

DECLARATION OF JUDGE LACHS

The present case provides me with an occasion to return to the issue which I raised in the declaration which, as President of this Court, I appended to the Advisory Opinion of 12 July 1973 on the *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal* (*I.C.J. Reports 1973*, p. 214).

Fourteen years ago I expressed reservations concerning the existing machinery for the control of the administrative functions within the Secretariat of the United Nations. In one observation, I pointed out that the proceedings were far from satisfactory and that the choice did not "lie between judicial control of the kind exemplified in the present proceedings and no judicial control at all". I maintained that the "choice ought surely to lie between the existing machinery of control and one which would be free from difficulty and more effective" and added "I see no compelling reason, either in fact or in law, why an improved procedure could not be envisaged". My other observation was of a different character, but also concerned the machinery of reviewing administrative decisions. I noted:

"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. Each of them [I continued] has been accepted by a number of organizations, mainly specialized agencies; and in the light of co-ordination which should be manifest between these organizations, belonging as most of them do to the United Nations family, it is regrettable that divergences should exist in the nature of the protection afforded to their staff members. There can be little doubt that, in the interest of the administrations concerned, the staff members and the organizations themselves, the procedures in question should be uniform." (*Ibid.*)

I was gratified to note that these observations did not remain without effect. Together with suggestions from other quarters, they were followed up by the General Assembly of the United Nations and the International Civil Service Commission, and eventually, on 19 December 1978, the General Assembly requested:

"the Secretary-General and his colleagues on the Administrative Committee on Co-ordination to study the feasibility of establishing a single administrative tribunal for the entire common system and to report to the General Assembly at the thirty-fourth session" (res. 33/119, sec. I, para. 2).

The report produced in response by the Administrative Committee on Co-ordination advised against immediate steps to merge the UNAT and the ILOAT but recommended the pursuit of harmonization. The General Assembly consequently requested further action along that line while maintaining the final aim of establishing a single tribunal. Consultations with legal advisers of international organizations followed and a special consultant produced a study on the subject.

It would be tedious to rehearse all the intervening stages whereby the Secretariat of the United Nations and the legal advisers of organizations in the common system were drawn into detailed study of the problem, but at length, after the submission of further reports and further urgings from the Assembly, a set of proposals, prepared by the Secretariat, was submitted to the thirty-ninth session of the General Assembly, which deferred their consideration to the fortieth on the recommendation of the Fifth Committee.

Basically these proposals were concerned with the harmonization of the Statutes, rules and practices of the two Tribunals. They thus represent a definite step forward towards the goal I envisaged, i.e., finally, the creation of a unified tribunal for organizations constituting members of the United Nations family.

However, the General Assembly, at its fortieth session, decided (dec. 40/465) on a second postponement of its renewed consideration of the report of the Secretary-General on the "feasibility of establishing a single administrative tribunal" (cf. report A/40/471 of 23 July 1985, previously circulated as A/C.5/39/7 and Corr.1). Thus a definite decision has still to be reached. The reform undertaken remains at the project stage, and no improvement has in fact yet materialized. Without ignoring the special difficulties which beset the Assembly in 1986 and by which it is still beset, I sincerely hope that it will before long bring the concrete decisions which will indicate a real advance towards the goal.

I welcome these developments, not only in themselves but because observations made by a Member of the International Court of Justice have been taken up by the United Nations General Assembly with a view to enacting some legislative measures in their respect. This indicates that, in its functioning, the principal judicial organ of the United Nations may not only decide contentious issues or give advisory opinions, but also contribute in practical terms to the improvement or operation of the law within the United Nations system.

(Signed) Manfred LACHS.