DISSENTING OPINION OF JUDGE LACHS

I. Introduction

1. The birth of international organizations not only opened a new chapter of international law but also created a series of issues concerning their functioning and the status of their personnel. Thus differences of view have arisen concerning the rights and obligations of this new type of official ; some became disputes between the administration and the official, and gave rise to specific problems concerning the methods and procedures for resolving them. The officials could not be left without remedies, hence the creation of special organs to resolve differences arising in this area. Thus, as is well known, three administrative tribunals are now in existence. The Administrative Tribunal of the United Nations established a rich jurisprudence which has helped to shape the internal law of international organizations. Yet no tribunal is infallible and occasionally questions were raised as to the correctness of its decisions. Hence the introduction of the machinery for the review of the judgements of two of these tribunals. The latest outcome is the present case.

2. There are several reasons which make me reluctant to write this opinion : among them is the fact that we face here a judgement coming from a tribunal which has a very good record and with many of whose findings I could surely agree. Yet, since I unfortunately have difficulty in accepting an important part of that judgement – a part with which I consider that the Court should have dealt in greater depth –, I feel that I must, in all conscience, indicate my views.

II. Jurisdiction

3. The Request, at first sight rather simple, raises complex and difficult questions of law. As the Court's opinion amply shows, the mere circumstances of its submission called for some trenchant comments on procedural issues and a special examination of the question of jurisdiction. As for the review procedure as a whole, its theoretical shortcomings are by now notorious. But in practical terms the Court's experience in the present case has been even more painful than that in the handful of comparable cases that preceded it : the irregularities committed are most striking, in particular at the stage of the Committee on Applications. However, at first

I saw in them no compelling reasons which would be an obstacle to considering the merits. Yet their closer analysis reflected in the text of the Advisory Opinion has disclosed grave violations in the screening process. Thus I was divided in my mind and the scales could easily have tipped the other way. Nevertheless, the Court's decision was taken undeniably in the long shadow cast by these deficiencies, despite which it agreed to surmount the difficulty, continued with the analysis of the case and reached its conclusions. This unusual circumstance, while reinforcing my doubts on the subject of the Court's jurisdiction, will, in later sections of this opinion, enable me to proceed with an analysis of the merits.

III. The *Locus Standi* of States Members of the United Nations

4. In the present case the Court could not, of course, as in 1973, put aside as irrelevant the arguments against the propriety of a State challenging the judgement in a dispute to which it is not a party. On the contrary, it had to live up to its statement that such "considerations would call for close examination by the Court if it should receive a request for an opinion resulting from an application to the Committee by a member State" (*I.C.J. Reports 1973,* p. 178 at para. 31). In doing so, however, it has been mindful that the arguments were originally raised in 1955 and that the General Assembly amended the Statute of the Tribunal despite them and in full awareness of them. Designedly, therefore, the General Assembly adopted an amendment permitting an intervention by a member State in a dispute between the Secretary-General and a staff member.

5. There are two aspects to the above objections to "State intervention". One concerns the rights of the staff member party to the original dispute. The other concerns the prerogatives of the other party thereto, the Secretary-General, as chief administrative officer of the Organization. From both angles, it has been objected that the procedure allows the intrusion of a member State into the relationship between the Secretary-General and a member of his staff.

6. What this boils down to is the issue of the relationship between member States and staff members (or former staff members) of the United Nations. Here a distinction has to be made between the day-to-day, functional relationship and the basic, organic relationship. The Secretary-General is the pivot of this distinction. For everyday, practical purposes, the staff members are responsible to him alone. The very nature of their duties, safeguarded by Article 100 of the Charter, is such as to require them to be shielded from the pressure of the individual member State – but also to require all member States to be shielded.

7. Conversely, the basic, organic relationship between the staff member and the member State has to be looked at in the light of fundamentals. One "fundamental" which is constantly obscured in the context of disputes is that it is not the Secretary-General that is a principal organ of the Organization, but the Secretariat – to which both he and his staff belong. The Secretary-General's staff are the servants of the United Nations. Their relationship is with the Organization, whose instructions he is expected to interpret and transmit. As chief administrative officer he represents the Organization in his dealings with them, but, as Article 101 of the Charter implies, it is another representative of the Organization, namely the General Assembly, which makes and has oversight over the regulations governing their relationship not only with him but with the Organization behind him. Thus the United Nations, made up of member States of which the General Assembly is the voice, is the ultimate employer of the staff. As the Court itself recognized in 1954, and has now confirmed (in para. 68), the Secretary-General is at all times subject to the control of the General Assembly in staff matters (cf. *I.C.J. Reports 1954,* p. 60).

8. The conclusions to be drawn are that the relationship lies basically between the staff member and the Organization and that, at that level, a member State, as such, cannot be regarded as an outsider. The present case, moreover, concerned not only an important problem of the validity of a rule but also the implementation of a General Assembly decision which did not affect one staff member only, and the issue involved touched upon – as I hope to show – the fundamental interpretation of Article 101 of the Charter.

9. In sum, the General Assembly's 1955 decision to admit the possibility of an application for review being submitted by a member State constituted recognition that a member State, as a representative of the Organization, can have a legitimate interest in questioning the Tribunal's decision on a matter concerning the staff member's rights and obligations vis-à-vis his ultimate employer, the Organization. On such occasions it is, I believe, misleading to visualize such an application as amounting to an intervention in a relationship between two other persons.

10. The fact is that, as was already seen in 1973, "Article 11 was not introduced into the Statute of the United Nations Administrative Tribunal exclusively, or even primarily, to provide judicial protection for officials" despite what had been said in 1956 about Article XII of the Statute of the ILO Administrative Tribunal (see *I.C.J. Reports 1973,* p. 183 at para. 40), and the Court must therefore give due weight to the other party deserving judicial protection – namely the Organization.

IV. Grounds of the Application for Review

11. Judgement No. 273 of the United Nations Administrative Tribunal, while not ordering the payment to Mr. Mortished of the repatriation grant he claimed, awarded him compensation in exactly the same amount, so that there is a material (if not jurisprudential) identity between the effect of its action and the satisfaction of the claim. The awards of the Tribunal (as concluded by the Court in 1954) are binding upon the United Nations. A member of the General Assembly of that Organization has made use of the review procedure in order to challenge the legal basis of this particular award.

12. I agree with the strictures passed by the Court on the diffuse and awkward wording of the question put to it by the Committee on Applications after consideration of the application for review, and I also agree that it is necessary to go behind this question in order to determine what grounds of objection are alleged, within the meaning of Article 11 of the Statute of the Tribunal. Of the two grounds raised in the Committee on Applications, one, that concerning excess of jurisdiction, seems most closely to relate to the terms of the actual question put to the Court, in that the Administrative Tribunal, though competent to examine alleged non-observance of terms of appointment, certainly has no power effectively to countermand a decision of the General Assembly. This point is apparently met by the fact that the Tribunal "merely" awarded compensation, thus not denying the immediate effectiveness of General Assembly resolution 34/165. But what I find a particular source of concern is that the basis of this award was a finding that Mr. Mortished enjoyed an "acquired right" by virtue of the already abolished Staff Rule 109.5 *(f)*, a text which, as I shall show, was in conflict with the will of the legislator. I therefore agree with the Court that the focus of enquiry should be the other ground of objection, namely error on a question of law relating to the provisions of the Charter.

V. The "Contentious" Aspects of the Court's Present Task

13. Before passing on to consider whether Judgement No. 273 did in fact commit an error on a question of law relating to the provisions of the Charter, I wish to comment on four other ways in which the Court's Opinion endeavours to narrow the scope of the enquiry to be undertaken. The first is by emphasizing the difficulties inherent in making use of the Court's advisory jurisdiction for the purpose of resolving contentious issues. This point is connected with the apprehension lest the Court act as a court of appeal, lest it "retry the case". I am in entire agreement with the caution here advocated, to the extent that it does not prevent the Court from fulfilling its role *in concreto.* But let it be remembered that even the Court's own Rules contemplate the possibility of its advisory opinion being sought "upon a legal question actually pending between two or more

States" (Art. 102). Of course, safeguards can then be given by observance of the rules for contentious cases, and it is notably more difficult to provide similar safeguards when one of the parties is an individual without standing before the Court. However, the examination of contentious issues is an inherent task of the Court in the review procedure, and if ever it considers that the performance of this task involves inequitable treatment of the parties its proper course may well be to decline to give an opinion. It does not improve the situation by agreeing to give an opinion while declining to examine the issues as thoroughly as is needed to reach a well-founded conclusion. Here, in my view, the Court draws back from the thorough accomplishment of its task in deference to scruples which relate to the system, not the case.

14. Another, connected way in which the Court has reduced the scope of its enquiry is to suggest that it may be able to detect an error in the Tribunal's interpretation of the Staff Regulations and Rules without itself deciding (or, at any rate, expressing) what, in its view, is the correct interpretation – without, indeed, even getting "involved in the question of the proper interpretation of the Staff Regulations and Staff Rules, as such, further than is strictly necessary [etc.]" (para. 64). However, I regret to note that here (as also in para. 66) the Court acts upon this formula only in regard to an objective which narrows down the scope of enquiry to consideration whether the Tribunal's interpretation is "in contradiction with the *requirements* of the provisions of the Charter" (my emphasis). This is an inadequate goal, which would clearly bar the Court from performing its real function, under Article 11 of the Tribunal's Statute, of examining *any* question of law in relation to those provisions, in order to ascertain whether the Tribunal erred thereon. But is not any court of law, whatever its functions, obliged to test its criticism of a judicial decision taken by another against its own conclusion as to what would have been correct ? Is it usually possible for it to be sure of having detected an error without being equally sure of what the other tribunal ought to have said ? To resort to an illustration taken from the jurisprudence of the Belgian Conseil d'Etat :

> *[Translation by the Registry]*
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> "The Council of State, administration section, has not to substitute its appreciation for that of the Minister as regards the advisability of issuing an emergency order ; however, to discharge the task of verifying legality which is inherent in that very competence, the Council of State, administration section, is under an obligation to examine whether the Minister, in invoking an emergency, attributed its proper scope to the provision in Article 3, subparagraph (1), of the co-ordinated laws, or in other words whether, in applying the concept of emergency to the circumstances of the case, the administrative authority did not go so far as to disregard, by distorting this concept, the legal

> qualification attached to it by the legislator." (Arrêt n° 16488, 20 juin 1974, *A.S.B.L. Institut technique libre Georges Cousot et consort c. Etat belge*, *Recueil des arrêts du Conseil d'Etat*, 1974, pp. 645-647.)

15. Interestingly, the Court's Opinion itself refers to an "assumption that the advisory opinion is to deal with a different question from that submitted to the Tribunal" (para. 61). This reveals that there is no necessary reason why the declaration of the Court's *interpretation* of the particular point or points underlying its answer to the question before it should be equivalent to the substitution of "its own opinion on the merits of the case for that of the Tribunal" (para. 47 of the *Fasla* Opinion), since the merits are likely to cover many other points on which the Court may have nothing to say. Indeed it is quite conceivable that the Court's interpretation of a particular question of law may differ from that of the Tribunal while leaving unaffected the latter's findings on the merits. It is in that light also that the action of the Tribunal subsequent to the Court's Opinion, under Article 11, paragraph 3, of its Statute, may be conceived.

16. In sum, while I agree that it is "very much the business of this Court to judge whether there is a contradiction between a particular interpretation or application of Staff Regulations and Rules by the Tribunal and any of the provisions of the Charter" (Opinion, para. 66), I fail to see how this business can be carried on without reaching a conclusion as to what an alternative interpretation or application might have been. Any other approach would be self-defeating, in that it would imply that the Court must give the Tribunal the benefit of the doubt at the very point where the Tribunal's Statute seeks to empower it to do the reverse. Hence "the inherent limitations of the advisory procedure" (*ibid.*, para. 63) would be so conceived as to frustrate the purpose of that Statute and make the provision in question a dead letter. Here again, to my mind, the Court has the choice either of refusing the procedure or, if it accepts it, of trying to make it work.

17. A third way in which the present Advisory Opinion has circumscribed the Court's powers is by declaring that

> "It is not the business of this Court to decide whether the Tribunal's Judgement involves an error in its interpretation of the relevant instruments, unless it involves an error on a question of law relating to the provisions of the United Nations Charter." (Para. 74.)

I hope sufficiently to indicate below why I consider this to be a false antithesis. Indeed, I would say that errors in the interpretation of instruments having their *fons et origo* in the Charter would be typically the kind of errors contemplated in Article 11 of the Tribunal's Statute.

18. Fourthly, the Court recalls that neither it nor the Tribunal possesses "any 'powers of judicial review or appeal in respect of the decisions' taken by the General Assembly" (para. 76). With this I entirely agree, with the

proviso that, as I have pointed out elsewhere, there is a possibility of the Court performing interpretative functions serving a similar purpose, acting upon the request of the Assembly or other organ desiring legal guidance as to its own activities (*I.C.J. Reports 1950,* pp. 131 ff. ; *1971,* p. 23). But I also conclude that, in consequence of this limitation, it behoves the Court, and *a fortiori* the Tribunal even more to heed the wishes of the Assembly as expressed in its decisions.

VI. Meaning of "Error of Law on a Question relating to the Provisions of the Charter of the United Nations"

19. As the preparatory work makes clear, it is highly unlikely that any provisions lying outside Chapter XV or Article 55 *(c)* of the Charter would be involved in a case before the Administrative Tribunal, and where Chapter XV is concerned staff members and the Secretary-General are no less interested than member States in this general observance. But within Chapter XV, Article 101, as constantly interpreted, provides *a specific role for the General Assembly* in establishing the regulations under which staff shall serve. Thus, in considering an application *from a Member of the Assembly,* one must look particularly, though not exclusively, to Article 101 to establish the scope of the ground of objection to the effect that the Tribunal has erred on a question of law relating to the provisions of the Charter.

20. To my mind, the Court's Opinion takes too abstract a view of this necessary operation. But it is certainly important to begin with the actual text of Article 11, paragraph 1, of the Tribunal's Statute : "error on a question of law relating to the provisions of the Charter". It has in particular to be stressed that it is the "question of law", not the "error" itself, that has to "relate to" the provisions of the Charter. The requirement of "connecting up" with the Charter, which is necessary for the Court to be able to examine the possibility of legal error, is thus a broad one, relating to the subject-matter of the Tribunal's deliberations, not necessarily to its actual analysis of Charter provisions.

21. Inspection of the Charter rapidly establishes that paragraph 1 of Article 101 is the text therein raising "questions of law" involved in the *Mortished* case before the Administrative Tribunal. On the one hand, that paragraph has been consistently interpreted as the basis of the General Assembly's power to make and maintain staff regulations (even if, unlike para. 3, it is ostensibly concerned with terms of appointment rather than conditions of service). On the other hand, the Tribunal, in the exercise of its functions, continually applies and interprets those regulations, and the rules flowing from them. Any "question of law" in the area of those regulations and rules thus "relates to" this provision of the Charter, and if the Tribunal in any way "errs" on such a question, it provides a ground on

which its judgement may be challenged via the review procedure, and affords the Court the possibility of examining its reasoning on that question.

22. *Pace* the Court's Opinion (para. 65), what it is about the Tribunal which derives its ultimate validity from the Charter is not so much the law it applies as its *application* of the law, because that is its very functioning, which is entirely dependent on the Statute with which the Assembly endowed it. The actual law it applies may derive from a variety of sources, some general, some more particular. Among the more particular are the Staff Regulations and the Rules enacted for their implementation. A question of law concerning these relates to a provision of the Charter. On the other hand, a general question of law – say, the question of acquired rights – will not of itself relate to the provisions of the Charter. If, however, for the sake of that question, the Tribunal has occasion to apply or observe Staff Regulations and Rules deriving from General Assembly resolutions – hence from Article 101 of the Charter – and does so wrongly, its error will afford a ground of review. There is therefore no justification for suggesting that, just because of the vast scope of the Charter, all legal errors without distinction would be subject to the review process if the relevant words of Article 11 of the Tribunal's Statute were interpreted as they stand. Besides, in the nature of things, the Court is involved, through this review procedure, in matters which are seldom likely to take on the international dimensions to which it is accustomed. Hence, while the Court is right to suggest that the reference to the Chapter forms a qualification which diminishes the inappropriate aspects of that involvement, it should be realized that any stressing of an alleged requirement of importance belongs rather to criticism of the system than to analysis of the text. Finally, there is a long distance between the interpretation indicated here and that which would include any "error of law". By forcing a choice between two antipodes, the Court loses sight of the real value of the "compromise solution" sought in 1955, to which it approvingly refers.

23. Finally, as I hope to make plain, the question of law which is in my view central to the case is decidedly of constitutional dimensions, since it concerns none other than the authority and relationships of the General Assembly, the Secretary-General and the International Civil Service Commission. The Court avoids the issues involved by placing them beyond the provisions of the Charter. But it is in the Charter that the very source is to be found of the relationship between the General Assembly, the Secretary-General and such a subsidiary organ as the International Civil Service Commission. Hence, whether "question of law concerning the provisions of the Charter" be given a restrictive or an extensive interpretation, I am satisfied that the question with which I am concerned passes the test and qualifies for the Court's examination.

24. The Court itself, on one occasion, said of the whole of Article 101 of the Charter :

> "The General Assembly could limit or control the powers of the Secretary-General in staff matters, by virtue of the provisions of Article 101" (*I.C.J. Reports 1954,* p. 60 ; quoted in para. 68 of the Court's present Opinion).

Thus, theoretically, a conflict might arise between a decision of the Secretary-General (e.g., a Rule or amendment issued by him) and a decision by the General Assembly controlling his powers. Any question involving that control thus concerns Article 101 of the Charter, on the Court's own showing. However, it is arguable that the error may also – or alternatively – concern other provisions of the Charter, applied to the personnel of the Organization, as they should be applied in international relations. If the United Nations is to promote, "With a view to the creation of conditions of stability and well-being . . . based on respect for the principle of equal rights . . . of peoples", "conditions of economic and social progress and development" (Charter, Art. 55), it is obviously bound to proclaim and practise the same principles within its internal legal system : not only to avoid but to bar all types of discrimination among those serving this Organization. If a much wider approach is taken, it will be seen that an error in giving a more privileged position to some and placing others on a disadvantageous level is involved in the present case. This question had in fact been raised by the non-expatriate personnel.

VII. Merits of the Review

25. To evaluate properly the whole case, the best way is to begin with the decision of the Administrative Tribunal. This, in a nutshell, was as follows : a resolution of the General Assembly (34/165) which was law-making, inasmuch as it was the basis of an amendment of a relevant Staff Rule (109.5), was declared *ineffective* in regard to an identified person (Mr. Mortished). He was granted as compensation a "sum equal to the repatriation grant" in reliance on another, earlier resolution, one already replaced, and a clause in the Staff Rule (109.5 *(f))* which was no longer in force. The ground of this award was an alleged "injury" sustained by the person concerned and due to the operation of the new resolution and Rule. What was the injurious act impeached ? Refusal of payment following non-compliance with a request for evidence of relocation as a condition for paying a repatriation grant due to that person on separation and relocation.

26. The Court did not consider whether the Tribunal, precisely in

resorting to the substitutions just mentioned, did not err on a question of law relating to the provisions of the Charter. It could however have done so without "retrying the case" : it need only have reviewed "the actual substance of the decision" to the extent envisaged in paragraph 48 of its 1973 Advisory Opinion (quoted in para. 57 of the Court's present Opinion).

VIII. The Nature of the Repatriation Grant

27. Let us consider the basic facts. We are confronted with an institution called "repatriation grant" which was established for internationally recruited staff members of the United Nations. Its objective was officially stated 33 years ago : it was intended to make up for the

> "loss . . . of professional and business contacts with the home country . . . ; . . . the necessity of giving up residence and liquidating obligations in a foreign country ; and . . . expenses which a staff member will normally have to meet in re-establishing himself and his home on return to his own country" (*General Assembly Official Records, Fourth Session, Annex to Summary Records of Fifth Committee,* Vol. II, A/C.5/331 and Corr.1, para. 108).

The logical outcome, in the words of the Advisory Committee on Administrative and Budgetary Questions, was that a "lump sum [should] be paid to staff members on being repatriated to their home countries to cover costs of re-establishing themselves" (A/313, para. 68).

28. Thus the object and purpose of the grant was clearly defined. In the further development of this institution it was decided that : "The Secretary-General shall establish a scheme for the payment of repatriation grant in accordance with the maximum rates and conditions . . ." (General Assembly resolution 470 (V), 15 December 1950). It was also laid down, under the heading "Repatriation Grant", that :

> "In principle, the repatriation grant shall be payable to staff members whom the organization is obligated to repatriate except those terminated by summary dismissal." (*Ibid.,* Ann. II.)

This was to become the basis of Annex IV to the Staff Regulations. The words "in principle" were evidently employed to provide some necessary flexibility in exceptional cases, and not to bestow an unconditional right to payment on all staff members who were objects of the mentioned obligation. This is at once clear from the promptly issued circular of the Secretary-General, dated 20 December 1950, which *for the staff's information,* stated that : "*The principle of a repatriation grant has been established, the grant to be payable to such members returned at United Nations expense to*

their home countries." (ST/AFS/SER.A/72, para. 11 ; my emphasis.) Here the word "principle" did not refer to payment (as the Court seems to assume) but to the institution established.

29. After the grant had come into being on 1 January 1951, the Salary Review Committee found that it was "unable to recommend the extension of the grant to non-expatriated staff" (Salary Review Committee report, 1956, A/3209 : see paras. 224 and 225). Thus the special status of expatriate personnel was emphasized ; the grant was intended only for those who, after terminating their service, go back to their country. This theme was to be repeated on many subsequent occasions (cf. Secretary-General's Bulletin, ST/AFS/SGB/81, Rev.2 and Rev.3, of 1 January and 6 July 1951 ; ST/AFS/SGB/94 of 1 December 1952 ; Rev.4 of 15 August 1955). It is really surprising, in the light of such convincing evidence articulating the original object and purpose of the grant, that the Court can have found "that the title of the grant has *always* been a misnomer" (para. 66 ; my emphasis). Affirmed at the beginning, the original description was defended 30 years later in the General Assembly. Equally strange is the reliance placed on the expression "obligated to repatriate" for the purpose of denying the reality of the repatriation requirement *(ibid.)*. This expression is only one side of the coin, the other being the staff member's obligation to leave his last duty station in order to qualify for the grant.

30. Two further interesting features are worth mentioning in the context. One is the sliding scale on which the amount of the grant is calculated and the 12-year maximum period of service taken into account. These indicate that the original guiding idea contemplated chiefly expatriates who would need help in picking up the threads of their career after separation, a task which becomes progressively more difficult as the years roll by, but not so much help as to enable them to live for more than a few months without being stimulated to look for other work. The grant was therefore not intended to be a gradually earned lump-sum gratuity to be paid on separation to those who had reached retirement and would draw a pension.

IX. The Question of Evidence : Its History and Legal Complications

31. The object and purpose of the institution having been defined, no difficulty about evidence need have arisen. It is only the events that followed which seem to have created some confusion on the subject. Thus in 1952 the CCAQ Secretariat suggested that :

> "it is believed that the grant should be paid after two years' service abroad, regardless of the conditions of separation (including resignation but excluding summary dismissal) and regardless also of whether the staff member is actually repatriated" (CO-ORDINATION/R.124, p. 6).

It was also pointed out that a staff member might have two or more residences and that it would then be difficult to establish the real address. But it was clear that these reasons were only an expedient means of endorsing a lax practice and were not intended to establish the correct interpretation of the underlaying principle. Small wonder this proposal never became part of the law. The Staff Regulations and Staff Rules remained unchanged.

32. On the other hand, the link with the home country was stressed again when in 1964 the Secretary-General incorporated into the Staff Rules a special provision concerning reduction of "repatriation grant entitlement" by one year for each six months' service in the home country, with the restoration of the credit (one year for six months) in case of later posting abroad.

33. Moreover, a special Staff Rule 104.7 *(c)* laid down :

> "A staff member who has changed his or her residential status in such a way that he or she may, in the opinion of the Secretary-General, be deemed to be a *permanent resident of any country other than that of his or her nationality may lose entitlement to* non-resident's allowance, home leave, education grant, *repatriation grant* and payment of travel expenses upon separation . . ." (my emphasis).

These elements further stressed the link between the repatriation grant and the fact of repatriation as a condition for its payment. A person becoming a permanent resident in another country might lose the title to the grant. (To my great regret, the Advisory Opinion omits any reference to that rule.)

34. The CCAQ recalled in 1974 its 1952 proposal that the grant be payable whether repatriation takes place in fact or not, yet it stated again that :

> "The whole purpose of the grant is to assist the staff member and his family to re-establish in the *home* country and clearly there is no logical justification for paying the grant to a staff member who remains in the country of his last duty station." (CCAQ/SEC/325/(PER), para. 14.)

Having stated this, it turned to the practical difficulties and the possibility of the ex-official evading the obligation by travelling to his home country or to another country and travelling back to the place of his last duty station in the United Nations at his own expense, without the administration knowing it.

35. With the passage of time, the requirement of evidence and formalities concerning the "repatriation grant" underwent a further liberalization of interpretation. The "obligation to repatriate" was given a wider meaning and became the "obligation to return . . . to a place outside the country of [the] duty station" (Secretary-General's Bulletin, ST/AFS/SGB/94, 1 December 1952 ; Rule 109.5 *(a)*). It was also conceded that "loss of entitlement to payment of return travel expenses . . . shall not affect a staff member's eligibility for payment of the repatriation grant" (now Rule 109.5 *(l)*). Moreover, in the practice of both the United Nations and other international organizations the requirement of evidence was not complied with. A practice developed of the grant being paid whether the official in question left his last duty station or not. However, and this is most important from the legal point of view, that practice, wide as it may have been, was never incorporated into any rules and it could therefore never have had any rule-making effects. The requirement of evidence of relocation remained binding. The proof of this is abundant :

(a) The International Civil Service Commission, called upon to review the question of the grant, found in 1978 that : "The conditions of entitlement to the grant have remained essentially unchanged since they were first established with effect from 1 January 1951." (A/33/30, para. 179.)

(b) The Chairman of the ICSC (Señor Quijano) made a very relevant statement on the subject to the Fifth Committee in 1978 : "In its study," he said, "the Commission had found in a few cases grants had been paid to expatriate staff members who had not moved from the country of their last duty station." He added that this was considered *"to be an unjustifiable and anomalous payment"* (my emphasis). (A/C.5/33/SR.42, para. 69.)

(c) The 1978 report of the ICSC concludes by a most telling formulation : while stating that it had "no desire to see an international information network set up to keep track of the movements of former staff members" (para. 185), the ICSC believed that

> "to pay repatriation grant to a person *who remained permanently in the country of his last duty station was incompatible with the purpose of the grant and could also be seen as discriminatory by non-expatriate staff members"* (A/33/30, para. 185, my emphasis).

Thus, notwithstanding the lax practice and proposals made by some organs of the United Nations and of other organizations there is no proof

that the necessary evidence of relocation was dispensed with *in law* (cf. above) and that officials were entitled to receive the grant without being obliged to produce such evidence.

36. On the contrary, 29 years after the rationale of the grant was defined, it was emphatically restated. The grant was to serve its real purpose ; no distortion of the institution and its purpose was sanctioned ; it was not to become an instrument of abuse. Any attempt to establish the right to a grant without being repatriated (or having relocated) would amount to an interpretation *in fraudem legis.*

37. That the law had remained unchanged since 1951 was confirmed even by the Administrative Tribunal in the very judgement which is the subject of the Court's deliberations, for it notes that the scheme announced by the Secretary-General on 22 August 1979 "was the first time that a provision of the Staff Rules acknowledged that entitlement to the repatriation grant might exist without evidence of relocation being provided" (Judgement, para. XIII). The new provision in question (Rule 109.5 *(f)*) was the outcome of action taken by the International Civil Service Commission following a decision by the General Assembly. That action and its fruit have to be analysed in order to appreciate the basis of the Tribunal's decision.

X. Resolution 33/119 and Staff Rule 109.5 *(f)* and Their Source

38. I turn now to the latest chapter in the history of the elaboration of the relevant rules, and in doing so cannot but note that the Court, after giving such a detailed analysis of the preceding chapters, pays but scant attention to the making of the two General Assembly resolutions which are decisive elements of the case. In particular it remains reticent on the evidence of the real wishes of the General Assembly, as so clearly expressed in the records. By resolution 33/119 the General Assembly decided that "payment of the repatriation grant to entitled staff members" should "be made conditional upon the presentation . . . of evidence of actual relocation, *subject to the terms to be established by the* [International Civil Service] *Commission"* (my emphasis). The emphasized words expressed the Assembly's reaction to the recommendation made in paragraph 186 of the Commission's report to the Thirty-third Session (A/33/30), to the effect that "payment of the repatriation grant should be made conditional upon signature by the staff member of a declaration that he does not intend to remain permanently in the country of his last duty station". They contain no reaction to the proposals in the same paragraph that "CCAQ should agree on a common transitional measure" in favour of the staff members who might have planned not to relocate after separation on the assumption they would receive the grant.

39. The Assembly's reaction was not to accept a signed declaration of intent as sufficient proof of title to payment but, *considering that the Commission ostensibly endorsed (in the above-quoted paragraph 185 of the same report) the principle of actual relocation as an inherent condition of payment,* nevertheless to leave it to the Commission to define what proof *was* sufficient. Hence it is clear from the text of General Assembly resolution 33/119, read with the explanations of the co-sponsors in the Fifth Committee, that the International Civil Service Commission had been entrusted by the Assembly with the specific but very limited task of establishing no more than the *terms of evidence of actual relocation* through which the fact of repatriation (as elastically understood) was henceforth to be controlled. The words "subject to" had not empowered the ICSC to establish conditions of entitlement – that, the General Assembly had done. *A fortiori,* it had no power to provide for exemptions, to divide personnel into two different categories. It was merely to specify what was to constitute acceptable evidence, when and how it should be produced, etc. Instead, it produced a proposal which distorted its mandate. The division of the expatriate personnel into two categories, to one of which – by far the greater – exemption was granted, and the prescription of an artificial date (1 July 1979) making a distinction between them were obviously contrary to the will of the legislator, and the strength of the Assembly's reaction is fully comprehensible. The Commission appeared, in respect of the overwhelming majority of serving staff members of the Secretariat, to have gone back upon the arguments it had presented to the Assembly in its own report (A/33/30), ignored the basis of its own recommendations therein (the last of which had set no higher than an "assumption" what it now endeavoured to transform into a right) and, in introducing transitional arrangements, disregarded the limited nature of the delegation of power conferred upon it by the Assembly. For it was quite obvious that by resolution 33/119 the Assembly had envisaged the application of the new (though always inherent) requirement of evidence to *all* "entitled staff members", and this is made clear by its adoption of resolution 34/165.

40. It may be argued, at a pinch, that the general mandate of the ICSC enables it to institute (via executive heads) transitional arrangements in order to avoid hard cases and anomalies or to preserve acquired rights. On the question of acquired rights, let me just say for the moment that this is a question of entitlement and that the ICSC is not empowered by its Statute (see Art. 11) to stipulate entitlements within the purview of Article 10 *(c),* which places, *inter alia,* repatriation grant under the direct authority of the General Assembly. But, be that as it may, even if the ICSC can institute

transitional arrangements, is it conceivable that it could do so in such a way as to exempt from a General Assembly decision the vast majority of those to whom the Assembly intended it to apply ? The Commission had no implied powers herein, for it should not be forgotten that the implied powers of an organ are limited to those which, though not expressly provided for in its statute, "are conferred upon it by necessary implication as being essential to the performance of its duties" (*I.C.J. Reports 1949,* p. 182). The Commission's whole duty, in relation to resolution 33/119, was to establish the terms on which evidence of relocation would be regarded as sufficient and acceptable, in the case of *all* staff members entitled to repatriation grant.

41. Faced with the "promulgated" decisions of the ICSC embodying the unwarranted distinction between two categories of staff member, the Secretary-General, acting under Staff Rule 112.2 and mindful of Article XII of the Staff Regulations, amended Rule 109.5 and reported to the Assembly accordingly. The new paragraph *(f)* thus contradicted resolution 33/119 in both its letter and its spirit.

42. In paragraph 23 of its 1979 report (A/34/30) the ICSC, in accounting for the changes introduced, stated that it

> "had foreseen the possibility that some special provision would be needed regarding staff members who had an *expectation* of receiving the grant under the existing rule but would *no longer be entitled to it under the new rule.* The Commission was informed that the legal advisers of several organizations had studied the question and come to the conclusion that *any entitlement already earned* by a staff member *could not be affected retroactively* by the changing of the rule ; but the exercise of further entitlements accruing after the date of the change would be subject to compliance with the new condition." (My emphasis.)

This statement, however seemingly innocuous, begged a question and concealed an important fallacy. First, it might well have been that certain staff members *expected* to receive the grant, but it was not under the existing *rule* but only by virtue of the existing extra-legal *practice* that they might have held that expectation. Secondly, exigibility of evidence of relocation was no "new" condition but one inherent in the very nature of the grant : *a fortiori* it could not affect the legal régime under which the grant was paid, except in so far as it made explicit what had previously been implicit. The ICSC ended by contradicting its own previous report to the effect that "the conditions of entitlement to the grant have remained essentially unchanged since . . . 1951" (A/33/30, para. 179), not to mention the statement of its own Chairman :

"The Commission believed that the repatriation grant should not be paid when the staff member at the end of his service remained in the place of his last duty station and accordingly did not incur the removal and reinstallation expenses which the grant was intended to meet." (A/C.5/33/SR.32, p. 11.)

43. There is often virtue in a change of approach. But a far more serious aspect of this inconsistency was the way the ICSC acted not only in contradiction to its own previous view, but *ultra vires* against the clear and unequivocal will of the General Assembly. For it defined the contents of its decisions promulgated on 6 April 1979 under CIRC/GEN/39 as "modifications to the terms of entitlement to the repatriation grant ... established in pursuance of paragraph 4 of section IV of General Assembly resolution 33/119". In paragraphs 38 and 39 above I believe I have amply shown that no such sweeping mandate had been given by the cited text. The Commission had, above all, no power to make exceptions to the Assembly's decision, which had been intended to affect all "entitled staff members". All it possessed was a delegation of power for the limited task of defining, as I indicated above, the terms of evidence, and all such delegations call for strict interpretation. The Commission apparently relied on some legal advice but, having received it, it had no power or authority to act the way it did but should have returned to the General Assembly and requested new instructions. This it failed to do. The Secretary-General was presumably aware of this situation. Yet Rule 109.5 *(f)*, voidable from the day it was issued, remained in force until the General Assembly returned to the matter at the following session and abolished the provision.

XI. Resolution 34/165 and Its Aftermath

44. Once the General Assembly realized the extent to which the amendments to Staff Rule 109.5 frustrated the very purpose of the task it had given to the Commission that had fostered them, it reacted, not surprisingly, to put an end to an abnormal situation, by adopting on 17 December 1979 resolution 34/165, to take effect as from the beginning of the following month (i.e., in 15 days) which happened also to be the beginning of the next calendar year. Accordingly, the Secretary-General abolished the short-lived Staff Rule 109.5 *(f)*.

45. Since Mr. Mortished made his claim after that abolition, and hence the institution of a new rule corresponding to the new resolution of the General Assembly, the Secretary-General refused him a repatriation grant when he failed to produce the necessary evidence.

XII. The Tribunal's Handling of Material Questions of Law

46. Competent as it is to adjudicate disputes concerning the terms of appointment and conditions of service of United Nations staff members, the United Nations Administrative Tribunal has constantly to apply and interpret United Nations Staff Regulations and Rules. When the General Assembly was considering the establishment of the Tribunal, the prudent view was expressed that :

> "The Tribunal would have to respect the authority of the General Assembly to make such alterations and adjustments in the staff regulations as circumstances might require. It was understood that the tribunal would bear in mind the General Assembly's intent not to allow the creation of any such acquired rights as would frustrate measures which the Assembly considered necessary." (*General Assembly Official Records, Fourth Session, Plenary Meetings,* Annex, Agenda Item 44, doc. A/1127, p. 168, para. 9.)

The relevant report of the Fifth Committee adds :

> "No objection was voiced in the Committee to those interpretations, subject to the representative of Belgium expressing the view that the text of the statute would be authoritative and that it would be for the tribunal to make its own interpretation." *(Ibid.)*

Thus this "interpretation" of the Tribunal's responsibility towards the intent of the Assembly was quasi-unanimous. The present case pre-eminently calls for examination of the question whether the Tribunal, in Judgement No. 273, took these requirements into account. It may have disregarded them and thus erred within the sphere of the law it had to apply.

47. The Administrative Tribunal, in Judgement No. 273 shows at various points its concern with the powers of the General Assembly and the Secretary-General and their inter-relationship, establishing (in para. III) the general co-ordinates thereof in terms of Articles 7, 97 and 101 of the Charter. Subsequently (para. V) it records the basic purpose and scope of the establishment of the International Civil Service Commission and recognizes that the *"ICSC is not competent to take decisions directly affecting staff members"* (my emphasis).

48. Now, although the Tribunal does not say so in terms, it appears to suggest (in para. XIV) that the failure of the Assembly to challenge the formal validity of the Secretary-General's amendments estopped it in some way from finding them materially defective. But, on the Tribunal's own showing, it is difficult to see how else the Assembly could have proceeded.

The method of passing the relevant part of resolution 34/165 was in fact the least hurtful way in which the Assembly could have exercised its inherent power of control over the Secretary-General while not making the strength of its disapproval of the Commission's action too explicit.

49. I can well appreciate that the Administrative Tribunal might scruple to suggest that the procedure whereby the ICSC prompted the Secretary-General to adopt Rule 109.5 *(f)* was not that laid down in resolution 33/119 – or was so only in outward form. I can also appreciate the argument that it has to take Staff Rules as it finds them. But since the rule in question had its direct origin in a General Assembly resolution and was drafted via powers of delegation, the Tribunal might have been expected to test its pedigree. In fact, as all the circumstances surrounding this most unusual case must have shown the Tribunal, the General Assembly itself disowned its alleged progeniture.

XIII. Acquired Rights

50. I have no intention to go deeply into the subject of acquired rights. In truth, any right validly and duly created and acquired under the rules of a particular legal order may be an "acquired right". The definition of these rights, or rather the determination of their scope in most areas, had become increasingly difficult in a world in which mutual rights and obligations are subjected to frequent changes. In fact, it was always a vexed problem. However, since the Staff Regulations and the Judgement of the Administrative Tribunal refer to the subject, it is difficult to avoid it. It was only natural that Mr. Mortished should have claimed such a title in order to show that he and other officials belonging to the same category enjoyed an "acquired right" *before* the adoption of the new paragraph *(f)* of Rule 109.5. This is, however, not the "acquired right" recognized by the Administrative Tribunal's Judgement (para. XVI).

51. For the Tribunal, as pointed out, recognizes that Rule 109.5 *(f)* marked "the first time that a provision of the Staff Rules acknowledged that entitlement to the repatriation grant might exist without evidence of relocation being provided" (para. XIII). If that is correct, the clause must have created that right, in which case the right did not exist before and the reasoning from 30 years' practice is of very little value ; it is reduced to a merely auxiliary status. If it created the right, and the Tribunal had found that that right became for Mr. Mortished an acquired right, then the first text I quoted in paragraph 46 becomes highly relevant.

52. But by any hypothesis, in my view, the finding of an acquired right

in the present case fails the test. I hope to have shown, in section VIII above, that actual repatriation, soon extended to mean actual relocation in a country other than that of the last duty station, was a basic condition of entitlement to receive repatriation grant.

53. The Secretary-General's abstention from demanding evidence of relocation throughout 30 years of paying repatriation grants amounted to a discretionary waiver – defensible in the sense that he was dealing with responsible ex-officials. However, this practice did not give rise to any acquired right, because relocation remained an essential condition, and evidence thereof remained exigible, hence the expectations the practice may have aroused were not compatible with the basic nature of the institution. A misconception therefore underlay the initiative of the ICSC which resulted in the introduction of Staff Rule 109.5 *(f)*. Indeed the Secretary-General showed that he recognized as much, when he told the Tribunal :

> "The General Assembly's authority under Article 101 of the Charter cannot be undermined by so broad a definition of 'acquired rights' as to encompass eligibility requirements for a repatriation grant." (Respondent's Answer, para. 26.)

No sooner was the rule cancelled than the inherently discretionary character of the waiver would have become evident, had not clause *(d)* immediately withdrawn the waiver altogether.

54. Apart from this, the discretion of the Secretary-General illustrated by Staff Rule 104.7 *(c)* (quoted above) remained in force, thus enabling him to withdraw entitlement to the grant from specifically defined staff members. This continued to be a serious obstacle to the creation of an "acquired right". In my view, paragraph XVI of Judgement No. 273 of the United Nations Administrative Tribunal erred on the relevant provision in particular as concerned the will of the General Assembly.

55. While the Court admits (para. 74) that there may be room for more than one view on the question as to what amounts to an acquired right and whether or not Mr. Mortished had one, the whole field of acquired rights is one which the Opinion deliberately refrains from entering. However, the very basis of the whole proceedings before the Tribunal and the Court is an alleged injury sustained as the result of disregarding an acquired right by the application of a Staff Rule which reflected a resolution of the General Assembly. If an injury is produced through the action of an organ of the United Nations, the relevant provision of the Charter is undoubtedly involved, hence also the need to deal with the question of acquired rights in a way which would not imply retrial of the case. One can therefore hardly accept the Court's approach, which amounts to an attempt to identify two different proceedings : "retrial" and "review", notwithstanding the Court's being sometimes "called upon to review the actual substance of the

decision", particularly in cases of this kind (*I.C.J. Reports 1973*, p. 188 at para. 48). In the present instance, the Court has refused even to consider whether the implementation of a law-making organ's decision in a way contrary to its will may really result in the creation of an "acquired right". To my mind, especially when the decision is implemented in a manner contrary to the specific purposes for which the affected institution was established from the outset – and which has never basically changed – no such creation is possible, and this should have been said.

56. The further issue of retroactivity – on which there should be no doubt – does not arise, for the simple reason that those who were entitled to benefit from the provisions of Rule 109.5 *(f)* did so as long as it was in force, i.e., until 1 January 1980. All others fell under the régime of the Staff Rule which was the outcome of resolution 34/165 of the General Assembly. Though it may be argued that entitlements accrued to Mr. Mortished in the course of the many years of his service in the United Nations, yet he became a beneficiary only on separation, and Mr. Mortished was separated from the service only in April 1980. Moreover (it is worth recalling) the benefit is not simply one "accruing to a staff member for services rendered before the entry into force of an amendment" (cf. UNAT Judgement No. 82, para. VII) but is linked with the obligation to "relocate", i.e., is intended to make up for the hardship caused by the "translocation" which could occur only at the time of separation. The right to payment therefore had no retroactive aspect.

57. As to excess of jurisdiction, I do not believe that the Administrative Tribunal could be held to have exposed itself to this charge. Relying as it did on the acquired right it held to exist in the case of Mr. Mortished, the Tribunal was careful not to challenge the validity or legality of a General Assembly resolution. In sum, I agree with the Court that there is no ground for finding that the Tribunal committed an excess of jurisdiction.

58. To conclude my considerations, I regret that a series of errors has been committed – in particular an error on a question of law relating to the provisions of the Charter of the United Nations –, including a misreading by the International Civil Service Commission of the unequivocal will of the law-maker (the General Assembly of the United Nations) and of its own terms of reference, and the recognition of allegedly created "acquired rights". This led to the emergence of a rule which was ill-conceived and to which the law-maker, once apprised of it, put a rapid end.

XIV. General Considerations

59. Having opened my comments on the present case by some reflections on the resolution of disputes within international organizations, I wish to conclude them on the same theme in regard to the functions of administrative tribunals. In fact, the Court has from the very outset been closely connected with the subject and expressed its views on the nature

and propriety of the functions which might be exercised by the various bodies involved. Having regard to the Court's utterance of 1954, the Statute of the United Nations Administrative Tribunal was amended and the General Assembly set up the subsidiary organ known as the Committee on Applications, endowing it, not with judicial, but with "screening" functions. The Court has had occasion to comment on this procedure. In 1956 it dealt with Article XII of the Statute of the International Labour Organisation Administrative Tribunal and at the same time could consider in such a context whether being "bound to remain faithful to the requirements of its judicial character" (*I.C.J. Reports 1956,* p. 84), its own Statute and functions stood in the way of its complying with a request for an opinion. It was only in 1973 that the Court finally had to contemplate the implications of participating in the procedure instituted by Article 11 of the Statute of the United Nations Administrative Tribunal. On that occasion in the *Fasla* case, it again bore in mind the permissive wording of Article 65, paragraph 1, of the Statute and its entitlement, in certain circumstances, to refuse to answer questions put to it. Much the same general misgivings were expressed as in 1956 ; but more specific objections were raised against the mysterious workings of the Committee. The Court went on, however, to stress in an *obiter dictum* the necessity for consistency in the standards applied by the Committee in assessing applications, especially as between those emanating from staff members or from other sources. In sum, the Court in 1973 complied with the request notwithstanding the grave doubts entertained by many, if not all, of its Members in regard to the basically hybrid nature of the system and the manner of its implementation.

60. However, the present case, as the Advisory Opinion stresses, differs from the 1973 case in that the application has been made by a member State, so that the questions of equality of the parties and the consistency of the standards applied by the Committee arise in acute form. Moreover, while in the *Fasla* case the transcript of the proceedings before the Committee was not available to the Court, in the present one it is, but it reveals, as indicated in the Advisory Opinion, such irregularities as the Court could not possibly ignore. It is thus impossible not to have qualms regarding the ostensibly unevenhanded nature of the whole procedure both in theory and in practice. In fact the review procedure contains a built-in dilemma. This awkward fact was mildly alluded to by the Court in 1973, when it indicated that it did "not consider the review procedure provided by Article 11 as free from difficulty" (*I.C.J. Reports 1973,* p. 183 at para. 40). I wish to recall that, while sharing the views of the Court at the time, I went much further, stating :

> "There would, perhaps, be little point in adverting to this problem if the sole choice for the future appeared to lie between judicial control of the kind exemplified by the present proceedings and no judicial control at all." (*Ibid.,* p. 214.)

What I had in mind was a serious improvement of the existing machinery and its revision so that it would "be free from difficulty and more effective". I saw "no compelling reason, either in fact or in law, why an improved procedure could not be envisaged" *(ibid.)*. In the light of the experience in the present case, the need for this improvement has been amply confirmed. I am gratified to note that the Court, in the Advisory Opinion, has made some comments to the same effect. In reiterating my views, I feel that the procedure is in need of some radical change.

61. In the same context, nine years ago, I made another observation concerning the "discrepancy between the two systems of review : one established by Article XII of the Statute of the ILO Administrative Tribunal and the other by Article 11 of that of the United Nations Administrative Tribunal" *(ibid.)*. I expressed my regret on account of the divergences which existed in the nature of the protection afforded the staff members of different international organizations. Indeed the situation created by this discrepancy is one which should raise very serious reservations, for it has no rational foundation. Almost all the organizations which accepted the jurisdiction of the ILO Administrative Tribunal belong to the United Nations family and it is difficult to explain, still less to justify, why the protection offered to one group of officials should be different from that enjoyed by others. I therefore pleaded for greater co-ordination and uniform procedures in both cases. Can there be any doubt that the personnel employed by the United Nations and the many other organizations belonging to one family in the international civil service should be subject to a uniform régime and the same legal protection ? The establishment of the International Civil Service Commission with the task of elaborating a uniform system and status embracing the personnel of the international organizations, the not-infrequent transfer of persons from one organization to another, are important factors indicating the trend in the same direction of uniformity. This need is further stressed by two contradictory opinions handed down by the two tribunals on the very same subject, a danger which may increase with the passage of time.

62. I have felt, moreover, that the goal of equal protection for all members of the international civil service could best be achieved in the long run if the tribunals were fused into one institution, located so as to be easily accessible, which would take under its wing all persons employed by international organizations of the United Nations family, and possibly others. I find confirmation in the suggestion of the General Assembly that the Secretary-General and the Administrative Committee on Co-ordination should "study the feasibility of establishing a single administrative tribunal for the entire system" (cf. General Assembly resolutions 33/119 and 34/438). The work on the subject was intended to afford an opportunity also to study possible unification of the procedures of the United Nations Administrative Tribunal and the ILO Administrative Tribunal

and to remove certain imperfections in the present Statutes of both, with a view to strengthening the common system.

63. In compliance with these resolutions, consultations took place between the representatives of the organizations which have accepted the jurisdiction of one or other of the two tribunals. The idea itself is not new and was pointed out by the first President of the Administrative Tribunal of the United Nations, Mrs. S. Bastid. It was in fact to be expected that the coming into existence of the United Nations would establish a unique jurisdiction, but this did not happen.

64. These consultations and the reports prepared indicate what are alleged to be serious difficulties in the establishment of a single tribunal, and the establishment instead of "some form of joint machinery" was suggested. I am confident, however, that a harmful tendency leading to the multiplication of organs entrusted with similar or even identical functions and the growth of international bureaucracy will be arrested. Without entering into the sphere of practical considerations which it would be improper for me to embark upon, I am of the view that one administrative tribunal could really solve the problems which face all organizations, even those which do not come within the United Nations system. It would be one of the practical outcomes of the guiding idea which led to the establishment of the International Civil Service Commission.

65. Here, then, I maintain my views expressed nine years ago, and enlarge upon them in the light of subsequent experience : suggestions concerning important changes in the procedure and guarantees, the eventual fusion of tribunals. All this in order to establish a sound, properly functioning system which would secure the effective administration of justice in accordance with universal standards. It may be timely, on that occasion, to review and consolidate the internal law of international organizations in view of the conflicts and inadequacy of a number of regulations and rules in the systems.

(Signed) Manfred LACHS.