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PERSONNEL QUESTIONS

Repatriation grant

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the note by the Secretary-General on the repatriation grant (A/C.5/37/26). As indicated in paragraph 1 of that note, its purpose is to inform the General Assembly of the administrative action that the Secretary-General proposes to take following the confirmation by the United Nations Administrative Tribunal of its Judgement No. 273 (Mortished v. the Secretary-General of the United Nations), which was the subject of an advisory opinion of the International Court of Justice (ICJ). 1/
2. The subject matter of Judgement No. 273 and the subsequent action by ICJ are described briefly in paragraphs 2 to 4 of the Secretary-General's note. In paragraph 4, he informs the Assembly that "Mr. Mortished has been paid as ordered by the Tribunal". The Secretary-General states that "in order to avoid further prolonged litigation, it would be advisable as well as justifiable to treat similar claims in the same manner as decided by the Tribunal in the Mortished case". The Secretary-General says that it is his intention "to act accordingly with respect to all claims for repatriation grant by staff members who had accrued qualifying service for the grant prior to 1 July 1979".
3. The Advisory Committee in its examination of the Secretary-General's note undertook extensive consultations on this matter with representatives of the Secretary-General from the Office of Legal Affairs, the Office of Personnel Services and the Office of Financial Services. As a result of this examination, the Advisory Committee has decided not to contest the Secretary-General's conclusion and intention as stated in paragraph 4 of his note. 2/

4. However, the Advisory Committee wishes to point out that the sequence of events since the repatriation grant was made payable some 30 years ago to all expatriate staff irrespective of whether they actually relocated has resulted in a situation, which, in the opinion of the Committee, is not consistent with the intent and purpose of the repatriation grant as it was originally conceived by the General Assembly. Moreover, although the Committee accepts that the Secretary-General has acted within the authority delegated to him, the Committee nevertheless has concluded that more could have been done to keep the Assembly fully informed of the application of the regulations governing the repatriation grant. For example, the Assembly's attention could have specifically been drawn to contemplated actions whose effect would significantly change what the Assembly had intended under the regulations.

5. The Advisory Committee believes that the unfortunate chain of events culminating in the situation that now exists with regard to the repatriation grant can serve as a valuable lesson and that corrective action should be taken to ensure that, in future, acquired rights will not be based on applications of the regulations which are contrary to the intent of the General Assembly. To this end, the Committee proposes a number of steps that should make it possible for the Assembly to monitor more effectively how the Staff Regulations are being carried out.

6. The first step recommended by the Advisory Committee relates specifically to the repatriation grant and involves amending the Staff Regulations to reflect the specific intent of the General Assembly with regard to the grant; a draft resolution to this effect is proposed in annex II to the present report.

7. The other actions proposed by the Advisory Committee would serve a more general purpose. In this regard, the Committee requests the Secretary-General to report to it all instances in which it could be argued that the evolution of practice has resulted in a departure or modification of the original intent of the regulations. This is not to say that the Committee knows at this point that any such divergencies between a strict interpretation of the regulations and actual practice in fact exist - but the preparation of such an analysis would help to determine whether the situation with regard to the repatriation grant is unique or whether comparable situations or potential problems exist in other areas. If such problems are found to exist, the Committee would report on them to the Assembly, which could take appropriate corrective action.

8. Along the same lines, another way in which developments in the application of staff regulations could be monitored (with a view to taking timely corrective action if that is deemed necessary) would be for the Advisory Committee to receive an annual report on the work of the Administrative Tribunal. Such a report would be separate from and in addition to the information note which is transmitted to the Assembly by the Secretary-General (see A/INF/37/6) and could focus on those decisions which would require significant modification of existing practice with regard to a particular regulation. The Committee could report to the Assembly on this annual report as it deemed necessary.

9. The recommendations of the Advisory Committee in paragraphs 7 and 8 above deal with the monitoring of existing rules and practice. In the opinion of the Committee there is also need to strengthen the review function of the Assembly with regard to new staff rules.

10. The current Staff Regulations provide the following with respect to the rule-making authority of the Secretary-General:

"The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat. They represent the broad principles of personnel policy for the staffing and administration of the Secretariat. The Secretary-General, as the Chief Administrative Officer, shall provide and enforce such staff rules consistent with these principles as he considers necessary." (Scope and purpose)

"The Secretary-General shall report annually to the General Assembly such staff rules and amendments thereto as he may make to implement these regulations." (Regulation 12.2)

11. Thus although the Secretary-General, as the Chief Administrative Officer, promulgates and enforces staff rules he must do so within the principles established by the General Assembly for the regulation of the Secretariat. As it now stands, the Secretary-General reports annually to the Assembly on the staff rules and amendments to rules he has issued. In the opinion of the Advisory Committee, the purpose of this procedure is unclear. Although the Secretary-General must report the rules, they are already in full force and effect at the time they are reported. If the Assembly does not like a rule it can direct a course of action which would result in the rule's elimination or amendment, but, as can be seen from the case of Mortished v. the Secretary-General of the United Nations with prospective effect only.

12. The Advisory Committee therefore recommends amendments to the Staff Regulations in order to provide that rules promulgated by the Secretary-General would at first have only provisional effect. They would then be reported to the Assembly in much the same manner as they have been in the past. Should the Assembly find, however, that a particular rule or amendment is inconsistent with the intent and purpose of the regulations, it could then direct that the rule be withdrawn or modified. Unless the Assembly takes such action, the rules and/or amendments reported to it would come into full force on January 1 following the year in which the report to the Assembly was made. The draft resolution proposed by the Advisory Committee in annex II below contains amendments to this effect.

13. In the opinion of the Advisory Committee a more active monitoring role by the General Assembly would not be inconsistent with the Secretary-General's role as Chief Administrative Officer, given the over-all authority of the Assembly. Moreover, the procedure recommended by the Advisory Committee would eliminate the present situation whereby a rule which the Assembly might deem to be inconsistent with the intent and purpose of the regulations could in fact give rise to acquired rights under regulation 12.1, since a provisional rule could not give rise to such rights.

Notes

1/ Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion of 20 July 1982, I.C.J Reports 1982.

2/ Information provided to the Committee on the number of serving staff who are eligible for repatriation grant and who have accrued service credit for the grant prior to 1 July 1979 is given in annex I.

ANNEX I

Staff members in service who are eligible for repatriation grant who
have accrued service credit for the grant prior to 1 July 1979

<u>Years of service credit as of 1 July 1979</u>	<u>Non-local General Service staff</u>	<u>Professional and above</u>
less than 1	1	97
1	7	219
2	9	166
3	5	149
4	6	188
5	14	181
6	20	124
7	24	97
8	24	118
9	30	131
10	35	130
11	38	100
12 or more	139	815
Total	<u>352</u>	<u>2 515</u>
Grand total		2 867

These figures are indicative of total numbers only. According to information supplied by the Secretary-General, many of the staff members represented above are expected to relocate upon separation from service, and it is not feasible to predict with any degree of certainty the number of cases in which staff members would remain at the country of duty station.

ANNEX II

Draft resolution

The General Assembly,

Bearing in mind that Article 101 of the Charter of the United Nations provides that the staff shall be appointed by the Secretary-General under regulations established by the General Assembly,

Mindful of Judgement No. 273 of the United Nations Administrative Tribunal and the advisory opinion of 20 July 1982 of the International Court of Justice reviewing that judgement, a/

1. Takes note of the note by the Secretary-General on the repatriation grant (A/C.5/37/26) and the related report of the Advisory Committee on Administrative and Budgetary Questions (A/37/675);

2. Endorses the comments and recommendations of the Advisory Committee as contained in its report;

3. Decides that, with effect from 1 January 1983, article XII of the Staff Regulations of the United Nations and the introductory paragraph of annex IV to the Staff Regulations shall be amended as shown in the annex to the present resolution.

Annex

Amendments to the Staff Regulations of the United Nations

1. Article XII (General Provisions) shall read as follows:

"REGULATION 12.1: These regulations may be supplemented or amended by the General Assembly, without prejudice to the acquired rights of staff members.

REGULATION 12.2: Such staff rules and amendments as the Secretary-General may make to implement these regulations shall be provisional until the requirements of regulations 12.3 and 12.4 below have been met.

REGULATION 12.3: Provisional staff rules and amendments shall be reported annually to the General Assembly. Should the Assembly find that a provisional rule and/or amendment is inconsistent with the intent and purpose of the regulations, it may direct that the rule and/or amendment be withdrawn or modified.

a/ Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion of 20 July 1982, I.C.J. Reports 1982.

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REGULATION 12.4: The provisional rules and amendments reported by the Secretary-General, taking into account such modifications and/or deletions which may be directed by the General Assembly, shall enter into full force and effect on 1 January following the year in which the report is made to the Assembly.

REGULATION 12.5: Staff rules shall not give rise to acquired rights within the meaning of regulation 12.1 while they are provisional.

2. The introductory paragraph of annex IV (Repatriation grant) shall be amended to read:

"In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate. The repatriation grant shall not, however, be paid to a staff member who is summarily dismissed. Staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General. The amount of the grant shall be proportional to the length of service with the United Nations, as follows:"
