DISSENTING OPINION OF JUDGE SCHWEBEL

While joining my colleagues in voting in favour of the Court's rendering an Advisory Opinion in this case, and in favour of the Court's reply to question 1, I regret to be obliged to dissent from the Opinion as a whole in view of my disagreement with the Court's reply to the essential question, question 2.

OBSERVATIONS ON QUESTION 1

I have voted in favour of the Court's reply to question 1 with some hesitation. That reply is, I believe, correct, not because Judgement No. 333 of the United Nations Administrative Tribunal is sound, nor because the Tribunal adequately or rightly responded to the question of whether a legal impediment existed to the further employment by the United Nations of Mr. Yakimetz after the expiration of his fixed-term contract on 26 December 1983. On the contrary, the Tribunal's Judgement is spangled with error and such inferential response as it may be said to have given to the question of a legal impediment was unsupported by the facts. Nevertheless, the Court's reply to question 1 may be accepted as correct within the narrow confines of that question, as the Court has chosen — even more narrowly — to interpret it, namely: the Tribunal did not fail to exercise its jurisdiction since one may deduce from Judgment 333's elliptical text, as elucidated with the help of its concurring and dissenting opinions, that the Tribunal did address its mind to the question of whether a legal impediment to a career appointment existed. As far as the text of that Judgement reveals, the Tribunal's mind was far from clear; at any rate, the expression which the Judgement gives of the Tribunal's ratiocinations in this regard is obscure. Nevertheless, for the reasons which Judge Jennings sets forth in the dissenting opinion which follows this opinion, the Court's reply to question 1 is sustainable, since the Judgement of the Tribunal would not appear to constitute a failure to exercise jurisdiction so much as an erroneous exercise of it. Accordingly, to vote in favour of the Court's answer to question 1 is by no means to suggest that the results of the Tribunal's addressing its mind to the issue of a legal impediment are correct. The Court's opinion rightly stops short of any such holding or inference.

OBSERVATIONS ON QUESTION 2

The essential issues of the *Yakimetz* case are encompassed by question 2. As the Secretary-General has acknowledged, the dispute between the parties turns on "essentially whether the Applicant was given 'every reasonable consideration' for a career appointment pursuant to General Assembly resolution 37/126 . . ." (A/AC.86/R.118). If he was not, but if the Tribunal held that he was, the question then arises whether the Tribunal thus "erred on a question of law relating to the provisions of the Charter of the United Nations".

For the reasons so ably and precisely set out in Judge Jennings' opinion — and particularly because of the terms of the correspondence he fully quotes which passed between the Secretary-General and Mr. Yakimetz, which need not be repeated in this opinion — I am convinced that, in fact, the Secretary-General did not give Mr. Yakimetz's candidacy for a career appointment "every reasonable consideration" — or indeed any consideration. The letter written on behalf of the Secretary-General on 21 December 1983 is unambiguous and dispositive. It indicates that Mr. Yakimetz's candidacy for a career appointment could not be given every reasonable consideration because "Your situation" was "not similar to that of 'most staff members' with comparable service records, because your present contract was concluded on the basis of a secondment from your national civil service". It holds that, being seconded, and having no "expectancy of renewal without the involvement of all the parties originally concerned", and having no "expectancy . . . of conversion to any other type of appointment", Mr. Yakimetz's name could not be "'forwarded to the appropriate Appointment and Promotion body for reasonable consideration' for career appointment". I fail to see how an analysis of the correspondence between the Secretary-General and Mr. Yakimetz, particularly the letter of 21 December 1983, can sustain another interpretation. I find the construction placed upon that correspondence by the Tribunal and by the Court unconvincing — more, in Judge Jennings' term, "not possible".

It is significant that the Tribunal itself could do no more than speak of what the Secretary-General "apparently decided"; it relies upon an alleged "plain and simple inference" which it purports to extract from the text of the critical letter of 21 December 1983. It cannot rely on the explicit language of that letter, which cuts the other way.

It is true that the letter of 21 December 1983 states that "The Secretary-General has given careful consideration to the issues raised" by Mr. Yakimetz in his counsel's letter of 13 December, among which was Mr. Yakimetz's entitlement to "every reasonable consideration" for a career appointment. But the terms of the letter of 21 December expressly exclude precisely that latter consideration; accordingly, the inference

which the Tribunal purports to discover, relying only on this reference "to the issues" which the Secretary-General considered, is fanciful. The specific governs the general. It is also significant that the Tribunal felt obliged to criticize the Secretary-General for his failure to state "explicitly" before 26 December 1983 that he had given "every reasonable consideration" to the Applicant's career appointment; the Tribunal recorded its dissatisfaction at the Secretary-General's "failure . . . to record sufficiently early and in specific terms the fact" that he had given that appointment the consideration "enjoined" by the General Assembly. Yet the Tribunal nowhere supplies a particle of direct evidence in support of its finding of that "fact" (which it acknowledges actually to be no more than an inference), nor has a shred of such evidence been pleaded by the Secretary-General at any stage of the case. For its part, the Court, which has scrutinized the record of the case, has been unable to produce one scrap of evidence in support of the Tribunal's finding that the Secretary-General gave Mr. Yakimetz's candidacy for a career appointment every reasonable or indeed any consideration.

There are two further factors which reinforce the conclusion which Judge Jennings and Judge Evensen and I share in this regard. They sit uneasily with the inferential interpretation placed upon the relevant correspondence by the Tribunal and the Court. The first is that the Secretary-General debarred Mr. Yakimetz from the premises of the United Nations, a debarral dictated shortly after Mr. Yakimetz's resignation from Soviet official positions and his application for asylum in the United States, and maintained thereafter to the very end of Mr. Yakimetz's service in the Organization. It was explained in his Comments submitted to the Court on 26 June 1985 (but not explained to Mr. Yakimetz at the operative time) that this "decision not to permit the Applicant, the centre of a controversy between two member States, to enter the Headquarters buildings", was "an administrative decision taken in the light of all the circumstances of the case and in order to avoid potentially disruptive consequences for the functioning of the Secretariat" (para. 17).

The mildest observation that may be made in respect of this extraordinary action is that it was hardly consistent with a then existing, contemporaneous disposition, or subsequent disposition, on the part of the Secretary-General to extend to Mr. Yakimetz every reasonable consideration for a career appointment. Can it really be supposed that, at one and the same time, during a period for all of which Mr. Yakimetz remained barred from entering the Headquarters building, the Secretary-General was giving every reasonable consideration to his career appointment? Can it be thought that it was the view of the Secretary-General that a staff member merited continued exclusion from his office and from the

United Nations corridors and cafeteria and, at the same time, every reasonable consideration for a permanent appointment upon the expiration of the fixed-term appointment which he was debarred from serving out on United Nations premises? Would the "potentially disruptive consequences" to which, *post facto*, the Secretary-General alluded, have disappeared during the post-1983 period in which Mr. Yakimetz, holding a permanent appointment, would have served, or does this comment of the Secretary-General indicate that the controversial Mr. Yakimetz, whose lunching in the cafeteria could be "disruptive", could not be seriously considered for a United Nations career, even though his performance ratings were excellent and even though resolution 37/126 required that he be given every reasonable consideration?

The second factor is that the Secretary-General failed to acknowledge, let alone act upon, the application for a permanent appointment which Mr. Yakimetz officially submitted on 9 January 1984, days after the expiration of his fixed-term appointment. That reaction, or lack of reaction, to Mr. Yakimetz's application for a career appointment suggests not that "every reasonable consideration" was given to it, but that no consideration was given to it. If there is another explanation of the Secretary-General's failure to reply to Mr. Yakimetz's application which is more favourable to the Secretary-General's position, it has not been forthcoming.

It might be speculated that the Secretary-General did not reply to Mr. Yakimetz's application for a career appointment of 9 January because Mr. Yakimetz filed his application with the Administrative Tribunal on 6 January. But that is conjecture. What is significant is that the Secretary-General has never advanced this argument, not to Mr. Yakimetz in January 1984 as he could so readily have done, nor to the Tribunal or the Court thereafter. One is left with the conclusion that the failure to acknowledge or respond to Mr. Yakimetz's application of 9 January confirms the failure of the Secretary-General to give Mr. Yakimetz's candidacy every or any reasonable consideration.

THE NATURE OF AN ERROR OF LAW "RELATING TO" THE CHARTER; AND FURTHER OBSERVATIONS ON QUESTION 2, INCLUDING THE TRIBUNAL'S ERROR RELATING TO ARTICLE 101, PARAGRAPH 1, OF THE CHARTER

Before looking more closely at the errors of law relating to provisions of the Charter of the United Nations made by the Administrative Tribunal in this case, it may be useful to comment upon that provision of the Tribunal's Statute. The terms of Article 11 of the Statute of the Tribunal, as well as its *travaux préparatoires*, make clear that an error of law "relating to" provisions of the United Nations Charter need not squarely and directly

engage a provision of the Charter. It is sufficient if such an error is "in relationship to" the Charter, "has reference to" the Charter, or "is connected with" the Charter. (See the definitions under "relate" and "relating" found in *The Oxford Dictionary,* 1910, Vol. VIII, pp. 397-398, and in *Webster's Third New International Dictionary of the English Language, Unabridged,* 1976, p. 1916.) The phrase "the provisions" of the Charter cannot mean all the provisions of the Charter, because no error of the Administrative Tribunal could apply to all the provisions of the Charter; that phrase must mean, "one or more provisions" of the Charter. An error, if it is to furnish ground for objection to a judgement of the Tribunal, must have a relationship to or be connected with at least one provision of the Charter. Moreover, when Article 11 of the Statute of the Tribunal was adopted, it was declared by the co-sponsors of the language in question that: *"The words 'relating to the provisions of the Charter' covered* not only interpretations of the provisions of the Charter but also *the interpretation or application of staff regulations deriving from Chapter XV of the Charter."* (A/AC.78/SR.10, p. 3, quoted in *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, I.C.J. Reports 1982,* p. 394, para. 9, and p. 469, para. 21; emphasis added.) It was understood that:

> "The co-sponsors intended by the phrase: 'a question of law relating to the provisions of the Charter' to provide for a case not only where the Administrative Tribunal might be considered to have misinterpreted the Charter, but also where the Tribunal might have interpreted and applied the Staff Regulations in a manner considered to be inconsistent with the provisions of Chapter XV of the Charter." (United Nations, *GAOR, 10th Session, Annexes, Report of the Special Committee on Review of Administrative Tribunal Judgements,* p. 10; quoted in *I.C.J. Reports 1982,* p. 471, para. 24.)

When the Secretary-General fails to apply a provision of a resolution binding upon him which the General Assembly has adopted in pursuance of its authority under Article 101, paragraph 1, of the Charter, which provides that, "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly", and when the Administrative Tribunal omits to recognize that failure — and consequently accepts a failure to apply the governing regulation — the Tribunal errs on a question of law "relating to" the Charter. That is exactly the instant case. It is exactly the kind of case which the General Assembly had in mind when it adopted Article 11 of the Statute of the Administrative Tribunal, as the foregoing quotations from the *travaux préparatoires* show.

It is of course true that the Secretary-General does not now acknowledge that he failed to apply a provision of a General Assembly resolution which he does acknowledge is binding upon him. He rather has affirmed

to the Administrative Tribunal and to this Court what he had omitted to affirm to Mr. Yakimetz: that he had given a career appointment for Mr. Yakimetz every reasonable consideration. The Secretary-General was placed in a difficult position by the circumstances of the *Yakimetz* case; and his affirmations placed the Tribunal, and this Court, in a delicate position. The reluctance of the Tribunal and the Court to discount the Secretary-General's affirmations is understandable. But, as Judge Jennings shows, the essence of administrative law and process entails the possibility of disallowance of the executive's affirmations. If what is the fact depends solely on the executive's *post facto,* unproved affirmation of what was the fact, there is no utility in administrative law, processes, and tribunals. For my part, with every respect for the Secretary-General's goodwill and good faith, I regret to be impelled to say that these unsupported statements of the Secretary-General cannot be accepted as governing.

It would be otherwise if the Secretary-General had substantiated his alleged consideration not merely by broad and conclusory statements made well after the operative time, solely in an adversarial context, and exclusively to the Tribunal and this Court (never, at the operative time, to Mr. Yakimetz). It would be otherwise if the Secretary-General's representative had not written to Mr. Yakimetz in the terms of the letter of 21 December 1983. But at the operative time, the Secretary-General, far from informing Mr. Yakimetz that every reasonable consideration to his career appointment had been given, was being given, or would be given, wrote Mr. Yakimetz that he could not be given consideration for a career appointment "because your present contract was concluded on the basis of a secondment from your national civil service". I do not believe that the Secretary-General now can be heard to say the contrary of what he said at that determinative time.

THE ROLE OF THE COURT IN THIS CLASS OF CASE

The Court reassures itself about the justice of an opinion about which it appears none too sure by maintaining that its proper role in this class of case is not to retry the case and to attempt to substitute its own opinion on the merits for that of the Tribunal. But the Court does not equally emphasize what it held in 1982, 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" (*I.C.J. Reports 1982,* p. 359, para. 66).

The Court fails to stress that, as it held in 1973, the Court's role is to determine if the circumstances of the case, "whether they relate to merits or procedure", show that any objection made to the judgement on one of the grounds mentioned in Article 11 is well founded:

> "In so doing, the Court is not limited to the contents of the challenged award itself, but takes under its consideration all relevant aspects of the proceedings before the Tribunal as well as all relevant matters submitted to the Court itself by the staff member and by the Secretary-General with regard to the objections raised against that judgement. These objections the Court examines on their merits in the light of the information before it." (*Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, I.C.J. Reports 1973*, p. 188, para. 47.)

Indeed as the Court further held in the *Fasla* case, "where the judgement has been challenged on the ground of an error on a question of law relating to the provisions of the Charter, the Court may . . . be called upon to review the actual substance of the decision" (*ibid.*, para. 48). The Court further held that, in review proceedings, the Court does not regard itself "as precluded from examining in full liberty the facts of the case or from checking the Tribunal's appreciation of the facts" (*ibid.*, p. 207, para. 85).

The extent of the Court's authority to examine in full liberty the facts of the case and to pass upon the merits of the Tribunal's Judgement is confirmed by the fact that its advisory opinion in this class of case binds the Secretary-General and the Tribunal. Article 11, paragraph 3, of the Tribunal's Statute provides:

> "In any case in which a request has been made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it shall confirm its original judgement, or give a new judgement, in conformity with the opinion of the Court. If not requested to convene specially the Tribunal shall at its next session confirm its judgement or bring it into conformity with the opinion of the Court."

The phrase, "in conformity with the opinion of the Court" in the first sentence of the foregoing quotation governs the whole of that sentence, as its punctuation demonstrates. Thus the Secretary-General himself either must give effect to the Court's opinion or the Tribunal must act to confirm its original judgement or give a new judgement, both of which judgements must be "in conformity with the opinion of the Court". This ineluctable interpretation is confirmed by the second sentence of the foregoing provision, which likewise obliges the Tribunal to bring its judgement "into conformity with the opinion of the Court". As the Court itself recognized in the *Fasla* case, "the opinion given by the Court is to have a conclusive effect with respect to the matters in litigation" in the case before the Administrative Tribunal (*I.C.J. Reports 1973*, p. 182, para. 39). This is a "special effect to be attributed to the Court's opinion by Article 11 of the Statute of the United Nations Administrative Tribunal . . ." (*ibid.*, p. 183, para. 39).

Moreover, it was recognized by its co-sponsors in the course of adopt-

ing Article 11 of the Tribunal's Statute that "the International Court of Justice should be the final authority on interpretation of the Charter or *of staff regulations based thereon* which might be involved in the Tribunal's decisions" (*GAOR, 10th Session, Fifth Committee, 498th Meeting,* p. 66 (emphasis added); see *I.C.J. Reports 1982,* p. 473, para. 27). The Court was intended to be and, by the terms of the Tribunal's Statute, is "the final judicial arbiter on questions of Charter law"; and "no organ would be more competent to settle other issues arising from the grounds specified for review" (*Report of the Fifth Committee, GAOR, 10th Session, Agenda item 49, Annexes,* p. 40; see *I.C.J. Reports 1982,* p. 474, para. 28). It is significant that not only was "the final authority" of the Court emphasized — an authority which accordingly must be able to substitute its opinion on the merits for that of the Administrative Tribunal, for an opinion which does not govern cannot be "final". It is equally significant that it was made clear by the Report of the Fifth Committee that the jurisdiction of the Court was defined to embrace the "legitimate interest in ensuring proper application of the Charter and the Staff Regulations . . ." *(ibid.).* It could not be plainer that, under Article 11 of the Tribunal's Statute, the Court is "the final authority on interpretation . . . of staff regulations based" on the Charter, i.e., regulations established by the General Assembly under Article 101, paragraph 1, of the Charter — such as that expressed by resolution 37/126, IV, paragraph 5.

In view of the terms of the Tribunal's Statute and the foregoing intentions of its draftsmen, and in view of the Court's proper holding that it may examine "in full liberty the facts of the case" and check "the Tribunal's appreciation of the facts" (*I.C.J. Reports 1973,* p. 207, para. 85), I believe that today's opinion of the Court, and previous opinions to like effect, are on weak ground when they shelter behind the conclusion that, "the Court's proper role is not to retry the case and to attempt to substitute its own opinion on the merits for that of the Tribunal" (*I.C.J. Reports 1982,* p. 356, para. 58, adopted in this opinion in paras. 27 and 89). On the contrary, the Court, when seised of a case of this kind, exercises "judicial review . . . The opinion of the Court is to be given a reformatory character." Since an objection on the ground that the Tribunal has erred on a question of law relating to a provision of the Charter "relates not to the validity of the judgment but to the merits of the judgment" of the Tribunal, this ground affords the Court "true appellate jurisdiction" (Leo Gross, "Participation of Individuals in Advisory Proceedings before the International Court of Justice: Question of Equality between the Parties", 52 *American Journal of International Law* (1958), p. 36.)

This is the conclusion which Judge Oda, in his separate opinion, and which I, in my dissenting opinion, reached in 1982 in the *Mortished* case, after an examination of the drafting history of Article 11 of the Statute of the Administrative Tribunal; it remains correct today (see *I.C.J. Reports 1982*, pp. 393-397, 468-470, 471, and Judge Oda's separate opinion in the current case, paras. 14-18). It is fully justified by the intent of the General Assembly in adopting Article 11 of the Statute of the Administrative Tribunal, as that intent is shown by the quotations from the *travaux préparatoires* set out above and in the cited *Mortished* opinions. In such a case, the Court *is* entitled — if not required — to substitute its opinion for that of the Tribunal on the merits, and both the Secretary-General and the Tribunal are bound to conform their judgments to the Court's opinion. What is at issue in the *Yakimetz* case is the Administrative Tribunal's "interpretation or application" — or misinterpretation or misapplication — "of staff regulations deriving from Chapter XV of the Charter", an issue explicitly declared by the drafters of Article 11 of the Statute to be within the Court's competence. The Court is fully empowered to give an opinion on the merits of that issue. Its failure to do so constitutes a failure to exercise a responsibility validly entrusted to it by the General Assembly.

It may be added that the exclusionary approach to its jurisdiction which the Court finds it convenient to adopt in the current case contrasts tellingly with the extraordinarily expansive approach to its jurisdiction which the Court found it convenient to adopt in the case concerning *Military and Paramilitary Activities in and against Nicaragua* (*I.C.J. Reports 1984*, p. 392; (*I.C.J. Reports 1986*, p. 14).

THE TRIBUNAL'S ERRONEOUS INTERPRETATION OF ARTICLE 101, PARAGRAPH 3, OF THE CHARTER

While the critical error of law relating to a provision of the United Nations Charter in this case lies in the Tribunal's failure to find that the Secretary-General had not given Mr. Yakimetz's candidacy every reasonable consideration, and in its consequent failure to require the Secretary-General to comply with a regulation binding upon him, established by the General Assembly in pursuance of Article 101, paragraph 1, of the Charter, still another error of law relates to Article 101, paragraph 3, of the Charter. That provision in effect establishes three "paramount" considerations in the employment of staff: efficiency, competence, and integrity. It further provides that: "Due regard shall be paid to the importance of recruiting staff on as wide a geographical basis as possible." That lesser consideration in no way imports that a change in the nationality of a staff member, much less actions manifesting an intent to seek a change in nationality, are considerations relevant to the suitability for continued service of such a staff member. The Administrative Tribunal held in the *Estabial* case (Judgement

No. 310) that considerations of geographical distribution may not be given precedence over an employment decision which is to be reached on the basis of an assessment of an official's efficiency, competence and integrity. No less must the paramount considerations of efficiency, competence and integrity govern considerations of nationality, which are not even mentioned in the Charter.

For his part, however, the Secretary-General, in his actions relating to Mr. Yakimetz, clearly gave weight to what he described as "the events of 10 February 1983, and thereafter" (the date being that of Mr. Yakimetz's communication to the Government of the USSR resigning his positions with it); in his Comments to the Court of 26 June 1985, the Secretary-General acknowledged that all the circumstances of which he took account "obviously included the Applicant's proposed change of nationality" (para. 14). For its part, the Tribunal defined as one of the three legal issues of the case: "The consequences of the application of United Nations rules and regulations in relation to the United States law on resident status and citizenship." In that regard, it held:

> "XII. The Applicant was entitled to act in any way he considered best in his interest, but he must necessarily face the consequences for his actions ... Another consequence of his actions raised the question of his suitability as an international civil servant. In Judgement No. 326 *(Fischman)*, the Tribunal referred to the widely held belief mentioned in a report of the Fifth Committee of the General Assembly that
>
> > 'International officials should be true representatives of the cultures and personality of the country of which they were nationals, and that those who elected to break their ties with that country could no longer claim to fulfil the conditions governing employment in the United Nations',
>
> and held that this 'must continue to provide an essential guidance in this matter'. In the same judgement, the Tribunal also recalled a part of Information Circular ST/AFS/SER.A/238 of 19 January 1954 which stated, *inter alia*, that
>
> > 'The decision of a staff member to remain on or acquire permanent residence status in ... [the] country [of his duty station] in no way represents an interest of the United Nations. On the contrary, this decision may adversely affect the interests of the United

> Nations in the case of internationally recruited staff members in the Professional category . . .'
>
> The Applicant had been granted asylum in the United States of America and there arose the problem of his having to waive privileges and immunities with the permission of the Respondent. Such a waiver was necessary for changing his visa category under the United States laws. However there was apparently no immediate problem and it seems that no request was made to the Respondent for agreeing to the Applicant waiving his privileges and immunities. Besides, a private bill was later introduced on the Applicant's behalf in the United States House and Senate.
>
> XIII. In view of the foregoing, the Tribunal concludes that during the period of his service with the United Nations the Applicant was under secondment which, as already stated, could not be modified except with the consent of all three parties and that no tacit agreement existed between the Applicant and the Respondent between 10 February 1983 and 26 December 1983 changing the character of their relationship.
>
> XIV. With these conclusions in mind the Tribunal considered the Applicant's plea that he was entitled to, but was denied, the right to receive 'every reasonable consideration' in terms of paragraph 5 of General Assembly resolution 37/126, IV, of 17 December 1982."

It is one of several perplexities posed by the Administrative Tribunal's Judgement that the Tribunal fails to make clear the relevance to its Judgement, if any, of paragraph XII and its incorporation of passages of its contemporaneous Judgement No. 326 in the *Fischman* case (made by the same Tribunal majority, i.e., President Ustor and Vice-President Sen). *Fischman* refers to an allegedly "widely held belief" mentioned in a report of the Fifth Committee that an international official who elects to break his ties with his country could no longer claim to fulfil the conditions governing employment by the United Nations. Whatever the point of the Tribunal's invocation in the *Yakimetz* Judgement of 8 June 1984 of what it said on 17 May 1984 in the *Fischman* case, what is clear is that the Tribunal concluded that "an essential guidance in this matter" (i.e., *Fischman*) is the aforesaid "widely held belief" and that a "consequence of his [Mr. Yakimetz's] actions" in seeking to change his nationality was to raise "the question of his [Mr. Yakimetz's] suitability as an international civil servant", because of the doctrine set out in and quoted from *Fischman* which provides "essential guidance". The Tribunal further held that "In view of the foregoing" (para. XIII), and "With these conclusions in mind" (para. XIV) — i.e., apparently, its foregoing holdings, among others,

about Mr. Yakimetz's suitability — the Tribunal considered the Applicant's pleas respecting entitlement to but denial of every reasonable consideration for a career appointment.

In so holding, the Tribunal committed an error of law relating to a provision of the United Nations Charter, namely Article 101, paragraph 3. As noted above, a change of nationality, much less an intended change of nationality, is not, or should not be, a consideration "essentially" bearing upon employment of United Nations staff. A change of nationality, while it may marginally affect computation of national quotas, does not detract from the efficiency, competence or integrity of a staff member. It does not throw into question the "suitability" of "an international civil servant" for continued service. In certain circumstances, it might even be evidence that such a staff member sought to avoid receipt of, or compliance with, "instructions from any government or from any other authority external to the Organization". The Applicant indeed alleges the existence of such circumstances in this case. His allegations, for which some supporting evidence has been introduced, have not been refuted or even denied. This is not to say that the Secretary-General transgressed Article 101, paragraph 3, of the Charter in taking account of Mr. Yakimetz's proposed change of nationality; such a proposed change was among the circumstances he could weigh in the process of giving Mr. Yakimetz consideration for a career appointment — provided that he actually gave Mr. Yakimetz that consideration. It is to say that the Tribunal's holding that that proposed change put into question — it indicates, "essential" question — Mr. Yakimetz's suitability for continued United Nations service did transgress Article 101, paragraph 3, of the Charter.

The question before the Court in the *Yakimetz* case naturally is not whether the Administrative Tribunal's Judgement in the *Fischman* case contained an error of law relating to a Charter provision, but whether the reliance on the passage of the *Fischman* Judgement quoted by the Tribunal in its *Yakimetz* Judgement imported an error into that Judgement, and, if so, whether it is an error of law relating to a Charter provision. The Tribunal found it appropriate to incorporate holdings in the *Fischman* case into *Yakimetz,* holdings which attribute "essential guidance" to a so-called "widely held belief" about the legal consequences to be attached to a United Nations official's change of nationality. It thereby invested maintenance of nationality of a United Nations official with an essentiality or paramountcy which conflicts with the terms of Article 101, paragraph 3, of the Charter. Beliefs expressed in a United Nations

committee, whether widely held or not, are not sources of law; still less may they derogate from the terms of the Charter. The weight attached by the Administrative Tribunal to that belief thus constitutes an error of law relating to a provision of the Charter. That error does not appear to have had dispositive effect on the Tribunal's Judgement; for this reason, it may be treated as *obiter dictum*. But since the Court, as the Court acknowledges, is obliged to assign error relating to a Charter provision regardless of its impact on the operative part of the Tribunal's decision, and whether or not it "has occasioned a failure of justice", the Court should have held that, in this respect, the Administrative Tribunal erred on a question of law relating to a provision of the Charter. The Court's failure to do so is the more regrettable in view of the importance of upholding a principle of the Charter which is vital to the maintenance of the independence and exclusively international responsibility of the Secretariat.

At the same time, it should be observed that the Court

> "notes in this respect that the 'widely held belief' amounts to the views expressed by some delegates to the Fifth Committee in 1953 at the Eighth Session of the General Assembly, which never materialized in an Assembly resolution" (para. 84).

The Court furthermore quotes a statement of the Secretary-General that differs sharply and refreshingly from the foregoing erroneous holding of the Administrative Tribunal:

> "Certainly, Respondent does not consider that a continuing relationship with a national government is a contractual obligation of any fixed-term staff member — seconded or not —, nor would a break between a staff member and his government constitute in itself grounds for terminating the fixed-term contract of a fixed-term staff member seconded or not. It is not for Respondent to approve or disapprove Applicant's transfer of allegiance." (Para. 83.)

Equally, in its reasoning, the Court disowns:

> "saying that a change or attempted change of nationality may be treated as a factor outweighing the 'paramount' consideration defined by Article 101, paragraph 3, of the Charter . . ." (para. 87).

Nevertheless, in the end, and "on balance", the Court, reiterating that its proper role is not to substitute its own opinion on the merits for that of the Tribunal, declines to find an error of law relating to a Charter provision here, on the grounds that the Tribunal found as a fact that there had

been "reasonable consideration" of Mr. Yakimetz's case, "and by implication that the Secretary-General had not been under a misapprehension as to the effect of secondment" and that: "The provision of Article 101, paragraph 3, of the Charter must have been present to the mind of the Tribunal when it considered the question" (para. 89). Without further explanation, the Court then concludes: "In the view of the Court, these findings cannot be disturbed on the ground of error on a question of law relating to the provisions of the Charter." *(Ibid.)*

The Court thus takes care not to approve the Tribunal's Judgement in so far as it holds that a change of nationality or attempted change raises essential questions about the suitability of a staff member for continued employment. Since the Tribunal's Judgement on this important issue so obviously conflicts with the letter and spirit of the Charter, the Court could hardly do otherwise.

What is puzzling is that the Court refrains from forthrightly denominating the Tribunal's evident error as an error of law relating to a Charter provision because of the Court's conclusion that *(a)* the Tribunal found as a fact that Mr. Yakimetz had been afforded reasonable consideration; *(b)* the Tribunal found "by implication" that the Secretary-General had no misapprehension about the effect of secondment; and *(c)* the Tribunal must have had the terms of Article 101, paragraph 3, "in mind". The Court appears to believe that the Tribunal's findings, or what the Court assumes that the Tribunal had in mind, cure, in some way, the Tribunal's manifest misconstruction of Article 101, paragraph 3, of the Charter. To my mind, however, this elusive reasoning of the Court illustrates again how far it strains to avoid explicit recognition of the Tribunal's errors of law relating to provisions of the Charter.

The Court's attempts to explain away the Tribunal's error of law in respect to Article 101, paragraph 3, of the Charter are particularly unpersuasive when it is recalled that, in respect of factor *(a)*, the Tribunal's finding of "fact" is based on no facts whatever; it simply is an inference — as the Tribunal admits — and one which the Tribunal claims to derive from the text of a letter, which text refutes the inference (as do the surrounding circumstances of the case). As to factor *(b)*, in which the Court finds that the Tribunal "by implication" concluded that the Secretary-General had not been under a misapprehension as to the effect of secondment, the weakness of the Tribunal's reasoning and of the Court's reliance upon it is revealed by resort to "implication". "Implication" of a fact cannot override demonstration of a contrary fact; and the communications of the Secretary-General which Judge Jennings quotes demonstrate that, at the operative time, the Secretary-General obviously was under the precise misapprehension as to the effect of secondment which the Tribunal chooses to imply that he was not. As to factor *(c)* — that the provision of Article 101, paragraph 3, of the Charter "must

have been present to the mind of the Tribunal when it considered the question" — that may well be so. But the question is not whether the Tribunal thought about the terms of Article 101, paragraph 3, but whether it thought about them correctly. If it did not, and if it expressed its error in its judgement, it committed an error of law relating to a provision of the Charter. Actually, that is exactly what it did, when it incorporated into its judgement in *Yakimetz* its erroneous holding in *Fischman* which invests a Secretariat official's change of nationality with an essentiality or paramountcy which conflicts with the terms of Article 101, paragraph 3.

For these reasons, I regret to say that the Court's conclusion that "these findings cannot be disturbed on the ground of error on a question of law relating to the provisions of the Charter" is what is truly disturbing. In my view, the Court, taking cover behind the jurisdictional barrier which it has found it politic to postulate, has turned a blind eye towards the Administrative Tribunal's errors of law relating to Charter provisions. The loser is the United Nations and the independent Secretariat which its Charter is designed to protect.

THE COURT'S CONSTRUCTION OF ARTICLE 100 OF THE CHARTER AND THE TRIBUNAL'S ERROR OF LAW RELATING TO ARTICLE 100

The Court rejects the Applicant's contention that the Tribunal committed an error of law relating to Article 100, paragraph 1, of the Charter, which provides:

> "In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization."

The Court holds:

> "His [Mr. Yakimetz's] argument rests on the following premises: that the Secretary-General believed that he could not give the Applicant any further employment whatever without the consent of his former national Government; that the Tribunal found that this was the Secretary-General's belief; that that belief was wrong as a matter of law; and that the Tribunal failed to find that it was wrong in law. The Court however does not consider either that the Tribunal found the existence of the belief attributed to the Secretary-General, or that the Tribunal found that such a belief was or would have been correct.

In view of the nature of the decision actually taken by the Tribunal on the facts of the case, it does not appear necessary to consider the matter further." (Para. 77.)

In my view, the Court's terse interpretation of Article 100, paragraph 1, as it applies to the current case, is unduly confining. It fails to take account of the import for this case of the second sentence of Article 100, paragraph 1. And it is difficult to reconcile with the construction of Article 100 which the Court rightly adopted in its Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations.*

It may be recalled that, in that landmark decision, the Court held that the United Nations has the capacity to bring an international claim in respect of the damage caused to the victim, its agent. In the course of the proceedings, Mr. G. G. Fitzmaurice of the United Kingdom argued for a liberal construction of Article 100 of the Charter in the following terms:

"In its written statement the United Kingdom Government has suggested that the requisite basis may be found in Article 100 of the Charter which creates a special relationship of *international allegiance* between the Organization and its servants. This, it is suggested, does forge between the Organization and its servants a link going beyond the ordinary relationship of master and servant, and which may provide the necessary basis for claims made by the Organization on behalf of the servants themselves in respect of the damage done to them.

If we follow the argument out, I think we shall see how this comes about. The special allegiance partially displaces the normal allegiance owed by individuals to their national State, and, in all matters affecting the United Nations, replaces it by an allegiance due exclusively to the Organization. Thus, where the servant concerned suffers injury in the course of doing the work of the Organization, in respect of which his allegiance is owed solely to the Organization, and even, if necessary, as against his own national State, it seems not only an appropriate, but even a necessary consequence of this position, that the Organization should be regarded as having the capacity to make a claim in respect of the loss or damage caused to him or his dependents.

Indeed, one might go further and say that the effect of Article 100 of the Charter is that the Members of the United Nations can be regarded as having implicitly recognized that such capacity must exist if the Organization is to be in a position adequately to carry out its functions. The point may be illustrated by considering the case of a United Nations servant who is required in the course of his work to do something which his own national State disapproves of

or considers to be contrary to its own interests. If he suffers injury in the course of doing this, it is then very possible that his national State will refuse to make any claim on his behalf, or will, at any rate, not feel called upon to do so. Consequently, unless the Organization itself be regarded as having the capacity to make claims on behalf of these persons, and in respect of the loss or damage caused to them, there will exist a lack of adequate protection, a position which may be prejudicial to the good functioning of the Organization, because if United Nations servants feel that they cannot look to the Organization for protection if they suffer injury in carrying out their duties, and that they must look, if at all, to their own national State for protection, their allegiance is liable, to that extent, to be divided, and the work of the Organization to suffer in consequence. This is precisely the situation which it was the intention of Article 100 of the Charter to guard against, and the Members of the United Nations must be considered as having recognized this fact. To put the matter in another way, the capacity of the Organization to make a direct claim on behalf of its servants in respect of injuries suffered by them in the course of performing their duties, is really the necessary complement to or, as it were, the opposite facet of the exclusive allegiance owed by them to the Organization; for you cannot ask a man to be faithful solely to an international organization in doing his work and even as against his own national State, and yet expect him to remain solely dependent on that State for protection in case he suffers injury in the course of doing this same work — especially when . . . he may be placed in especial danger by the very nature of this work. Such a position would be obviously contrary to the principle enshrined in the Charter, and clearly inherent in the very conception of the United Nations, that the Organization and its servants should function independently of all considerations of nationality: because, if they *ought* to do so, then they must also be *enabled* to do so, that is to say the Organization must have such capacities as are necessary to bring this about, or, if you prefer it, must not lack capacities in the absence of which this independence may be prejudiced." (*I.C.J. Pleadings, Oral Arguments, Documents, Reparation for Injuries Suffered in the Service of the United Nations, 1949,* pp. 123-124.)

The Court responsively construed Article 100 of the Charter in the following way:

"Having regard to its purposes and functions already referred to, the Organization may find it necessary, and has in fact found it neces-

sary, to entrust its agents with important missions to be performed in disturbed parts of the world. Many missions, from their very nature, involve the agents in unusual dangers to which ordinary persons are not exposed. For the same reason, the injuries suffered by its agents in these circumstances will sometimes have occurred in such a manner that their national State would not be justified in bringing a claim for reparation on the ground of diplomatic protection, or, at any rate, would not feel disposed to do so. Both to ensure the efficient and independent performance of these missions and to afford effective support to its agents, the Organization must provide them with adequate protection

. . . .

For this purpose, the Members of the Organization have entered into certain undertakings, some of which are in the Charter and others in complementary agreements. The content of these undertakings need not be described here; but the Court must stress the importance of the duty to render to the Organization 'every assistance' which is accepted by the Members in Article 2, paragraph 5, of the Charter. It must be noted that the effective working of the Organization — the accomplishment of its task, and the independence and effectiveness of the work of its agents — require that these undertakings should be strictly observed. For that purpose, it is necessary that, when an infringement occurs, the Organization should be able to call upon the responsible State to remedy its default, and, in particular, to obtain from the State reparation for the damage that the default may have caused to its agent.

In order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and, consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. *If he had to rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter.* And lastly, it is essential that — whether the agent belongs to a powerful or to a weak State; to one more affected or less affected by the complications of international life; to one in sympathy or not in sympathy with the mission of the agent — he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless." (*I.C.J. Reports 1949*, pp. 183-184; emphasis added.)

It was observed years ago of this holding of the Court that:

"The breadth of the Court's construction of Article 100 is instructive. The Court was prepared to hold, as in fact it did, that in the relatively unlikely event of an agent of the Organization being injured in the course of his duties in circumstances involving the responsibility of a State, or, rather, in the contingency of the agent's anticipating the possibility of the occurrence of such an event, his independence might be compromised unless he were able to rely upon the very limited protection afforded by the presentation of a monetary claim *post facto,* not by his State, but rather by the Organization. This attitude of the Court is of importance for its possible approach to a less indirect encroachment upon Article 100." (S. M. Schwebel, "The International Character of the Secretariat of the United Nations", XXX *The British Year Book of International Law* (1953), p. 82.)

Is there not a more direct encroachment upon Article 100 in the Administrative Tribunal's disposition of the *Yakimetz* case? If the Secretary-General believed, as the evidence uniformly indicates that he did believe, that Mr. Yakimetz could not be considered for a career appointment in the absence of the consent of the USSR Government, and if, as it did, the Administrative Tribunal failed so to find despite the evidence requiring that finding, those errors may, in my view, be seen as errors "relating to" Article 100, paragraph 1, of the Charter. Error did not consist of the Secretary-General's seeking or receiving instructions from the Government of the USSR in violation of the first sentence of that paragraph; consequently, there is no error of the Tribunal in failing so to hold. But if, under a misapprehension about the weight to attach to the lack of consent of the Soviet Union to a career appointment for Mr. Yakimetz, the Secretary-General gave that Soviet position determinative weight, then the Secretary-General did not merely commit an error of law. He failed to fulfil his obligation under the second sentence of Article 100, paragraph 1, to "refrain from any action which might reflect" on his position as an international official "responsible only to the Organization", because, in effect, he ceded responsibility in this respect to a "government or . . . other authority external to the Organization". Therein lies the error relating to a Charter provision. In my view, this conclusion is consistent both with the facts, in so far as the facts have been placed before the Court, and with the law, in the construction of it earlier made by the Court in the *Reparation for Injuries Suffered in the Service of the United Nations* case. It is equally consonant with Judgement No. 431 of the Administrative Tribunal of the International Labour Organisation, *In re Rosescu.* The failure of the Administrative Tribunal to assign this error constitutes an error of law relating to a provision of the Charter.

THE QUESTION OF WHETHER A STATE MAY LAWFULLY REQUIRE THAT ALL OF ITS NATIONALS ENGAGED BY THE UNITED NATIONS BE SECONDED

The Court's opinion does not do more than to allude to the rights and duties of a State in respect of its nationals who are seconded for service in the United Nations Secretariat, though this is a question which was argued in the course of the proceedings. In this regard, two observations may be made. The first is that, as the Government of Canada rightly submitted in its written statement:

> "the only interpretation of secondment that is consistent with the terms of the Charter is that in such an arrangement an individual makes his services available to the U.N. Secretariat, while the member State concerned grants the individual a right to return to his previous employment. Any interpretation that seeks to provide member states with a veto power over any staffing decision of the Secretary-General is contrary to the Charter.
>
> The Secretary General undoubtedly has a legitimate interest in consulting with member states on staff appointments in the interests of securing the highest standard of efficiency, competence and integrity, or to seek out staff to improve the geographical distribution of employees in the Secretariat. Indeed, the relationship of an employee with his or her country of nationality may be a factor in determining the extent to which an individual fulfills the requirements of Article 101. The views of the member state, in this regard, may be a relevant factor but cannot be the sole criterion in decisions of the Secretary General with respect to secondments.
>
> If the appointment or re-appointment of an employee were refused solely for want of the consent of the country of the employee's nationality, or indeed of any other member state, such decision would be contrary to Articles 100 and 101 of the U.N. Charter."

The second observation is that it is difficult to reconcile with the Charter the policy pursued by certain States of Eastern Europe in requiring that 100 per cent of their nationals appointed to the Secretariat of the United Nations have fixed-term contracts (the *Report of the Secretary-General on the Composition of the Secretariat,* A/41/627 of 27 September 1986, pp. 31-35, shows that, whereas 100 per cent of the nationals of the Soviet Union are on fixed-term contracts, 32 per cent of China's, 18.5 per cent of France's, 14 per cent of the United Kingdom's and 16.4 per cent of the United States's nationals in the Secretariat serve on fixed-term contracts). Does a United Nations Member which, by the terms of Arti-

cle 100, paragraph 2, of the Charter, "undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities" fulfil those obligations when it requires that all of its nationals serving in the Secretariat be seconded from its Government service? Can it be supposed that such nationals are well-placed to fulfil their obligation not to "seek or receive instructions from any government or any authority external to the Organization" and to "refrain from any action which might reflect on their position as international officials responsible only to the Organization"?

In view of these considerations, the recommendation contained in the report of the "Group of 18" that "no more than 50 per cent of the nationals of any one Member State employed by the United Nations should be appointed on a fixed-term basis" is to be welcomed. (Report of the Group of High-Level Inter-Governmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations, *GAOR, Forty-first Session, Supplement No. 49,* A/41/49, p. 22.) Also to be welcomed, if for distinguishable reasons, is the judgment on 8 April 1986 of the United States District Court for the Eastern District of Pennsylvania in *Hinton* v. *Devine* (Civ. No. 84-1130), declaring unconstitutional the International Organizations Employees Loyalty Program instituted pursuant to US Executive Order No. 10422 of 9 January 1953. It is reported that the United States Government has decided not to appeal that judgment and that it has suspended the investigative programme of Executive Order No. 10422. (See Mark A. Roy, "U.S. Loyalty Program for Certain UN Employees Declared Unconstitutional", 80 *American Journal of International Law* (1986), p. 984.)

I believe that the observations of the late Secretary-General of the United Nations, Dag Hammarskjöld, on the question of secondment remain as valid today — in their legal as well as political conclusion — as they were when he set them out in a famous Lecture delivered to Congregation at Oxford University on 30 May 1961:

> "A risk of national pressure on the international official may also be introduced, in a somewhat more subtle way, by the terms and duration of his appointment. A national official, seconded by his government for a year or two with an international organization, is evidently in a different position psychologically — and one might say, politically — from the permanent international civil servant who does not contemplate a subsequent career with his national

government. This was recognized by the Preparatory Commission in London in 1945 when it concluded that members of the Secretariat staff could not be expected 'fully to subordinate the special interests of their countries to the international interest if they are merely detached temporarily from national administrations and dependent upon them for their future'. Recently, however, assertions have been made that it is necessary to switch from the present system, which makes permanent appointments and career service the rule, to a predominant system of fixed-term appointments to be granted mainly to officials seconded by their governments. This line is prompted by governments which show little enthusiasm for making officials available on a long-term basis, and, moreover, seem to regard — as a matter of principle or, at least, of 'realistic' psychology — the international civil servant primarily as a national official representing his country and its ideology. On this view, the international civil service should be recognized and developed as being an 'intergovernmental' secretariat composed principally of national officials assigned by their governments, rather than as an 'international' secretariat as conceived from the days of the League of Nations and until now. In the light of what I have already said regarding the provisions of the Charter, I need not demonstrate that this conception runs squarely against the principles of Articles 100 and 101.

This is not to say that there is not room for a reasonable number of 'seconded' officials in the Secretariat. It has in fact been accepted that it is highly desirable to have a number of officials available from governments for short periods, especially to perform particular tasks calling for diplomatic or technical backgrounds. Experience has shown that such seconded officials, true to their obligations under the Charter, perform valuable service but as a matter of good policy it should, of course, be avoided as much as possible to put them on assignments in which their status and nationality might be embarrassing to themselves or the parties concerned. However, this is quite different from having a large portion of the Secretariat — say, in excess of one-third — composed of short-term officials. To have so large a proportion of the Secretariat staff in the seconded category would be likely to impose serious strains on its ability to function as a body dedicated exclusively to international responsibilities. Especially if there were any doubts as to the principles ruling their work in the minds of the governments on which their future might depend, this might result in a radical departure from the basic concepts of the Charter and the destruction of the international civil service as it has been developed in the League and up to now in the United Nations."

(*The International Civil Servant in Law and in Fact,* Oxford at the Clarendon Press, 1961, pp. 17-19.)

THE POSSIBILITY OF HEARINGS IN THIS CLASS OF CASE

As the Court's Opinion records, hearings in this case were not held, a decision which was the more understandable because neither the Secretary-General nor Mr. Yakimetz requested oral argument. Had hearings taken place, however, it may be that certain significant factual uncertainties might have been resolved. At all events the Court could have decided to hold hearings in this case and is at liberty to do so in future such cases. A matter which has been the subject of some misunderstanding has, I believe, been usefully clarified by the following statement of the Secretary-General:

> "One of the objections against the present system of review by ICJ advisory opinions is the truncated Court procedure foreseen. Because no way was seen for individual applicants to appear through counsel in oral proceedings in the Court, the General Assembly, in the resolution by which it adopted article 11 of the UNAT statute (957 (X), para. 2), recommended that neither States nor the Secretary-General seek to present oral statements in such an ICJ proceeding. The Secretary-General and all interested States have so far complied with this request, but unease has been expressed that this does violence to the judicial procedures of the Court, that in some cases a hearing may be necessary for the proper presentation of a case and that the entire procedure is thus at the mercy of any State that might insist on its right to make an oral statement under article 66 (2) of the ICJ Statute (which would result in the type of inequality of arms *vis-à-vis* the applicant that would almost surely cause the Court to abort the proceeding).
>
> However, this entire procedural limitation appears to be unnecessary. Under article 11 (2) of the UNAT statute, the Secretary-General is obliged to transmit to the Court the views of the applicant in the Tribunal proceeding as to which the Court's opinion was requested. In the 'appeals' so far brought to the Court under UNAT statute article 11 and the one brought under ILOAT statute article XII, the applicant's views were presented to the Court by having the exe-

cutive head concerned (respectively the United Nations Secretary-General and the UNESCO Director-General) forward directly, without any editing or censorship, all written communications received from the applicant or his counsel. Precisely in the same way, if oral proceedings were held, counsel selected by the applicant (and acceptable to the Court) could be introduced as the Secretary-General's special representative to express the applicant's views. With respect to this proposal the President of the Court has indicated 'that the Court, which has stressed on several occasions the maintenance of the principle of equality among the parties, will continue to bear it in mind in determining its own procedure in each particular case'.

Whether or not UNAT statute article 11 is maintained unchanged, or is restricted to purely State-initiated proceedings . . . or a new type of reference to the Court is introduced . . . the General Assembly might consider changing the recommendation in its resolution 957 (X) in the sense indicated . . . This recommendation should be formulated broadly enough so as also to apply to reviews sought under article XII of the ILOAT statute." (Report of the Secretary-General on the feasibility of establishing a single administrative tribunal, A/C.5/397, paras. 88-90.)

(Signed) Stephen M. SCHWEBEL.