authorized to make such a request. It would appear to be too cumbersome a procedure for the General Assembly, itself, to request advisory opinions in each case. Article 96, paragraph 2 of the Charter, however, provides that organs of the United Nations which may at any time be so authorized by the General Assembly may request advisory opinions of the Court on legal questions arising within the scope of their activities. The General Assembly could therefore authorize the Secretary-General, who is the head of a principal organ of the United Nations, to request

advisory opinions on legal questions concerning Administrative Tribunal judgments, and conceivably it might be able to authorize him to do so, not only on his own initiative, but also at the request of some other body, such as, for example, a Member State or Member States, or possibly the applicant.

68. Advisory proceedings might be suitable for the review of certain legal questions in determining the validity of a judgment as is provided by the Statute of the Administrative Tribunal of the International Labour Organisation. While no proceeding has thus far been instituted by the International Labour Organisation, this method appears to be compatible with the Statute of the International Court of Justice. Some problem might arise with respect to the right of the staff member concerned to present his views to the Court. However, if the review is limited to certain legal questions it would seem possible that the Secretary-General might include a statement or brief by the staff member concerned among the "documents likely to throw light upon the question" which are submitted to the Court under Article 65, paragraph 2 of its Statute, or in information furnished the Court pursuant to a notification under Article 66, paragraph 2 of its Statute.

69. If, however, a broader scope of review were desired it might be difficult to fit such review into the advisory proceedings. A re-examination of the merits of the case might involve matters which are not strictly legal questions within the meaning of Article 65 of the Statute of the Court, and might also require more active participation of the parties in the proceedings than would be considered permissible by the Court. Advisory proceedings would probably not be appropriate for such re-examination which might even be considered incompatible with the Statute of the Court.

70. There is probably no absolute line between a review for which advisory proceedings would be possible and one for which they would not. Individual proposals which may be made would have to be examined in the light of the Statute of the Court and the nature of advisory proceedings. However, the question whether the International Court of Justice should be involved at all should be approached with caution since it involves the problem of whether the Court is an appropriate forum for such questions.

3. Review by a specially constituted reviewing tribunal

71. If it should be decided that the review should not be undertaken by members of the Administrative Tribunal itself or by the International Court of Justice, it would be necessary to establish a new Review Tribunal. The method of constituting such a body and its membership would be questions of first importance. The International Court of Justice in its advisory opinion (A/2701, International Court of Justice Reports 1954, pp. 52-53) emphasized the independence and judicial nature of the Administrative Tribunal. At the ninth session of the General Assembly, the view was held generally that any procedure to be established should be truly judicial and that the authority, independence and judicial character of the Administrative Tribunal should be preserved (A/2883, paragraph 27).

72. The members of the Administrative Tribunal, themselves, are elected by the General Assembly and are eminent jurists or administrators, representative of various national systems. In order that the stature of the Administrative Tribunal should not be reduced, it would be necesary to constitute the reviewing body at the highest possible level. With this in mind it has been suggested that three members of the Review Tribunal might be elected for a period of three years by the General Assembly from among the members of the International Court of Justice or perhaps appointed by the President of the International Court of Justice from among eminent jurists of Member States. Whether or not the members of the International Court of Justice could serve on such a Tribunal would depend upon the Court's decision concerning the compatibility of such a function with Article 16 of its Statute.[1/]

1/ Article 16 of the Statute of the International Court of Justice is as follows:

> "1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
>
> "2. Any doubt on this point shall be settled by the decision of the Court."

4. Review by other bodies

73. In addition to the three alternative possibilities considered above, there may be other methods which the committee may wish to examine. For example review might be made by an ad hoc body established for each case, or it might be by a judicial sub-committee of the General Assembly established either on an ad hoc or on a permanent basis.

74. The original draft resolution introduced at the ninth session of the General Assembly by Argentina and the United States (A/C.5/L.317) proposed a Board of Judicial Review composed of three members, one to be elected by the General Assembly for a term of three years, the second to be named by the President of the International Court of Justice for a similar term, and the third to be named by the first two members acting jointly when a case would be referred to the Board by the General Assembly. Several representatives in the Fifth Committee, however, expressed doubt whether this proposed Board, being merely an ad hoc body, would have sufficient permanency and stature, and also expressed doubts concerning the proposed method of constituting the Board (A/2883, paragraph 27). Furthermore, an ad hoc body could not develop a consistent jurisprudence in the same way that a permanent body could do.

C. The initiation of the review

75. It would seem that one of the most difficult issues which has arisen is the question of who should have the right to initiate the review. The draft resolution of Argentina and the United States (A/C.5/L.317) provided that review would be initiated by a simple majority vote of the General Assembly upon the proposal of a Member State or of the Advisory Committee on Administrative and Budgetary Questions.

76. The report of the Fifth Committee (A/2883, paragraph 28) pointed out that the method by which the review was to be initiated was a matter of considerable concern. Some representatives, although recognizing the desirability of some machinery to act as a filter for ensuring that only serious cases were reviewed, believed that the parties, including the staff member concerned, should have the right to request a review. They doubted that the General Assembly should be asked to decide which cases should be reviewed, since the Assembly was a

political organ and could not easily examine judicial issues as they applied to individual cases. They further considered that initiation of review might be an undue burden on the General Assembly, and that there would be danger to the administrative efficiency of the Secretariat if Member States were to use the proposed procedure to support their nationals in cases which had been decided by the Tribunal. They also believed the initiation of a review by the Advisory Committee to be a function inappropriate for that organ.

77. Under the Statute of the Administrative Tribunal of the International Labour Organisation it is the Governing Body or the Administrative Board of the Pensions Fund which initiates the review, and the executive boards of the other specialized agencies accepting the jurisdiction of the Tribunal may also initiate the request for an advisory opinion. There is not, however, in the United Nations an organ exactly like the executive boards of the specialized agencies.

78. The possibilities which may be considered with respect to the initiation of review would seem to be the following:

(1) By the parties, i.e., the staff member who made the application and the United Nations represented by the Secretary-General.

(2) By the United Nations only.

(3) By the reviewing body.

(4) By the General Assembly or one of its subsidiary organs, or by a Member State or group of Member States.

1. By the parties

79. Normally an appellate procedure is initiated by the parties. In the present instance the parties are, on the one hand, the applicant and, on the other hand, the Secretary-General acting for the United Nations. The review may be either an absolute right of the party, or it may be at the discretion of the reviewing tribunal as in the case of certiorari in the Supreme Court of the United States.

80. If the purpose of the review procedure is to meet a need felt by the parties for a further step in the appeals procedure now available then it would seem appropriate to provide that the review procedure should be initiated by the parties. However, the staff has never expressed nor has the Administration felt such need. Furthermore, an absolute right of appeal which undoubtedly would be ...

extensively utilized by applicants might result merely in an increase in the burden of litigation and in a prolongation of the proceedings.

2. By the United Nations only

81. Since the Secretary-General acts for the United Nations as one of the parties, he would not consider it equitable that he should be given a general right of appeal which is not given to the other party. There is, however, one possible situation in which it might be considered whether the United Nations alone should have the right to initiate review. This would be if the review were of a principle of interpretation for future application only and were not to affect the outcome of the particular case decided. Such authoritative interpretation for the future involving a principle only and not a decision of a particular case, can at present be sought from the General Assembly which may, if it so decides, amend the Regulation in question.

3. By the reviewing body

82. It is possible to find examples either of an automatic review of all cases, or of review of certain cases on the initiative of the reviewing body or of an official thereof. It would be possible to give to a Review Tribunal the right to examine all cases and to review those in which it found an important question of principle. In this connexion it has also been suggested by a delegation that the General Assembly might address a general request to the International Court of Justice to review legal questions in all future judgments of the Tribunal and to render an advisory opinion if it found an error on an important point of law.

4. By the General Assembly or one of its subsidiary organs, or by a Member State or group of Member States

83. It is also possible to find in national systems instances of a review initiated by a public official rather than by a party. Furthermore, there is the precedent of the International Labour Organisation where the Governing Body initiates the review. Initiation by some one other than a party is, therefore, not completely unknown. It may therefore be considered whether a review might

be initiated by the General Assembly or one of its subsidiary organs, or by a Member State or group of Member States. If the review relates more directly to questions of principle than to the merits of individual cases, the General Assembly or possibly Member States, might be considered as having an interest in such review.

84. From a technical point of view, however, there would seem to be a number of reasons why the General Assembly itself would not be an appropriate organ to initiate review. In the first place it is not in continuous session, and considerable delay might result. Furthermore, some representatives have expressed the view that it would be an undue burden on the Assembly to be forced to consider individual cases as a preliminary to instituting review.

85. Although it would seem that the Advisory Committee would be the existing body most nearly analogous, in this particular matter, to the executive boards of the specialized agencies, a number of representatives expressed the opinion that the initiation of a review would be a function inappropriate for the Advisory Committee.

86. It would be possible that a small committee composed of Permanent Delegates elected by the General Assembly could be established to represent the General Assembly in the matter. On the other hand, it has been suggested that the function might be left to any group of five or ten Member States acting in concert.

B. Members of the Permanent Court of Arbitration: note prepared by the Secretary-General

(A/AC.78/L.9/Rev.1
12 April 1955
ORIGINAL: ENGLISH)

I. Texts governing the list of members of the Permanent Court of Arbitration

Article 44 of The Hague Convention of 1907 for the Pacific Settlement of International Disputes is as follows:

"Article 44

Each contracting power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

The persons thus selected are inscribed, as members of the court, in a list which shall be notified to all the contracting powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the contracting powers.

Two or more powers may agree on the selection in common of one or more members.

The same person can be selected by different powers.

The members of the court are appointed for a term of six years. These appointments are renewable.

Should a member of the court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years."

Similar provisions are found in Article 23 of The Hague Convention of 1899 for the Pacific Settlement of International Disputes.

II. States entitled to appoint members to the Permanent Court of Arbitration

There are forty-five States which were Contracting Powers to the above Conventions on 1 March 1954 and were therefore entitled to name members of the Permanent Court of Arbitration. Of these States the following thirty-five were both Members of the United Nations and Contracting Powers:

Argentina
Belgium
Bolivia
Brazil
Chile
China
Colombia
Cuba
Czechoslovakia
Denmark
Dominican Republic
Ecuador
El Salvador
France
Greece
Guatemala
Haiti
Iran
Luxembourg
Mexico
Netherlands
Nicaragua
Norway
Panama
Paraguay
Peru
Poland
Sweden
Thailand
Turkey
United Kingdom
United States of America
Uruguay
Venezuela
Yugoslavia

The following States are parties to The Hague Conventions for the Pacific Settlement of International Disputes, but are not Members of the United Nations:

Bulgaria
Finland
Germany
Hungary
Italy
Japan
Portugal
Romania
Spain
Switzerland

The following twenty-five States are Members of the United Nations but are not parties to The Hague Conventions for the Pacific Settlement of International Disputes:

Afghanistan
Australia
Burma
Byelorussian SSR
Canada
Costa Rica
Egypt
Ethiopia
Honduras
Iceland
India
Indonesia
Iraq
Israel
Lebanon
Liberia
New Zealand
Pakistan
Philippines
Saudi Arabia
Syria
Ukrainian SSR
Union of South Africa
USSR
Yemen

III. List of members of the Permanent Court of Arbitration

As of 22 April 1955 (the date of the last report of the Administrative Council of the Permanent Court of Arbitration) there were 160 members of the Permanent Court of Arbitration. Of these 129 were selected by States Members of the United Nations. Their names and curricula vitae will be found in the official list published in the report of the Administrative Council of the Permanent Court of Arbitration.

C. Participation of individuals in proceedings before the International Court of Justice: memorandum submitted by the Secretary-General

(A/AC.78/L.10
13 April 1955
ORIGINAL: ENGLISH)

I. Introduction

1. The following memorandum has been prepared by the Secretary-General pursuant to the suggestion of the Special Committee on Review of Administrative Tribunal Judgments that an examination of the relevant provisions of the United Nations Charter relating to the International Court of Justice and of the relevant provisions of the Statute of the Court would be useful in its work.

2. Chapter XIV (Articles 92 to 96) of the Charter contains the provisions dealing with the International Court of Justice. The International Court of Justice, according to Article 92, is the principal judicial organ of the United Nations. Article 96 provides that the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question and that other organs of the United Nations and specialized agencies may be authorized by the General Assembly to request advisory opinions of the Court on legal questions arising within the scope of their activities.

3. Article 34 of the Statute of the International Court of Justice which deals with the competence of the Court in contentious proceedings provides that only States may be parties in cases before the Court. Paragraph 1 of Article 65 which deals with the competence of the Court in advisory proceedings provides that the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. Paragraph 2 of Article 65 provides that questions upon which an advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

4. Under Article 66, paragraph 1, notice of a request for an advisory opinion is given to all States entitled to appear before the Court, including all Members of the United Nations. Under Article 66, paragraph 2, however, only those States entitled to appear before the Court and those international organizations which are considered likely to be able to furnish information are notified that the Court will be prepared to receive written or oral statements, and consequently such notifications may not be sent to all Members of the United Nations (as, for example, in the case of Interpretation of the Peace Treaties, Advisory Opinion: I.C.J. Reports 1950, pp. 68-69). If a State has not been notified under Article 66, paragraph 2, of the Court's willingness to receive written or oral statements, that State may express a desire to submit a written statement or to be heard, and, under Article 66, paragraph 3, the Court decides whether the request will be granted. Under paragraph 4 of this Article, States or organizations having presented written or oral statements or both are permitted to comment on the statements made by other States or organizations in the form, to the extent and within the time limits which the Court, or if the Court is not sitting the President, shall decide in each particular case.

5. Under Article 68 of the Statute, the Court in the exercise of its advisory functions is to be further guided by the provisions of its Statute which apply in contentious cases to the extent to which it recognizes them to be applicable. Article 82 of the Rules of Court amplifies this provision by providing that the Court shall be guided by the provisions of its Rules which apply in contentious cases to the extent to which it recognizes them to be applicable, and that for this purpose it shall above all consider whether the request for an advisory opinion relates to a legal question actually pending between two or more States. Article 83 of the Rules of Court further provides that the Court shall apply Article 31 of the Statute concerning ad hoc judges in advisory proceedings relating to a legal question actually pending between States. Article 82 of the Rules also provides that if the Court believes that a request for an advisory opinion necessitates an early answer it should take the necessary steps to accelerate the procedure.

6. It is thus clear that under the provisions of the Statute relating to contentious proceedings only States and not the Secretary-General or individual staff members could be parties to a case before the International Court of Justice. It is also clear that advisory opinions may be requested by the General Assembly on any legal question or by any organs duly authorized by it on legal questions within the scope of their activities.

7. It may be of interest to examine in some detail the question of possible participation by individuals in proceedings before the International Court of Justice. In view of the discussion in the Special Committee as well as in view of the provisions of the Statute of the International Court of Justice it would appear that only the advisory proceedings of the Court are of direct concern. Nevertheless there have been some considerations in the drafting of the Statutes of the International Court of Justice of its predecessor the Permanent Court of International Justice and in the proceedings before these bodies which may be of interest to the Committee.

8. The following sections of the present memorandum therefore deal with the question of the presentation by individuals of written and oral statements of an argumentative character in contentious cases and in advisory proceedings before the International Court of Justice and its predecessor the Permanent Court of International Justice. The relevant information concerning the Permanent Court is first set out under each heading and is followed by the relevant information concerning the present Court. The memorandum does not deal with the appearance before the Court of witnesses and of individuals requested by the Court to carry out an enquiry or to give an expert opinion in accordance with Article 50 of the Statute.

II. Participation by individuals in contentious proceedings

A. Permanent Court of International Justice

9. Before and during the drafting of the Statute of the Permanent Court there was some discussion whether individuals should be able to bring cases before the Court. German counter-proposals concerning the structure of the League of Nations, transmitted to the Allies on 9 May 1919, suggested that the court to be

established under Article 14 of the Covenant should have jurisdiction over complaints of private persons in certain contingencies (M.O. Hudson, The Permanent Court of International Justice 1920-1942, p. 101). These counter-proposals were, however rejected.

10. During the discussions in 1920 of the Advisory Committee of Jurists, which drafted the Statute of the Permanent Court, certain members of the Committee opposed the exclusion of individuals as parties before the Court (1920 Advisory Committee of Jurists, Procès-Verbaux, pp. 206-209). This position, however, was contested by other members, and ultimately the Committee decided that individuals should not be able to become parties (op. cit., p. 539). The Committee's report explained (op. cit., pp. 722-723):

> "To whom shall the Court be open?
>
> "May private persons appear against States or only States against States?
>
> "Suppose that a private person has dealings with a foreign State, not in its character as a sovereign State, but in economic matters upon a footing of equality, exactly as he would with another foreigner. In view of the great difficulty of obtaining justice before national tribunals, whether of the State in question or of any other, arising out of a State's internal irresponsibility and external independence, certain theoretical proposals have been put forward to the effect that an individual should be able to bring an action directly against States before some high international jurisdiction. Should this jurisdiction be our Court?
>
> "To take a case less quoted but of a still more delicate nature, could an individual, who is claimed by two States as a subject, bring an action against one or both of them in order to obtain a decision as to his real nationality with regard to them? These problems may be interesting, but at the moment they are premature, because they tend to affect the sovereignty, independence and even existence of States.
>
> "The Committee was unanimously of the opinion that, without prejudice to any subsequent development of the Permanent Court of International Justice, for the moment it must be given a basis which, though restricted, would, for that very reason, be firmer and more substantial.

"The Court projected by Article 14 of the Covenant 'shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it'. In the opinion of the Committee, the 'parties' cannot be private individuals. This answer, which was given /at The Hague Conference/ in 1899 and 1907, and which was evidently intended to apply not only to the Court of Arbitration but also to the Court of Arbitral Justice was expressly laid down in the Five-Power Plan /for the Permanent Court/...".

11. The Statute of the Permanent Court therefore provided in Article 34 that

"Only States or Members of the League of Nations can be parties in cases before the Court."

When the Registry of the Permanent Court received applications from individuals attempting to institute proceedings before the Court, it simply referred to that article.

B. International Court of Justice

12. At the Washington Committee of Jurists, which met before the San Francisco Conference to consider the Statute of the Court, the delegation of Venezuela submitted a memorandum proposing that the Court should be able to serve as a court of appeal for international administrative tribunals (Documents of the United Nations Conference on International Organization, Vol. 14, pp. 373-374). This proposal was not, however, discussed in the Committee, which left Article 34 of the Statute unchanged in substance. At one point in the discussions the Chairman explained (op.cit., p. 141):

"... the principle involved in Article 34 was that States, but not private individuals or international organizations, might be parties to cases."

13. At the San Francisco Conference, during the discussion of the Statute by Committee IV/1, the delegation of Venezuela proposed an amendment to Article 34 which, as revised, provided in part (Documents of the United Nations Conference on International Organization, Vol. 13, p. 482):

"(2) As a Court of Appeal, the Court will have jurisdiction to take cognizance over such cases as are tried under original jurisdiction by international administrative tribunals dependent upon the United Nations when the appeal would be provided in the statute of such Tribunals."

This proposal would presumably have made it possible for the parties to judgments of administrative tribunals, even if they were private persons, to take appeals to the International Court of Justice. After some discussion, the amendment was rejected by Committee IV/1 (op. cit., p. 282).

14. Consequently Article 34 (1) of the present Statute provides:

"Only States may be parties in cases before the Court."

This provision is cited by the Registry whenever individuals attempt to begin proceedings before the Court.

III. Participation by individuals in advisory proceedings

A. The Permanent Court of International Justice

i. Advisory case of the Danzig Legislative Decrees, 1935

15. Until 1936, when amendments to the Statute came into force, there were no provisions in the Statute of the Permanent Court concerning advisory opinions; the only provisions on the subject were to be found in Article 14 of the Covenant and in the Rules of Court. Articles 72 and 73 of the Rules adopted in 1931, however, were substantially identical with Articles 65 and 66 which were added to the Statute by the 1936 amendments.

16. In 1935 the Council of the League received a petition from individuals representing three minority political parties in Danzig concerning certain legislative decrees of the Danzig Senate, and decided to refer the matter to the Court for an advisory opinion. The Political Section of the Secretariat explained as follows in a letter to the Registrar of the Court (P.C.I.J., Ser. C, No. 77, pp. 248-249):

> "With reference to the request which the Council is addressing to the Permanent Court for an advisory opinion concerning the compatibility with the Constitution of the Free City of two decrees issued by the Senate of Danzig, it may be of interest to you to know that, before deciding to propose that the Court should be consulted, the Rapporteur /of the Council/ was anxious to know whether the Court's procedure limited it to seeking information from the Government of the Free City and excluded it from also seeking information from the parties or persons who petitioned against the two decrees.
>
> "The Secretariat felt able to say that it understood the Court could seek information from any quarter it chose and could, therefore, call for evidence from the petitioners.

"It may, therefore, be understood that in proposing consultation of the Court the Rapporteur was influenced by the consideration that the petitioners as well as the Government of the Free City could, in the discretion of the Court, be called upon to assist the Court by evidence or information."

17. The Court later telegraphed and wrote the Secretary-General requesting that the authors of the petition be informed that if they desired to supplement the statement in the petition, the Court would be prepared to receive an explanatory note from them (P.C.I.J., Ser. C, No. 77, p. 262). The petitioners presented two documents, which were received by the Court (P.C.I.J., Ser. C, No. 77, pp. 120-144, 270-271).

18. Though the Court thus received explanatory notes from the indivudals, it "decided that the terms of the Statute and Rules precluded it from hearing the petitioners" in oral proceedings (P.C.I.J., Ser. E, No. 14, p. 161).
Judge Anzilotti, in a dissenting opinion, said that the Court should not have rendered an advisory opinion, because inter alia "the two Parties to the dispute" that is, the Senate of Danzig on the one hand, and the three political parties on the other - were placed on a footing of inequality; the Senate could submit both a written memorandum and an oral statement, while the minority parties were only allowed to send explanatory notes, without taking any part in the oral procedure, and were given no opportunity of answering the contentions of their opponents (P.C.I.J., Ser. A/B, No. 65, p. 66).

ii. Revision of the Rules of Court, 1936

19. On 1 February 1936 the amendments to the Statute of the Permanent Court came into force. One of these amendments was Article 66, which, with only formal changes, later became Article 66 of the Statute of the present Court. The article provided that:

"1. The Registrar shall forthwith give notice of the request for an advisory opinion to the Members of the League of Nations, through the Secretary-General of the League, and to any States entitled to appear before the Court.

"The Registrar shall also, by means of a special and direct communication, notify any Member of the League or State admitted to appear before the Court or international organization considered by the Court (or, should it not be sitting, by the President) as likely to be able to furnish information on the question, that the Court will be prepared to

receive, within a time-limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

"Should any Member or State referred to in the first paragraph have failed to receive the communication specified above, such Member or State may express a desire to submit a written statement, or to be heard; and the Court will decide.

"2. Members, States, and organizations having presented written or oral statements or both shall be admitted to comment on the statements made by other Members, States, or organizations in the form, to the extent and within the time-limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to Members, States, and organizations having submitted similar statements."

20. The amendment of the Statute made necessary a revision of the Rules of Court. During the Court's discussions on this subject in March 1936, Vice-President Querrero referred to the decision of the Court that it could not hear the Danzig political parties in oral proceedings, and suggested consideration of the question whether it would not be possible, by means of a provision in the Rules, to remove any inequality between the parties, whoever they might be (P.C.I.J., Ser. D, No. 2 (3rd add.), pp. 701-702). The President said that he himself had originally intended to propose a change in the Rules for that purpose, but he referred to Article 66, which had just come into force, and said:

"It was difficult to place upon the words 'international organization' bracketed as they were with the word 'State', a construction so wide as to cover, for instance, a minority or a political organization."

Other members of the Court also found it impossible to follow the suggestion of the Vice-President, and no provision on the matter was put in the Rules.

iii. Case of former officials of the Saar Commission, 1939

21. After the dissolution of the Governing Commission of the Saar Territory, certain of its former officials put forward claims in regard to the prejudice caused them by the expiry of the powers of the Commission, and attempted to invoke the responsibility of the League of Nations. Even though the League Council obtained the advice of a Committee of Jurists, which concluded against the claimants, they continued to insist on their claims. Finally in December 1939 the Secretary-General proposed to the Council that the claims be submitted to the

Permanent Court for an advisory opinion. A resolution proposed by the Secretary-General for this purpose was adopted by the Council on 14 December 1939.

22. The resolution, together with the record of the discussion leading to its adoption (League of Nations Official Journal, November-December 1939, pp. 502-503) are attached to this memorandum (see Appendix, pp. 108-111). The resolution provided that the claimants should be allowed a period of about three and a half months to lodge memoranda with the Secretariat; the Secretary-General would within the following 90 days furnish a statement of the point of view of the League of Nations; the claimants could then lodge an additional memorandum within 60 days; and if they did so, the Secretary-General could produce another statement within 60 days. Then all these documents were to be transmitted to the Permanent Court, together with a request for an advisory opinion on whether the League had any legal obligations to the claimants, and if so, for how much. The resolution expressly recognized that the Court would be free to take account of any relevant element of fact or law apart from those in the documents submitted. The resolution concluded by providing that the League renounced the exercise of the right to present written and oral statements under Article 66 of the Statute if the same possibility could not be given to the petitioners, since the League did not wish to have greater opportunities of furnishing information to the Court than the petitioners themselves.

23. Because of the disruption caused by the war, this proceeding was never carried through, and the Permanent Court had no opportunity to pass on it.

24. The resolution shows that the Council and the Secretary-General did not doubt that the Court would receive the memoranda and counter-memoranda transmitted to it with the request for an advisory opinion, presumably as "documents likely to throw light upon the question" within the meaning of the last sentence of Article 65 of the Statute. They did doubt, however, that the Court would receive written or oral statements from the claimants under Article 66, and therefore both set up an elaborate procedure before the submission of the request and also waived the League's rights under Article 66 if the same rights were not granted to the claimants. The resolution did not deal with the question whether States could participate in the written and oral proceedings under Article 66; in any event that question would appear, under the text of the Statute, to be one for decision by the Court.

B. The International Court of Justice

25. The question of presentation of written or oral statements by individuals before the Court in advisory cases was apparently not discussed either in the Washington Committee of Jurists or in the San Francisco Conference. Article 65 of the Statute was modified in ways not here material, and Article 66 remained substantially unchanged.

26. The only precedent of the present Court on the participation of individuals in advisory proceedings was in the case on the Effect of Awards made by the United Nations Administrative Tribunal, where a firm of lawyers which had represented applicants before the Tribunal asked for authorization to state its views. The Court refused the request (I.C.J. Pleadings, United Nations Administrative Tribunal, pp. 394-395, 397). The Registrar explained in his letter:

> "If the Court should subsequently feel the need for further information, it would most certainly make use again of the faculty given to it by Article 66, paragraph 2, of its Statute. It would, in any event, be bound by the limitations set forth in that clause and would therefore not be authorized to request or receive written or oral statements either from your clients or on their behalf from the Counsel who represented them before the Administrative Tribunal."

APPENDIX

EXTRACT FROM THE LEAGUE OF NATIONS OFFICIAL JOURNAL,
NOVEMBER-DECEMBER 1939, PAGES 502-503

(Meeting of 14 December 1939)

4175. Complaints from former officials of the Governing Commission of the Saar Territory

The SECRETARY-GENERAL presented the following report and resolution:

"On May 27th 1939, I had the honour to make a declaration to the Council which appears in the Minutes in the following terms:

"'The Secretary-General reminded the Council of the complaints put forward on various occasions by former officials of the Governing Commission of the Saar Territory in regard to the prejudice occasioned to them by the expiry of the powers of the Governing Commission, and their attempts in that connection to invoke the responsibility of the League of Nations.

"'The Members of the League having never admitted any financial responsibility for the acts or orders of the Governing Commission in the exercise of its functions as laid down by the clauses of the Treaty of Versailles, the Council had consulted a Committee of Jurists, which had heard the complainants. The Committee of Jurists having returned a negative opinion, the Council had not admitted any legal basis for the complaints of these ex-officials; but, on humanitarian grounds, it had made them grants ex gratia, on two different occasions.

"'The complainants nevertheless contended that they had been condemned without both sides being heard; and their contention had given rise to a movement of public opinion in their favour. At each successive session, the President of the Council for the time being had been the recipient of petitions and requests. The Secretary-General was himself convinced that the Council, though unable to admit any pecuniary responsibility on the part of the Members of the League, for which there was no legal basis, would nevertheless be reluctant to have its previous decisions - which were pure acts of kindness on its part - represented as denials of justice. It was, in his opinion, desirable to give the complainants an opportunity to state their grievances in some form which would ensure both sides' being heard, so as to close the matter by a final decision. If the Council agreed, he would make proposals for the purpose at the opening of the next session.'

"The Council having agreed, I have now to submit a proposal.

"The proposal which I feel able to make to the Council will be found in the appended draft resolution, the object of which is to submit the question under consideration to the Permanent Court of International Justice. The provisions of the Court's Statute make it necessary that the Court should be asked for an advisory opinion.

"The draft resolution provides that the persons concerned shall themselves set out the claims which they consider themselves entitled to make in connection with the cessation of their functions in the Saar Territory, together with the arguments in support of these claims. The memorandum which they will lodge for this purpose will be followed by a statement on my part, and a further exchange of memoranda may, if necessary, take place. All these statements will be transmitted to the Court.

"With the same desire to avoid any inequality of opportunity for submitting arguments to the Court, it is provided that the League of Nations renounces from the outset the opportunity of presenting written or oral statements, which is provided for in Article 66 of the Court's Statute, if the complainants cannot be given the same opportunity.

"The members of the Council will not fail to perceive the gravity of the issues involved. Enquiry into the validity of the present claims involves the question whether, having regard to its constitution and the principles of international law which are applicable, it is possible that the League of Nations should have incurred financial responsibility by reason of accomplishing a function of the character given it by Section IV of Part III of the Peace Treaty of Versailles. A question of principle involving such grave consequences should, it would seem, be elucidated by a judicial body having the authority and special experience which the Members of the League of Nations, which are all interested in the matter, are entitled to expect for such a purpose. In my opinion, only the Permanent Court of International Justice fully satisfies this condition and it is for this reason that I propose recourse to the Court.

"I have the honour, therefore, to submit for the Council's approval the following draft resolution:

"'The Council of the League of Nations,

"'Being desirous that it should be made clear by the highest judicial authority what is the legal position of the League of Nations in the matter;

"'Decides as follows:

"'1. A period expiring on March 31st, 1940, shall be allowed to M. Danzebrink, M. Lauriolle, M. Lehnert, M. Machts and M. Ritzel for lodging with the Secretariat, jointly or singly, a memorandum or memoranda addressed to the League of Nations, setting out, together with the arguments upon which they rely, the claims which they make against the League of Nations in connection with the cessation of their services as officials of the Governing Commission of the Territory of the Saar Basin.

"'The complainants shall choose an address at Geneva to which all communications intended for them may validly be addressed.

"'Within ninety days from April 1st, 1940, the Secretary-General will furnish a statement of the point of view of the League of Nations regarding the memorandum or memoranda lodged before that date.

"'Within sixty days from the despatch of the Secretary-General's statement, the complainants, if they so desire, may lodge an additional memorandum to elucidate further the question at issue. If they use this opportunity, the Secretary-General may himself produce another statement within sixty days.

"'The President of the Council may prolong the periods fixed above.

"'2. The above-mentioned documents shall be transmitted to the Permanent Court of International Justice at the same time as the request for an advisory opinion provided for in paragraph 3 of the present resolution. The Court will, of course, remain free to take account of any other element of fact or law which may be relevant for the purpose of giving the advisory opinion which is requested.

"'3. In virtue of the present resolution, which he will communicate to the Permanent Court of International Justice, the Secretary-General of the League of Nations, on behalf of the Council, shall lay before the Court a request for an advisory opinion of the Court upon the following questions:

"'(a) Has the League of Nations any legal obligations towards the authors of the memoranda lodged in accordance with Article 1 of the present resolution in connection with the claims formulated in these memoranda?

"'If the answer is affirmative, on what basis of law and of facts, duly proved, are these obligations founded?

"'(b) And further, if the answer is affirmative, what sums are due to each complainant in execution of the obligations in question?

"'4. The League of Nations hereby renounces the exercise of the right to present the written and oral statements provided for by Article 66 of the Statute of the Court, if the same possibility cannot be given to the petitioners, since it does not wish to have greater opportunities of furnishing information to the Court than the petitioners themselves.'"

Count CARTON DE WIART said that, if his understanding was correct, the Secretary-General proposed merely to ask the Permanent Court of International Justice for an advisory opinion; there was no question in this case of giving the Court powers to conclude an amicable arrangement.

The SECRETARY-GENERAL replied that Count Carton de Wiart's interpretation was correct.

The resolution was adopted.

ANNEX III

PRELIMINARY VIEWS OF MEMBERS STATES AND CONSULTATION WITH SPECIALIZED AGENCIES CONCERNED ON THE SUBJECT OF THE ESTABLISHMENT OF A PROCEDURE TO PROVIDE FOR REVIEW OF THE JUDGMENTS OF THE ADMINISTRATIVE TRIBUNAL

(A/AC.78/L.3, Add.1, 2 and 3
30 March, and 4, 14, 21 April 1955
ORIGINAL: ENGLISH)

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I. Views of Member States

A. Note by the Secretary-General

1. Pursuant to paragraph 3 of General Assembly resolution 888 B (IX), the Secretary-General, by note verbale of 17 February 1955, requested Member States to communicate to him, before 1 July 1955, their views on the establishment of a procedure to provide for review of the judgments of the Administrative Tribunal and to submit any suggestions which they might consider useful.

2. By the same note verbale the Secretary-General, pursuant to paragraph 6 of General Assembly resolution 888 B (IX), notified all Member States that the Special Committee on Review of Administrative Tribunal Judgments would meet on 4 April 1955. He suggested that should the Member Governments desire to submit preliminary views for the consideration of the Special Committee, these views should be received before 25 March 1955 in order that they might be reproduced and distributed in time for the meeting.

3. The Secretary-General has received communications of preliminary views for submission to the Special Committee from the Governments of New Zealand, Sweden and Ethiopia. These views are reproduced in the following section. The Governments of Belgium, Haiti and Thailand have replied that they do not intend to submit preliminary views on the question.

B. Replies of Governments

4. The preliminary views of Member States communicated to the Secretary-General for submission to the Special Committee are as follows:

(1) Note verbale to the Secretary-General from the Minister of External Affairs of New Zealand dated 22 March 1955

" .....

"The New Zealand Government does not wish to submit detailed preliminary comments to the Special Committee, although it will, of course, give careful consideration to the Committee's report at a later stage. The Minister would be grateful, however, if the Secretary-General would draw the attention of the Special Committee to the statements made on this subject by New Zealand representatives at the Ninth General Assembly and set out in the official records of the 479th meeting of the Fifth Committee and the 515th plenary meeting respectively. Broadly, the New Zealand Government's position remains as explained in those documents.

"The Minister would also be grateful, however, if the Secretary-General would inform the Special Committee that the New Zealand Government would find it difficult to accept any review procedure which did not provide for the establishment of a truly independent and judicial body, and contain safeguards to prevent re-examination on a political basis by the General Assembly of the facts of a particular case."

(2) Letter to the Secretary-General from the Minister of Foreign Affairs of Sweden dated 28 March 1955

"With reference to your note of February 17, 1955, regarding the question of judicial review of judgments of the United Nations Administrative Tribunal I have the honour to transmit, on behalf of my Government, the following preliminary views on this matter.

"If a system of judicial review of the judgments of the Administrative Tribunal is to be initiated, such a system should be constructed, in the view of the Swedish Government, as a real appellate procedure, i.e. each party, the Secretary-General of the United Nations on the one hand and the staff members on the other hand, should be entitled to lodge the appeal. Such a procedure would lead to a complete contradictory process before the contemplated appellate body.

"Irrespective of the composition of such an appellate body, the procedure to be followed by it would necessarily be time-consuming. Already there is a considerable delay between the rise of a dispute and the final decision by the Administrative Tribunal. The dispute first has to be considered by the Joint Appeals Board, then submitted to the Administrative Tribunal whereupon the parties express their opinion in written statements. These are studied by the members of the Tribinal which then meets about twice a year for its decisions. The whole procedure usually takes more than one year.

"Further court procedures would also occasion additional heavy costs that would, in the opinion of the Swedish Government, be out of proportion to the salaries or compensations involved.

"Furthermore, such a prolonged procedure would imply severe psychical and economic stresses on the staff members concerned. They would be kept in suspense concerning employment and future for a still longer period of time than at present.

"Because of the above stated reasons the Swedish Government is not in favour of a system of judicial review of the judgments of the Administrative Tribunal."

(3) Note Verbale to the Secretary-General from the Ministry of Foreign Affairs of Ethiopia dated 5 April 1955.

"The Ministry of Foreign Affairs of the Imperial Ethiopian Government have the honour ... to submit the following views:

(1) The statute of the Administrative Tribunal of the United Nations should be left intact - that is, no review system should be established.

(2) Should, however, the General Assembly be convinced that a system of review is necessary as it seems to have decided by paragraph 2, section B, of Resolution 888 (IX), then the Ministry submit the following for consideration by the Special Committee which is created to study the subject:

(a) The system of review should be strictly judicial,
(b) the feasibility of assigning the task to an existing judicial organ, such as one Chamber of the International Court of Justice should be given preference,
(c) whether the review organ should be given the power to give decisions on appeals or simply set aside the decisions of the Administrative Tribunal and remand the case for rehearing should be studied, and
(d) whether the review organ's jurisdiction be limited to facts, questions of law or both should be studied carefully."

II. Consultation with specialized agencies concerned

A. Note by the Secretary-General

5. Pursuant to paragraph 4 of General Assembly resolution 888 B (IX), the Secretary-General, by letter of 21 February 1955, consulted with the specialized agencies which he considered to be concerned by virtue of their agreement in principle to accept the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund. These specialized agencies were the Food and Agriculture Organization, the International Civil Aviation Organization, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the World Meteorological Organization.

6. The replies from these specialized agencies are reproduced in the following section.

B. Replies of specialized agencies

7. The observations received from the specialized agencies are as follows:

(1) Letter to the Secretary-General from G. Swoboda, Acting Secretary-General, the World Meteorological Organization, dated 4 March 1955

"I have taken note of resolution 888 (IX) of the General Assembly and have no comments to offer. However, I should be grateful to receive detailed information regarding developments in this matter, in view of the

Organization's acceptance, in principle, of the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund."

(2) Letter to the Secretary-General from David A. Morse, Director-General, International Labour Office, dated 5 March 1955

"You point out that the International Labour Organisation has agreed in principle to accept the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund and that, in accordance with paragraph 4 of the resolution (General Assembly resolution 888 (IX)), you have been invited to consult with the specialized agencies concerned regarding the establishment of procedures to provide for review of the judgments of the United Nations Administrative Tribunal.

"As you know, since 1946 the International Labour Organisation has maintained the ILO Administrative Tribunal which has general jurisdiction relating to the terms of appointment of officials and of the applicable staff regulations, and is competent to hear complaints of non-observance of the Staff Pension Regulations of the ILO Pensions Fund. The Statute of that Tribunal contains in article XII provision for the submission to the International Court of Justice, for advisory opinion, of decisions of the Administrative Tribunal challenged by the Governing Body or the Administrative Board of the ILO Pensions Fund. That article provides as follows:

> '1. In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.
>
> '2. The opinion given by the Court shall be binding.'

"At the present time, the general jurisdiction of the ILO Administrative Tribunal is accepted by WHO, UNESCO, ITU, WMO and FAO. The Annex to the Statute adapts Article XII to provide that the Executive Board of those agencies may challenge a decision of the ILO Tribunal in the same way as the Governing Body of the ILO.

"In the memorandum submitted by the International Labour Office to the International Court of Justice in connexion with its Advisory Opinion of 13 July 1954 on the effect of awards of compensation made by the UN Administrative Tribunal, there was set forth the origins and legislative history of Article XII of the Statute of the ILO Tribunal. (I.C.J. Pleadings, UN Administrative Tribunal, pp. 46-90; particularly

pp. 70-73). In that connexion the memorandum stated: 'The significance of the Article lies in the fact that such challenge by the Governing Body is made to superior judicial authority and is not left to the decision of a representative body' (idem, p. 47). I assume that that memorandum is available to the members of the Special Committee.

"General Assembly resolution 888 (IX) accepts in principle the judicial review of judgments of the UN Administrative Tribunal. It is, therefore, fully in accordance with the underlying policy of Article XII of the Statute of the ILO Administrative Tribunal. That article provides also that such judicial review shall be by the International Court of Justice, which the International Labour Organisation decided was the most appropriate judicial organ to undertake such a review.

"In addition to the question of the body to undertake the judicial review of judgments of the UN Administrative Tribunal, other questions relating to the scope and procedure thereof will naturally arise for consideration by the Special Committee. These are matters on which at the present time I have no special views to put before the Special Committee.

"I should, however, be very glad to supply the Special Committee with any further information which it may request, and I would appreciate being kept informed in due course of the outcome of the Special Committee's deliberations."

(3) Letter to the Secretary-General from Luther H. Evans, Director-General, United Nations Educational, Scientific and Cultural Organization, dated 18 March 1955

"I have carefully examined the question of the judicial review of judgments delivered by the United Nations Administrative Tribunal, in the light of the debates which led to the adoption of this Resolution (General Assembly Resolution 888 (IX)).

"As you indicate, the General Conference of UNESCO has authorized me to accept the jurisdiction of the United Nations Tribunal only in so far as Pensions Cases are concerned. In respect of all other claims by staff members, UNESCO has, for the time being, accepted the jurisdiction of the Administrative Tribunal of the International Labour Organisation.

"Accordingly, I have come to the conclusion that it would be inappropriate for me to transmit any comments on the question of judicial review to you for transmittal to the Special Committee when it meets on 4 April 1955. I am, however, most grateful for your undertaking to keep me informed regarding this matter, as I might wish to comment upon it at a later stage."

(4) Letter to the Secretary-General from M.G. Candau, M.D., Director-General, World Health Organization dated 18 March 1955

"In accordance with paragraph 4, Part B, of this Resolution (General Assembly Resolution 888 (IX)), you have been invited to consult with the World Health Organization, which has agreed in principle to accept the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, regarding the establishment of procedure to provide for review of judgments of the Administrative Tribunal.

"May I recall in this connexion that the World Health Organization has recognized the jurisdiction of the Administrative Tribunal of the International Labour Organisation for the purpose of hearing complaints of alleged non-observance in substance or in form of the terms of appointment of WHO officials and of the provisions of WHO staff regulations. Pursuant to Article XII of the Statute of the ILO Administrative Tribunal, as adapted in the Annex to this Statute, the Executive Board of the World Health Organization may challenge a decision of the ILO Administrative Tribunal in the same way as the Governing Body of the International Labour Organisation. The text of this Article reads as follows:

'1. In any case in which the Executive Board of an international organization which has made the declaration specified in Article II, paragraph 5 of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice.

'2. The opinion given by the Court shall be binding.'

"In view of the foregoing, the World Health Organization would see no objection in principle to the establishment of procedure to provide for review of judgments of the United Nations Administrative Tribunal. However, as will be noted from the wording of Article XII, as adapted, of the Statute of the ILO Administrative Tribunal, the possibility of challenging a decision given by this Tribunal is open solely to the Executive Board of the WHO (or of any other Specialized Agency having accepted this Tribunal's jurisdiction) and in strictly defined cases only, i.e. lack of competence of the Tribunal and fundamental fault in the procedure followed.

"Bearing in mind that the World Health Organization's field of interest in the question of judicial review of U.N. Administrative Tribunal decisions is limited by the fact that it has accepted this Tribunal's jurisdiction only as concerns Joint Staff Pension Fund cases, the Organization would not be in favour, as concerns these cases, of establishing a procedure for judicial review which would depart from the principles embodied in above-cited Article XII, as adapted, of the ILO Administrative Tribunal; similarly, as concerns decisions of the U.N. Administrative Tribunal on Pension Fund cases involving a WHO participant, it is my view that the right to challenge decisions should be given to the U.N. Joint Staff Pension Board and/or the WHO Executive Board only, and this solely in strictly defined cases.

"I feel that I have to emphasize these views because of the discussions which took place at the Fifth Committee meetings and at the closing Plenary Meeting of the General Assembly on matters of terminology such as 'review' as opposed to 'appeal' or 'revision', and those relating to the problem as to who (the parties to a case or even Member States) should have the right to initiate the procedure for review.

"To sum up, I wish to state that, as far as the World Health Organization is concerned, it would be in favour of the establishment of a procedure for review of judgment of the United Nations Administrative Tribunal, provided:

"(a) the review is to be made by a judicial body, i.e. the International Court of Justice;

"(b) on request of the United Nations Joint Staff Pension Board and/or the Executive Board of the World Health Organization;

"(c) in strictly limited and defined cases the importance of which warrants submission to a higher jurisdiction.

"At this stage I merely wish to draw attention to these points. I shall of course be pleased to elaborate further on them and to submit any other comments that might become necessary in the light of developments at the Special Committee's meeting."

(5) Letter to the Secretary-General from P.V. Cardon, Director-General, Food and Agriculture Organization of the United Nations, dated 29 March 1955.

"The decision of the FAO Conference to adhere to the United Nations Administrative Tribunal in matters involving applications alleging non-observance of the Joint Staff Pension Fund Regulations was taken on the basis of the Statute of the Tribunal in force at the time. Any official expression of opinion from this Organization concerning amendment

of the Statute of the Tribunal or any decision regarding continued adherence to the Tribunal subsequent to such amendment would naturally have to emanate from the FAO Conference.

"The FAO Conference, at the time it decided to adhere to the United Nations Administrative Tribunal for Pension Fund cases, also accepted the jurisdiction of the Administrative Tribunal of the International Labour Organisation with respect to complaints of alleged non-observance of the terms and conditions of appointments of staff members.

"Article XII, paragraph 1 of the Annex to the Statute of the Administrative Tribunal of the International Labour Organisation provides that the Executive Board of any international Organization which has recognized the jurisdiction of the Tribunal may submit the question of the validity of a decision given by the Tribunal to the International Court of Justice for an advisory opinion. It is to be noted, however, that an advisory opinion may be requested only when the Executive Board challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed.

"Should it be considered desirable that the competence of the appellate body envisaged for the United Nations be more extensive, it would presumably be thought advisable to restrict this competence to points of law. It may be noted, furthermore, that under the Statute of the Administrative Tribunal of the International Labour Organisation, only one party may appeal against a decision of the Tribunal, namely, the organization concerned. If, in the case of judgments of the United Nations Administrative Tribunal, it were thought desirable to grant this right also to staff members, this could be done rather simply as far as this Organization is concerned by authorizing the appellant to submit a request to the FAO Council, which body, after having determined that such request was not of a frivolous nature, would transmit it to the appellate body.

"In the devising of a review procedure, the applicability of the various phases thereof to the Specialized Agencies concerned should be borne in mind, especially with reference to Pension Fund cases in which three parties may be involved, namely, the staff member, the Joint Staff Pension Board and the organization."

(6) Letter to the Secretary-General from C. Ljungberg, Secretary-General, International Civil Aviation Organization, dated 1 June 1955

"As mentioned in your letter, ICAO has decided to accept the jurisdiction of the UN Administrative Tribunal only in matters involving applications alleging non-observance of the regulations of the UN Joint Staff Pension Fund. I presume the views of the Joint Staff Pension Board are being ascertained by you. I have no particular comments to offer in this connection."

ANNEX IV

VIEWS OF THE STAFF COUNCIL OF THE SECRETARIAT OF THE UNITED NATIONS WITH NOTE OF TRANSMITTAL BY THE SECRETARY-GENERAL

(A/AC.78/L.4
1 April 1955
ORIGINAL: ENGLISH)

The Secretary-General has the honour to transmit, for the information of the members of the Special Committee, a copy of a letter dated 1 April 1955 which he has received from the Chairman of the Staff Committee transmitting the Views of the Staff Council of the Secretariat of the United Nations on the establishment of a Procedure for the Review of Judgments of the United Nations Administrative Tribunal.

Letter dated 1 April 1955 from the Chairman of the Staff Committee to the Secretary-General of the United Nations

"I take pleasure in sending you enclosed the views of the United Nations Headquarters Staff Council on the establishment of a Procedure for the Review of Judgments on the Administrative Tribunal.

"It would be appreciated if you would be kind enough to bring these views to the attention of the Special Committee set up under General Assembly Resolution 888 (IX). If so desired, the Staff Council would be glad to have one of its officers provide a clarification of its position to the members of the Special Committee.

(Signed) Hylke G. HALBERTSMA
Chairman, Staff Committee."

VIEWS OF THE UNITED NATIONS HEADQUARTERS STAFF COUNCIL ON THE JUDICIAL REVIEW OF JUDGMENTS OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

I. Introduction

1. By its resolution 888 (IX) of 17 December 1954, the General Assembly accepted "in principle judicial review of judgments of the United Nations Administrative Tribunal" and established a special committee to study the question of the institution of such a procedure in all its aspects.

2. Before commenting on various aspects of the envisaged review procedure, the Staff Council considers it pertinent to recall that the operation of the Administrative Tribunal has so far occasioned no request on the part of the staff for review machinery. Having examined carefully the various problems involved in the establishment of a system for reviewing judgments of the Administrative Tribunal, the Council is of the opinion that the present situation does not seem to warrant an immediate implementation of the principle of judicial review. In this connexion, it might be observed that the General Assembly accepted a review "in principle", which would not exclude the possibility that, following a more detailed analysis of the numerous aspects of such a complex problem, a different practical conclusion could be reached. This possibility was, in fact, clearly suggested when amendment A/L.192 was introduced before the General Assembly (A/PV.515, p. 9).

3. Since, however, the General Assembly has requested the Special Committee "to study the question of the establishment of such a procedure in all its aspects", the Staff Council would hasten to welcome the clear expression of the Assembly's will that a review procedure should be strictly judicial and not political in character. The records of the discussion in the Fifth Committee and in the Plenary Meeting of the General Assembly as well as the very terms employed in resolution 888 (IX) leave no doubt as to this point.

II. Nature of "judicial review"

4. The nature of the term "judicial review" as used in General Assembly resolution 888 (IX) is determined by (a) the judicial character of the Administrative Tribunal as the body of first instance; (b) the fact that the review affects the particular case under litigation; (c) the purposes to be served by the review, and (d) the status of parties to the dispute.

(a) The Administrative Tribunal has a judicial character. This has been recognized and emphasized by the International Court of Justice in its Advisory Opinion of 13 July 1954; the Assembly itself has acknowledged the principle that any review of the decisions of the Tribunal must be of a judicial character. Such review must therefore follow the principles recognized by the main judicial systems; accordingly it is inconceivable that the decision of the Administrative Tribunal might be reviewed and possibly quashed by an administrative or political organ. It may also be noted in this connexion that several delegations expressed concern that a review procedure might weaken the authority of the Administrative Tribunal and impair its usefulness.

(b) It seems clear that the review which the General Assembly had in mind is one which would deal not only with principles of interpretation for future application, but would also affect the outcome of the particular case decided by the Administrative Tribunal. The review will therefore obviously have the purpose to set aside or to confirm the judgment of the tribunal of first instance. This requires that the review procedure be one which follows the principles applicable for judicial appeals, and in particular one which gives both parties the opportunity to take the necessary steps for the safeguarding of their rights acquired under the previous judgment.

(c) The purpose of the review is to further enhance the safeguards for the proper functioning of the Secretariat in accordance with Articles 100 and 101 of the Charter, by giving both the Organization and the staff members an additional judicial guarantee for an equitable application of the relevant provisions, regulations and rules governing the employment and conditions of service of the staff. In fulfilling this purpose, the review procedure must strengthen the legal status of the staff rather than undermine it. It is clear from the discussions preceding the adoption of General Assembly resolution 888 (IX), that a great number of delegations was concerned lest the review procedure might have untoward effects on the morale of the staff which might feel that its legal security was threatened.

(d) The parties to the dispute which is subject to the review procedure are the Secretary-General in behalf of the Organization and a member of the

Secretariat of the United Nations. The review procedure must take fully into account the responsibilities and position of these parties under Chapter XV of the Charter; it must be applied so as to strengthen rather than weaken the indpendence of the Secretariat and its exclusively international character. Under the Charter, the Secretariat is one of the principal organs of the United Nations endowed with specific powers and responsibilities. While the Charter authorizes other principal organs of the Organization to entrust functions to the Secretary-General, this authority cannot be used in such a way as to interfere with the exercise of the Secretariat's responsibilities, or to prejudice the essential attributes of an independent international civil service. This principle was indirectly recognized by the Advisory Opinion of the International Court of Justice which stated that the General Assembly has the power to amend the statute of the Administrative Tribunal but that unless it so provides, it could not proceed to review a judgment already pronounced by the Tribunal; the Court also expressed the opinion that the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ all the more so as one party to the dispute is the United Nations Organization itself. This principle applies a fortiori to any other political organ of the United Nations. Any influencing of the review procedure by individual Member States or group of Member States would, of course, be clearly inconsistent with Article 100 of the Charter.

5. All these considerations point to the conclusion that the words "judicial review" as used in General Assembly resolution 888 (IX) can mean only a consideration of judgments of the Administrative Tribunal, on the appeal of the parties concerned, by an indpendent and impartial judicial tribunal free of any political influences either on the part of a United Nations organ or of any of the Member States of the Organization. The Staff Council feels it to be essential that there should be no compromise on these basic principles, so that the review procedure will increase the responsibility and indpendence of the Secretariat as one of the principal organs of the United Nations.

III. Composition of the reviewing body

6. It is essential that the body which would have the power to make a review of the judgments of the Administrative Tribunal be an indpendent and impartial tribunal enjoying high authority, and able to develop a consistent jurisprudence. The review body must, therefore, have the nature of a judicial tribunal at the highest possible level. This requirement also follows from the Assembly's decision to have a "judicial review" of the Administrative Tribunal's judgments. Review by a body other than one composed of members possessing the highest qualifications for judicial office would necessarily cast reflection on the Administrative Tribunal itself, reduce its status and impair its future usefulness.

7. The review tribunal must be constituted so as to assure its full independence, as a body and as regards individual members, of any organ of the United Nations and of the government of any Member State. No political consideration whatsoever should be allowed to influence either the composition or the functioning of the review tribunal. The development of a consistent jurisprudence and the uniformity of practice of the review tribunal can best be assured if the tribunal is established as a permanent body and if its members serve for a sufficiently long period of time.

8. Taking into account the above considerations, the Staff Council submits that the best method for the constitution of the review tribunal would be to request the President of the International Court of Justice to accept the function of designating (by whatever method he considers suitable) from among the judges of the Court three members to form the review tribunal and to hold office for the entire term for which they were elected to the Court itself, and to continue as members of the review tribunal if re-elected to the International Court of Justice.

9. If that method were not acceptable, another method would be for the President of the International Court of Justice to appoint the three members of the review tribunal from eminent jurists who in their own countries qualify for high judicial office and who do not serve in any position which would make them dependent on either a government of a Member State or a United Nations organ.

In case the second alternative method is chosen, a suitable term for service as members of the review tribunal would be six years or more, subject to reappointment at the expiration of the term.

IV. Jurisdiction of review tribunal

10. Both from the point of view of limiting the number of cases subject to review and of maintaining the high standing of the review tribunal and of the Administrative Tribunal, it is essential that only important questions of law which touch upon matters of principle should constitute a ground for the review. Ground for review should therefore be restricted to issues of (1) lack of jurisdiction of the Administrative Tribunal, (2) fundamental fault in the procedure followed by the Administrative Tribunal, and (3) arbitrary application of the law.

11. Equally important as the limitation of the grounds of appeal is their clear definition. The issues which are subject to review should be specifically enumerated in the review tribunal's statute.

12. The scope of the review should not include questions of fact; the findings of fact by the Administrative Tribunal should be conclusive. It is noted that the International Court of Justice stated in its Advisory Opinion that the Administrative Tribunal is not precluded from revising a judgment in special circumstances when new facts of decisive importance have been discovered, and that the Tribunal has already exercised this power.

13. In order to avoid further delays and costs the review tribunal should not return to the Administrative Tribunal, for retrial, a judgment which it decides to invalidate in whole or in part. The review tribunal should be empowered to rule on all points at issue which are subject to review and render a new judgment, its ruling being enforceable forthwith.

V. Initiation of review procedure

14. The Staff Council considers it essential that both parties to the proceedings before the Administrative Tribunal - the Secretary-General, on behalf of the United Nations, and the staff member concerned - should have the equal right to request the review. It would be contrary to the principle of equality of justice if opportunity to have the award of the Administrative Tribunal reviewed were

granted only to one party and denied to the other party; this is a fortiori true if the right to request review were denied to the weaker party. The discussions which took place in the General Assembly indicate that a number of representatives considered that the parties to the review procedure can only be the Organization, represented through its chief administrative officer, and the staff member concerned; and that any other procedure would be "inconsistent with the principle that at the appellate stage, only parties to a case can only be parties in appeal, revision or review". It is also noted that the Secretary-General himself stated that since he "acts for the United Nations as one of the parties, he would not consider it equitable that he should be given a general right of appeal which is not given to the other party".

15. It is the considered opinion of the Staff Council that the right to request a review should not be given to Member States either individually or as a group. As one delegation has pointed out, the staff member is not the servant of any particular Member State; he is the employee of the Organization. The right of Member States to request a review would gravely prejudice the international character of the Secretariat and of the Organization and might expose staff members to influences and pressures; such a procedure would be inconsistent with the spirit of Article 100 of the Charter.

16. Since the Secretary-General as Chief Administrative Officer is, under the Charter and the related Staff Regulations, responsible for the administration of the United Nations Secretariat, it would not be in the interest of good administration if other organs of the United Nations could intervene in a specific case.

VI. Aspects of the review procedure of special concern to the Staff

17. The Staff Council earnestly hopes that the adoption of a procedure for judicial review will not unduly prolong the final settlement of a case. The existing procedure is already extended. Of 23 cases which have reached the Administrative Tribunal after their consideration by a Joint Appeals Board, the average duration of the proceedings - from the date of the contested decision until the Tribunal's judgement - is approximately 15 months. This period, under the circumstances in which some staff members - especially those recruited overseas -

find themselves following an adverse decision, may already involve special financial and other hardships, and the question arises whether the existing procedures cannot be shortened.

18. The period in which a request for review may be filed should therefore be reduced to the absolute minimum. It is felt that it should not exceed thirty days from the date on which the Administrative Tribunal's judgment is communicated to the parties. If the time-limit is exceeded, the appellate body should without further formality declare the proceedings dismissed. A time-limit should also be set for the review and a period of two months seems appropriate.

19. With regard to the rights of the applicant within the review procedure, it is felt that provision for physical presence at the review, travel and subsistence costs, representation, etc., should be no less than that provided for in the Statute and Rules of the Administrative Tribunal or in existing administrative arrangements connected with its proceedings.

20. In particular, it is hoped that the need for adequate legal counsel for the applicant, which has already been recognized in the case of the Tribunal, should also be recognized in connexion with the review procedure.

21. As the review tribunal may develop principles of interpretation for future application, due provision should be made in the statute of the review tribunal allowing a representative of the staff association of the Organization concerned to make an appearance before the tribunal and to make such statements as in the association's opinion may be of interest to the staff as a whole.

22. Finally, the Staff Council feels that some method should be found for safeguarding the acquired rights of the staff member following a favourable decision by the Administrative Tribunal. The entering of an appeal against a decision should, in principle, not have suspensive effect on the Tribunal's judgment. It is true, of course, that in some cases part of the payment of an award might have to be withheld pending the expiration of the time-limit for appeal or of appeal proceedings. In any case the staff member, having on many occasions already suffered financial or other hardship pending a judgment by the Administrative Tribunal, should not be put in the position of having insufficient means of subsistence to protect his acquired rights.

VII. Conclusions

23. The Staff Council's opinion as set forth above may be summed up as follows:

(1) It has not been convinced of the necessity of establishing a procedure for reviewing judgments of the Administrative Tribunal;

(2) If, however, such a procedure should be established, the review should be made by a strictly judicial body and should follow the generally recognized principles for judicial appeals;

(3) The review body should be a judicial tribunal of the highest standing; it should be fully independent, and permanent rather than ad hoc. To meet these requirements, its members should be appointed by the President of the International Court of Justice according to one of the methods, suggested in order of preference, in paragraphs 8 and 9 above.

(4) Only specified important questions of law should be reviewed and the review tribunal should be empowered to rule on all points at issue;

(5) Only the parties (the Secretary-General and the staff member concerned) should have the right to initiate the review procedure;

(6) The time-limit for the appeal and the proceeding should be kept to a specified minimum;

(7) Appropriate arrangements should be made to ensure that the staff member would not be put in the position of having insufficient means of subsistence or inadequate legal assistance to protect his acquired rights.
