DISSENTING OPINION OF JUDGE DE CASTRO

[Translation]

To my regret, I find that I am obliged to append a dissenting opinion to the Advisory Opinion of the Court.

I agree with the majority of the Members of the Court on the question of the Court's competence to give the opinion, and I propose to give my reasons on this point.

I am not in agreement with the conclusions reached by the majority of the Members of the Court on the substance of the case, and I think that I should set out the reasons which support my dissent.

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I. Preliminary Questions

A. Jurisdiction of the Court

1. The preliminary question of the Court's jurisdiction to give an opinion in the case has not been raised by the interested Parties, but no *forum prorogatum* rule can apply in regard to advisory opinions and "Nevertheless the Court, in accordance with its Statute and its settled jurisprudence, must examine *proprio motu* the question of its own jurisdiction" (*Fisheries Jurisdiction (United Kingdom* v. *Iceland) Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 7)[1].

2. The jurisdiction of the Court is based on Article 11 of the Statute of the United Nations Administrative Tribunal, according to which the Committee on Applications for Review of Administrative Tribunal Judgements may request the Court to give an advisory opinion on certain questions. This Article was based on Article XII of the Statute of the ILO Administrative Tribunal, under which the question of the validity of certain decisions given by the Tribunal can be submitted to the Court for advisory opinion by the ILO Executive Board.

Before 1955 nobody appears to have maintained that Article XII was legally unsound or conflicted in some way or other with the provisions

[1] As I have occasion to observe, the consensual nature of the Court's jurisdiction does not operate where advisory opinions are concerned (separate opinion, *I.C.J. Reports 1971*, p. 174). In my view, Article 68 of the Statute only permits application to advisory opinions of the rules peculiar to contentious cases with the implied reservation that such rules must not be irreconcilable with the nature of advisory opinions.

of the United Nations Charter or of the Statute of the Court.

3. Doubts with regard to the Court's jurisdiction arose when it was proposed to amend the Statute of the United Nations Administrative Tribunal so as to create a remedy by way of an advisory opinion to be given by the Court. The proposal to this effect originated in the grave crisis that arose out of certain judgements given by the Tribunal in 1953 in favour of staff members of United States nationality who had been accused of subversion. This explains why the discussions in the Special Committee on Review of Administrative Tribunal Judgements, the Fifth Committee and the General Assembly had a political flavour. Some legal arguments on the Court's jurisdiction were nevertheless relied on in this controversy, and they should not be overlooked. One of the sponsors of the proposed amendments remarked—and his remark was repeated by others—that in the last resort it would be for the Court to rule on its own competence to give an advisory opinion.

It is therefore not surprising that some doubts should have remained with regard to the jurisdiction of the Court, even after the adoption of General Assembly resolution 957 (X) of 8 November 1955 adding the new Articles 11 and 12 to the Statute of the United Nations Administrative Tribunal. The objections raised against the Court's jurisdiction have to be examined. I do not find those known to me convincing.

4. The mechanism set up by Article 11 of the Statute of the United Nations Administrative Tribunal (like that provided for by Article XII of the Statute of the ILO Administrative Tribunal) is open to criticism *de lege ferenda* as a "hybrid procedure" or "pseudo-advisory opinion"[1], inasmuch as the advisory procedure is, so to speak, made to do duty as a form of cassation (with regard to the Organization, the Administrative Tribunal and the Secretary-General) in proceedings between the United Nations and one of its staff members. But this artifice does not deserve the epithet *fraus legis*. It is a legitimate development of the law, on the lines of the techniques of Common Law or the Roman praetor, whereby existing provisions are employed for new ends. Article 11 is not *contra legem*. There is no rule either in the Charter or in the Statute of the Court which prohibits giving the advisory opinion[2]. It is true that the force conferred upon the opinion will exceed the scope attached by the Charter and the Statute to an advisory opinion, but the origin of that force is outside the Charter and Statute. Any action to be taken pursuant to the Court's opinion by the Secretary-General or by the Administrative Tribunal "in no wise affects the way in which the Court functions; that continues to be determined by its Statute and its Rules. Nor does it affect the reasoning by which the Court forms its Opinion or the contents of the Opinion itself. Accordingly, the fact that the Opinion of the Court is

[1] Mrs. Bastid sees it as "an exceptional adaptation of the rules generally applicable to the Court": Le Tribunal administratif des Nations Unies, Conseil d'Etat, *Etudes et documents*, 1969, No. 22, p. 20, Note 1.

[2] On this statement, see para. 5 *et seqq.*

accepted as binding provides no reason why the Request for an Opinion should not be complied with." (*Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion, I.C.J. Reports 1956*, p. 84.)

The Court gives an advisory opinion endowed with the limited force proper to it. Such force as provisions, agreements, statutes or rules emanating from States or organizations may bestow on the opinion *ante factum* or *ex post facto* neither diminishes nor enlarges the jurisdiction of the Court.

5. The criticism derived from the imperative character of Article 34 of the Statute of the Court is misdirected. The rule contained in that text is limited to contentious cases, disputes between States, and does not affect advisory opinions.

6. There is more substance in the following doubt: can the Committee on Applications for Review of Administrative Tribunal Judgements legitimately request the Court to give an advisory opinion (Art. 11 of the Statute of the Tribunal)?

Supporters of the negative contend that the Charter (Art. 96) and the Statute of the Court (Art. 65) give the right to request advisory opinions of the Court solely to organs and specialized agencies which already exist and have a personality of their own (what Art. 65 calls "bodies") and can in no circumstances confer such a power on a committee which is composed of member States and was instituted for the sole purpose of requesting advisory opinions of the Court.

7. Paragraph 4 of Article 11 of the Statute of the United Nations Administrative Tribunal provides that, for the purpose of Article 11, a committee is established and authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. This Article 11 was adopted by General Assembly resolution 957 (X). Now a "resolution of a properly constituted organ of the United Nations which is passed in accordance with the organ's rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted" (*I.C.J. Reports 1971*, p. 22). The presumption of validity so far as the powers conferred on the Committee by Article 11 are concerned is buttressed by both the letter and the purposes of the United Nations Charter and the Statute of the Court.

Capacity to request advisory opinions has been given to the General Assembly, the Security Council and to other organs of the United Nations and specialized agencies which may at any time be so authorized by the General Assembly (Charter, Art. 96). There are no restrictions *ratione temporis*. Organizations, organs or bodies yet to come (Statute, Art. 65) may enjoy the right to request advisory opinions of the Court.

The organs that can be authorized to request advisory opinions are not only the principal organs of the United Nations but also the subsidiary organisms or administrative instruments by means of which organizations may exercise their rights, for example the Governing Body

of the ILO or the Executive Board of Unesco. It appears to me that the General Assembly, which has the power to request opinions and authorize other organs and specialized agencies to do so, and has also the power of establishing subsidiary organs (Charter, Art. 22), can bestow on those organs or on one of the elements of its administration the right to seek advisory opinions (*in eo quod plus sit, semper in est et minus*, D. 50, 17, 110)[1]. The General Assembly can exercise its rights either itself or by conferring them upon a particular organ *(potest quis, per alium, quod potest facere per se ipsum)*—in the present instance on the Committee on Applications for Review [2].

Despite the foregoing, the validity of the provision in Article 11 conferring on the Committee on Applications for Review the right to seek advisory opinions has been doubted but, as I think, without good reason. The Committee is really of a special nature [3]. But, so far as we are here concerned, this is because it is an organ which is independent by reference to the system of judicial organization of the United Nations. Article 11 is intended to effect its integration into that system. The Committee is an organ which is supplementary to the Administrative Tribunal; it was set up to provide additional guarantees of the judicial function of the Tribunal. The United Nations has conferred specific functions on the Tribunal and on the Committee, by giving them the status of independent organs. This is what States themselves do when they create a judicial organization equipped with independent and co-ordinated organs [4].

Nor do I consider that one would be justified in denying the Committee the right to seek advisory opinions from the Court on legal questions arising within the scope of its activities (Charter, Art. 96, para. 2) on the ground that it does not have the activities of an organ, or that it has no activities of its own. The Committee does have activities, namely to decide whether the objection to the Tribunal's judgement has a substantial basis, and if so, to request the Court to give an advisory opinion. I see no valid reason for requiring that, in order to be regarded as an organ within the meaning of Article 96 of the Charter, the organ in question should have activities of a particular magnitude. The Committee is not an organ unrelated to the Administrative Tribunal; it is a supplementary organ, established in order to afford additional guarantees that the

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[1] As the Court once said, the General Assembly has the power to amend the Statute of the Administrative Tribunal and "to provide for means of redress by another organ" (*I.C.J. Reports 1954*, p. 56).

[2] The Committee was set up in order to be able to request advisory opinions.

[3] On the nature of the Committee, compare A. M. Del Vecchio, *Il Tribunale ammini strativo delle Nazioni Unite*, 1972, pp. 172 ff.

[4] It has been said that the organization is "represented by one of its organs", namely the Committee on Applications for Review: see Dehaussy, "La procédure de réformation des jugements du Tribunal administratif des Nations Unies", *Annuaire français de droit international*, 1956, p. 476. This expression is ambiguous; it is more a question of creation of an organ better to meet the needs of the organization, than one of representation.

Administrative Tribunal will exercise its own function. The General Assembly has conferred certain functions on the Tribunal and on the Committee by setting them up as co-ordinated organs.

8. The frequently heard objection as to the political nature of the Committee's composition and the fact that its members do not necessarily possess legal qualifications does not hold water. One need only recall that the Charter confers the right to request opinions in the first place on the General Assembly and the Security Council, i.e., on bodies of an undoubtedly political character.

It should also be observed that the expression "political nature" may be ambiguous. One may say of a body the members of which are appointed by States that it has a political character. But it is not correct so to describe it when it performs judicial functions. It is not difficult to demonstrate by means of examples that a distinction must be made between appointment and functions; thus in some States, the *ministère public* carries out the screening of applications for cassation, and does so as a judicial organ. When deciding whether or not effect will be given to an application by a staff member that an advisory opinion of the Court be requested, the members of the Committee are not engaged in political activity, but are and must be carrying out a judicial activity.

9. The objections made to the competence which the Court derives from Article 11 of the Statute of the United Nations Administrative Tribunal seem to have been forgotten once the political controversies of 1953 had died down.

The Court's Advisory Opinion on *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco (I.C.J. Reports 1956)* would seem to have had a decisive effect in the same direction. In 1956 the Court had to decide a question virtually identical with the one arising in the present case, namely that of its jurisdiction by virtue of Article XII of the Statute of the ILO Administrative Tribunal. In the 1956 Advisory Opinion referred to, the Court did not find that there were in the Charter or in its own Statute any obstacles to the jurisdiction conferred upon it by that Article XII. The request for advisory opinion did indeed relate to a legal question that had arisen within the scope of the activities of the Organization. The only doubt stemmed from the necessity, owing to "the judicial character" of the Court, for observance of the "principle of equality of the parties", which follows from the requirements of good administration of justice; but, as the Court said, "These requirements have not been impaired in the present case by the circumstance that the written statement on behalf of the officials was submitted through Unesco" and "although no oral proceedings were held, the Court is satisfied that adequate information has been made available to it" (*I.C.J. Reports 1956*, p. 86).

Judges Winiarski, Klaestad and Sir Muhammad Zafrulla Khan, in their separate opinions, showed their concern for the safeguard of the equality of the parties before the Court, but they expressed no doubts as to the competence of the Court. President Hackworth, in his dissenting

opinion, began by saying that he concurred "in the conclusion of the Court that it is competent to give an Advisory Opinion in response to the request from the United Nations Educational, Scientific and Cultural Organization, and that it should do so" (*I.C.J. Reports 1956*, p. 116). Like Vice-President Badawi and Judge Read, President Hackworth grounded his dissent on an argument relating to the ILO Administrative Tribunal's lack of jurisdiction to deal with the subject-matter of the case.

10. Article 11 of the Statute of the United Nations Administrative Tribunal endeavours to safeguard the principle of equality in the proceedings by placing the Secretary-General under an obligation to transmit to the Court the views of the person in respect of whom the judgement was rendered. The General Assembly, for its part, recommended in resolution 957 (X) that "Member States and the Secretary-General should not make oral statements before the International Court of Justice in any proceedings under the new article 11 of the Statute of the Administrative Tribunal".

11. The authority of the Advisory Opinion of 1956 in the Unesco case and the soundness of its reasoning explain why such distinguished writers as Rosenne and Mrs. Bastid do not, when they come to examine Article 11 of the Statute of the United Nations Administrative Tribunal, express the slightest doubt as to the right of the Committee on Applications for Review to request advisory opinions of the Court or as to the Court's competence to give such opinions; they do not even cite the objections to the Court's jurisdiction discussed above (paras. 4-8) [1].

I myself do not, in present circumstances, discern any reasons for change in the criterion applied by the Court.

B. Advisability of Giving an Opinion

12. The Court *may* give an advisory opinion (Statute, Art. 65); therefore it may choose not to do so. But a refusal by the Court may not be arbitrary; it must be based on sound and weighty reasons. The Court has never refused to give an advisory opinion sought by an organ authorized to request one, with the sole exception, going back to the Permanent Court, of the *Status of Eastern Carelia (Advisory Opinion, 1923, P.C.I.J., Series B, No. 5)* [2], which was a very special case.

The view has been expressed that the function assigned to the Court by Article 11 of the United Nations Administrative Tribunal is not consonant with the dignity and standing of the Court. One may reply that the dignity of a judicial organ is not to be measured by the prestige of those subject to its jurisdiction—be they States or private persons—but derives from its contribution to the upholding of justice.

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[1] Rosenne, *The Law and Practice of the International Court*, 1965, Vol. II, pp. 686-690; Mrs. Bastid, *loc. cit.*, pp. 19-21; see also Del Vecchio, *loc. cit.*, pp. 163-184. Koh, in *The United Nations Administrative Tribunal*, 1966, p. 92, refers to these examinations of the question, but without disputing the Court's jurisdiction. Dehaussy has no doubt as to the Court's jurisdiction, despite his reservations *de lege ferenda*: *loc. cit.*, p. 479.

[2] As to this Advisory Opinion, see my separate opinion in *I.C.J. Reports 1971*, p. 171.

13. "The Court could, of course, acting on its own, exercise the discretion vested in it by Article 65, paragraph 1, of the Statute and decline to accede to the request for an advisory opinion. In considering this possibility the Court must bear in mind that: 'A reply to a request for an Opinion should not, in principle, be refused.' (*I.C.J. Reports 1951*, p. 19.) The Court has considered whether there are any 'compelling reasons', as referred to in the past practice of the Court, which would justify such a refusal. It has found no such reasons. Moreover, it feels that by replying to the request it would not only 'remain faithful to the requirements of its judicial character' (*I.C.J. Reports 1960*, p. 153), but also discharge its functions as 'the principal judicial organ of the United Nations' (Art. 92 of the Charter)." (*I.C.J. Reports 1971*, p. 27.[1])

14. In the Unesco case, the Court, after having examined the particular nature of the procedure provided for in Article XII of the Statute of the ILO Administrative Tribunal—which is very similar to Article 11 of the Statute of the United Nations Administrative Tribunal—stated:

> "In view of this [respect for the principle of equality of the parties] there would appear to be no compelling reason why the Court should not lend its assistance in the solution of a problem confronting a specialized agency of the United Nations authorized to ask for an Advisory Opinion of the Court. Notwithstanding the permissive character of Article 65 of the Statute in the matter of advisory opinions, only compelling reasons could cause the Court to adopt in this matter a negative attitude which would imperil the working of the régime established by the Statute of the Administrative Tribunal for the judicial protection of officials." (*I.C.J. Reports 1956*, p. 86.)

15. It might also be considered that the possibility of some supervision of the decisions of the United Nations Administrative Tribunal by the Court, which is afforded by Article 11 of the Statute of the Tribunal, enlists "the support of the Court for the good functioning of the Organization" (*I.C.J. Reports 1972*, p. 60), and thus enables it to fulfil its task as an organ of the United Nations.

C. Application of Article 11 of the Statute of the United Nations Administrative Tribunal

16. Article 11 of the Statute of the United Nations Administrative Tribunal is the source of the Court's jurisdiction to give an opinion in the present case, and thus defines the extent of its jurisdiction. It will be as well to consider this text here, for the purposes of its application by the Court.

17. A member State, the Secretary-General, or the person in respect of whom a judgement has been rendered by the Administrative Tribunal,

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[1] See, in this sense, my separate opinion in *I.C.J. Reports 1971*, pp. 170 and 173.

has the power to object to the judgement and to ask the Committee on Applications for Review to request an advisory opinion of the Court on the matter. In any case in which a request is made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court, or request the Tribunal to confirm its original judgement or give a new judgement in conformity with the opinion of the Court.

The Court is not called upon to judge the case afresh; it does not itself play the part either of a court of appeal or of a court of cassation. When an advisory opinion is requested, the Court gives it in order to co-operate, within well-defined limits, in the judicial function of the Administrative Tribunal, and to lend its support for the proper functioning of the Organization.

18. Article 11 lays down a limited number of grounds on which the judgement may be challenged. There is thus a *numerus clausus* of questions on which the Court may be asked to give an opinion: the judgement may be challenged on the grounds that the Tribunal has exceeded its jurisdiction or competence, or has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice.

It should be observed that the grounds on which the judgement may be objected to are questions of law, the only questions on which the Court may give an opinion (Charter, Art. 96; Statute, Art. 65). The Court has no jurisdiction to consider all the complaints made by the person who challenges the judgement. It has no power to re-examine the evidence laid before the Administrative Tribunal, still less to consider facts or evidence which were not laid before the Tribunal, or which were not taken into account by it [1]. Thus the Court is legally debarred from taking into account the presentation of the case in the corrected statement of the views of Mr. Mohamed Fasla. This is certainly a very brilliant account of the matter, but the Court cannot follow it; it cannot step outside the limits of its jurisdiction. Still less can it take account of presumptions, rumours, hearsay, of the multiplicity of "perhaps", "presumably", "it would seem", to be found all over the statement. Nor can the Court take note of documents which were not laid before the Administrative Tribunal. Finally, the Court can say nothing about those of Mr. Fasla's claims which do not fall within the scope of the request for advisory opinion; it may not go beyond its jurisdiction.

19. In the advisory proceedings in the Unesco case in 1956, the question was raised of the proper method of interpreting the provisions governing

[1] One of the *leitmotive* of the discussion on the revision of the Statute of the Administrative Tribunal was that the review would not involve re-opening questions of fact. The Court will have to examine the facts as established by the Tribunal. It does not play the part of a court of appeal; its role has a certain analogy with that of a court of cassation, since it is confined to the grounds of objection advanced by the applicant which have been regarded as substantial by the Committee, and to the grounds for review permitted by Article 11 of the Tribunal's Statute.

the functions of the ILO Administrative Tribunal. The international character of the Tribunal was relied on in support of a restrictive interpretation of these provisions. The Court's answer on this point was as follows:

> "The Court does not deny that the Administrative Tribunal is an international tribunal. However, the question submitted to the Tribunal was not a dispute between States. It was a controversy between Unesco and one of its officials. The arguments, deduced from the sovereignty of States, which might have been invoked in favour of a restrictive interpretation of provisions governing the jurisdiction of a tribunal adjudicating between States are not relevant to a situation in which a tribunal is called upon to adjudicate upon a complaint of an official against an international organization." (*I.C.J. Reports 1956*, p. 97.)

The Court thus drew attention to the way in which the internal regulations of organizations should be interpreted when a decision has to be given on legal questions arising within the scope of their activities. The law applicable to the relationships between the staff member and the administration in an international organization can be described as international, but solely in order to explain the lack of jurisdiction of municipal tribunals to deal with such disputes. They are not true international disputes, but cases to be determined on the basis of an internal system of law—the internal law of the organization—which must be interpreted as such, in conformity with the object and purpose of the rules which it lays down [1].

20. Article XII of the Statute of the Administrative Tribunal of the ILO gives the Executive Board (in the case of Unesco) the right to submit the question of the validity of the Tribunal's decision to the International Court of Justice for an advisory opinion in any case in which it "challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed".

The power granted to the Governing Body to challenge decisions of the Tribunal is a very limited one; the terms of Article XII have been relied on in support of the view that this power is confined to cases of *ultra vires* and error in the application of formal procedural rules, and that Article XII does not make it possible to challenge a decision of the Tribunal on the grounds of a failure of justice on the merits.

21. Article 11 of the Statute of the United Nations Administrative Tribunal presupposes a complete and, as it were, "Copernican" change, as compared with Article XII of the Statute of the ILO Administrative Tribunal.

The political motive for the proposal of the new Article 11 was that of

[1] The Administrative Tribunal thus takes into account the principle of effectivity—"must give the maximum effect to these rules": see Koh, *loc. cit.*, p. 84.

affording States means of challenging judgements of the Tribunal. But in the draft texts submitted, as in the discussions in the Special Committee, the Fifth Committee and the General Assembly, a new spirit, broader and more just, made itself felt.

The right to challenge the Tribunal's judgement ceased to be a privilege of the highest administrative body; it was of course conferred upon member States and upon the Secretary-General, but it was also conferred upon "the person in respect of whom a judgement has been rendered by the Tribunal". Thus staff members obtained the right to challenge judgements.

During the United Nations discussions, the representatives of various States sought to show that one of the objects of the reform ought to be to strengthen the legal situation of the staff, to take account of their legitimate interests, to ensure security of employment for staff members, and strict respect for their rights [1].

22. Nor is the scope of Article 11 confined to revision of a judgement for defects of form; it also contemplates error of law "relating to the provisions of the Charter of the United Nations".

These words have been interpreted as covering "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" (Mr. Evans, A/AC.78/SR.10, p. 3); they cover questions under Articles 97, 100 and 101 of the Charter (Mr. Bender, *ibid.*, p. 6); they cover, *inter alia*, "such questions as whether the Secretary-General's judgment should be upheld in regard to the conduct of the staff member and the United Nations standards of efficiency, competence, and integrity as prescribed in accordance with Article 101 of the Charter..." (Mr. Merrow, *GA, OR*, 10th Session, Fifth Committee, 494th Meeting, p. 44, para. 20) [2].

23. An important divergence from Article XII of the Statute of the ILO Administrative Tribunal was introduced in the third ground of challenge laid down in Article 11 of the Statute of the United Nations Administrative Tribunal. In place of a "fundamental fault in the procedure followed" there is reference to the Tribunal having "committed a fundamental error in procedure which has occasioned a failure of justice". The source of the mention of "failure of justice" was an amendment proposed by India and accepted without discussion [3]. The effect thereof is far-reaching: the formula enables the Court, in the advisory opinion requested, to examine the question whether the decision of the Administrative Tribunal on the merits is just.

[1] While also avoiding anything which would weaken the authority of the Administrative Tribunal or afford opportunities of hampering the Secretariat in the exercise of its functions.

[2] See also Del Vecchio, *loc. cit.*, pp. 168 ff.

[3] It was intended "to preclude review on account of trivial errors in procedure or errors that were not of a substantial nature" (*GA, OR*, 10th Session, 5th Committee, 496th Meeting, para. 26).

24. Each of the grounds for revision laid down in Article 11 is to be interpreted in the spirit with which the Article as a whole is imbued—the spirit of its reference to the provisions of the Charter and to failure of justice. The Court must consider whether or not there was failure of justice, and for this purpose must ascertain whether the judgement respects the purposes and principles of the United Nations, the general principles of law (Art. 38 of the Statute), and in particular the principles of administrative law, labour law (relations between the organization and staff members), and procedural law [1].

The phrase "which has occasioned a failure of justice" has independent significance. There is no valid reason for considering that it refers to defects in the procedure *(error in procedendo)*. It cannot be supposed that the expression is an unnecessary repetition of the words "fundamental error". The failure of justice contemplated is a failure of justice on the merits *(error in judicando)*, the result of the error and not the error itself committed in the procedure.

I am unable to perceive any reasons weighty enough for not interpreting this phrase in its literal sense, or for narrowing down its scope to such an extent as to render it unnecessary. Nor are there any grounds for attributing such an intention to the Indian delegation and to the majority in the Assembly which voted for the adoption of Article 11.

Study of the discussions in the Fifth Committee rather leads to the view that opinion moved in a direction favourable to the rights of staff members, and towards an interpretation which permits of errors of law being taken into account, though to a very limited extent[2]. This tendency did not finally assume a concrete form, but one may consider that it operated in favour of acceptance of the Indian proposal. That proposal made it possible to satisfy to some extent the desire expressed by some delegates that the Court should give an advisory opinion in order to resolve a legal problem in a way which would be equitable for all those concerned.

II. Questions Submitted to the Court for its Opinion

A. Has the Tribunal Failed to Exercise Jurisdiction Vested in it as Contended by Mr. Fasla?

25. In his application to the Committee objecting to the Tribunal's judgement, the applicant claims that the Tribunal failed to exercise its

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[1] Art. 38 of the Statute applies in disputes between States. In its advisory opinion the Court applies the internal law of the Organization, which it supplements with the rules of common law of States; the Administrative Tribunal "often relies on fundamental legal concepts which have a place in any legal system" (Mrs. Bastid, *loc. cit.*, p. 26. On the applications of the general principles of law and equity see Koh, *loc. cit.*, pp. 82 and 83).

[2] The concern generally felt was to exclude the possibility of objections to judgements relating to factual matters.

jurisdiction in that the Tribunal did not fully consider all his claims, that is to say item by item. The Committee on Applications for Review considered that there was "a substantial basis" for Mr. Fasla's application, 11 of its members being in favour of asking the Court to give an advisory opinion on the question of failure by the United Nations Administrative Tribunal to exercise jurisdiction.

26. The intended meaning in Article 11 of the words "failed to exercise jurisdiction vested in it" *(n'a pas exercé sa juridiction)* does not seem clear. Is it the everyday meaning of the words which is intended—does it mean that the Tribunal failed to consider and pass upon one or more of the applicant's claims? In a more technical sense, on the other hand, such an omission may be regarded only as an error or defect in the procedure. The Tribunal does not exercise its jurisdiction *(n'exerce pas sa juridiction)* when it declares that it has no competence, whether the question of lack of competence is raised by one of the parties or by the Tribunal *proprio motu*; on the other hand, it does exercise its jurisdiction even if it commits an error in the procedure by not examining one of the applicant's claims.

The distinction does not seem to be an easy one to make in practice. In the written statements of Mr. Fasla, the difficulty is got round by accusing the Tribunal of having "failed to exercise its jurisdiction and/or committed a fundamental error in procedure".

It is true that in the municipal codes of various States, no distinction is sometimes made between procedural error in judgments given *infra petita* (judgments in which the judge does not decide all the points in issue) and failure to exercise the power conferred on the judge; the reason for this is that by refraining from determining some of the points in issue, the judge will not have exercised his jurisdiction in respect of those points.

27. It seems to me however that Article 11 contemplates jurisdiction in its strict or technical sense. The distinction made in the phrase "has exceeded its jurisdiction or competence or ... has failed to exercise jurisdiction vested in it" [1] militates in favour of this interpretation. In my opinion, the Tribunal did not deny that it had jurisdiction to judge the case, and it did not refuse to receive and consider the claims of Mr. Fasla.

It is under the heading of "fundamental error in procedure" that the question must be examined.

The distinction is of practical importance. In a case in which jurisdiction was not exercised, there could be no question of the case being wrongly decided (*mal-jugé*, rendered in Art. 11 as "failure of justice"); but an error in procedure can only be taken up if this condition is fulfilled.

[1] In the text recommended by the Special Committee, the passage referring to failure "to exercise jurisdiction vested in it" does not appear.

B. Has the Tribunal Committed a Fundamental Error in Procedure which Has Occasioned a Failure of Justice?

28. *Error and failure of justice.* The question here raised is a complex one. Fundamental error in procedure is a ground for revision if it has occasioned a failure of justice. It is not such a ground unless there has been a failure of justice.

It would seem logical to begin by considering whether there has been a failure of justice. If there has been none, even the most fundamental error in the procedure cannot be made a ground for revision.

It must first of all be borne in mind that the reference to failure of justice gives a different aspect to this ground; it ceases to have the formalistic nature appropriate to a defect in procedure, and acquires a more substantive nature, in harmony with the respect due to the provisions of the Charter.

There is a close interdependence between the error and the failure of justice, but it is not necessary that the error should be the cause of the failure of justice, if causality is understood in a purely logical way, or as analogous to the relation of cause and effect in the law of tort. It is sufficient that the failure of justice should have been occasioned by it (French text: *provoqué*, that is to say, called from outside *(pro-vocare)*). Of the two elements involved in this ground, that relating to the justice of the judgement is of primary importance.

The word "occasioned" is not a technical term. It was chosen to avoid imposing an obligation to prove that the error was the *conditio sine qua non* of the failure of justice. It thus gives the Review Committee, and consequently the Court, the opportunity of applying the Statute in accordance with common sense. The error preceding the injury suffered by the victim is to be regarded as "a circumstance generally favouring failure of justice"; the link to be established is the existence of a reasonable presumption that the error favours a failure of justice or is the occasion thereof [1].

29. *The facts to be considered.* To ascertain whether there was a failure of justice, one must first all of ascertain which facts are of importance in the case. As has been said above (para. 18), the Court cannot go outside the bounds of its competence; it must confine itself to the facts examined and accepted as proved in Judgement No. 158 of the Administrative Tribunal [2].

30. Mr. Fasla entered the service of the United Nations under a contract which, after several prolongations, was to expire on 31 December 1969.

[1] Paul tells us that "*et qui occasionem praestat, damnum fecisse videtur*", D.9, 2, 30, para. 3.

[2] The Court does not have to examine Mr. Fasla's allegations that he was persecuted and even punished for having acted loyally towards the United Nations, by reporting the abuses and improper practices of a superior. There may be some indication that this was the case, but the matter was not duly argued and proved before the Administrative Tribunal.

The Chief of the UNDP Personnel Division informed Mr. Fasla, by letter of 22 May 1969, that, as the Director of the Bureau of Administrative Management and Budget of UNDP had explained to him, "every effort will be made to secure another assignment for you".

The chances of finding an official another assignment in the Organization, in the specialized agencies, and even outside the United Nations, depend on the assessments and notes made in the administrative file and in the fact sheet of the person concerned.

Mr. Fasla's file was "incomplete and misleading" and his fact sheet was "incomplete" (to adopt the words of the Joint Appeals Board), because of the carelessness and ill-will of certain officials of the Organization.

In the Tribunal's opinion, the letter of 22 May 1969 constituted "a formal commitment by the Respondent to try to find another assignment for the Applicant. Such a commitment to make 'every effort' obviously implies an obligation to act in a correct manner and in good faith". The Tribunal considered that this commitment "was not correctly fulfilled", since the information concerning Mr. Fasla's service "had serious gaps", and was not "complete and impartial".

The Tribunal held that the report of September 1970, which was very unfavourable to the applicant, could "be due only to a violence of feeling and lack of self-control which, in this case, revealed prejudice on the part of the first Reporting Officer"; this prejudice shown by the first Reporting Officer was in no way corrected by the second Reporting Officer, who adopted the terms of the first Officer, and did not take into account information favourable to Mr. Fasla "from an authorized person who had been requested to make an investigation of the mission in Yemen".

The Administrative Tribunal concluded that the prejudice shown by the first Reporting Officer was in no way corrected by the superior Officer "as he was obliged to do under the Staff Rules", that the Organization allowed a report "manifestedly motivated by prejudice" to be placed in the applicant's file, and used in the fact-sheet as revised in response to the recommendation of the Joint Appeals Board, that the periodic report "is invalid" and that "the Respondent did not perform in a reasonable manner the obligation which he had undertaken to seek an assignment for the Applicant" [1].

[1] The respondent has not contested the Tribunal's judgement; he therefore accepts the facts stated therein as proved.

In order properly to understand the decisions of the Tribunal, one must bear in mind that, in the practice of the United Nations and the specialized agencies, "fixed-term contracts are not like an ordinary fixed-term contract between a private employer and a private employee" (*I.C.J. Reports 1956*, p. 91), and also that "there may be circumstances in which the non-renewal of a fixed-term contract provides a legitimate ground for complaint" *(ibid.)*. This practice is reflected in Article 4.4 of the Staff Regulations.

In municipal law, contracts must be "performed in good faith"; they "bind not only

31. The Tribunal awarded the applicant compensation in lieu of execution of the obligation undertaken by the respondent to seek an assignment for the applicant. The Tribunal fixed as the sole compensation for all damage suffered by Mr. Fasla a sum equal to six months' net base salary of the applicant.

32. *The Applicant's claims.* Mr. Fasla has also sought compensation for the injury sustained by him as a result of the prejudice displayed against him, compensation for the emotional and moral suffering inflicted upon him, compensation for the damage inflicted on his professional reputation and career prospects as a result of the circulation by the Respondent, both within and outside the United Nations, of incomplete and misleading information concerning the applicant [1].

33. *The Judgement of the Administrative Tribunal.* The applicant was able to criticize the Tribunal's Judgement on two grounds: first that it did not take into account several of his claims, and secondly that it did not grant sufficient compensation for the heads of damage which the Tribunal did examine.

34. In its statement of facts, the Tribunal did not fail to mention the series of acts causing injury to the applicant originating from the negligence and prejudice (dishonest conduct) of certain officials of the Organization, but it subsequently failed to give a decision on several of the applicant's complaints, which were well founded in law, and overlooked the fact that he who causes injury is under an obligation to make good the damage he has caused.

35. According to the Tribunal, the Organization undertook a formal commitment to try to find another assignment for Mr. Fasla, and did not in fact do so "in a correct manner and in good faith". The Tribunal also observed that it was only possible to remedy the situation by the award of compensation, and it fixed the compensation at a sum equal to six months' net base salary for the applicant.

Compensation for injury must be related to the damage and loss suffered; otherwise there is a failure of justice.

36. The letter of 22 May 1969 gave rise, according to the Tribunal, to an obligation for the respondent to endeavour to find a new assignment for the applicant. The Joint Appeals Board, in its report of 3 June 1970, made the following recommendation: "UNDP should make further serious efforts to place the appellant in a suitable post either within UNDP

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to what is expressed therein, but also to all consequences attached to the obligation according to its nature by equity, custom or law" (Arts. 1134 and 1135 of the French Civil Code). Hence the legitimate nature of the hopes born of the employer's conduct towards the employee. In case of non-performance, the obligation is resolved by the award of damages. These general principles apply to the contractual relationship between the United Nations and its staff members.

[1] I do not mention here all Mr. Fasla's claims, but merely those which, in my view, could have been the subject of a fundamental error in procedure which occasioned a failure of justice.

or with one of the other international organizations". The Board also held that "the performance record of the appellant is incomplete and misleading and that this seriously affected his candidacy for further extension of his contract or for employment by other agencies".

The Joint Appeals Board recommended the payment of a sum equivalent to six months' salary to Mr. Fasla. This recommendation is explained by the fact that the compensation was assessed taking into account the period of six months which had elapsed between the end of the applicant's contract (31 December 1969) and the date of the Board's report (3 June 1970). During that period, account had to be taken of Mr. Fasla's hopes that he would be accepted for employment in an international organization. But the recommendations of the Board themselves further nourished the hopes of Mr. Fasla, who could legitimately have continued to cherish them until the Judgement of 28 April 1972.

37. The Tribunal noted that UNDP did not fully comply with the recommendation that it should correct the file and fact sheet of Mr. Fasla, so that if the new fact sheet had been circulated, "it would not have elicited a more favourable response from prospective employers than the fact sheet prepared in 1969 [1]".

The Tribunal concluded that the respondent had not fulfilled the obligation which he had undertaken to seek an assignment for Mr. Fasla, and also noted "that it is not possible to remedy the situation by rescinding the contested decision or by ordering performance of the obligation contracted in 1969".

38. It is noted that, as a result of negligence and ill-will on the part of the respondent, and despite his promises, Mr. Fasla was unable to obtain an assignment in the Organization, and it was made practically impossible for him to obtain a post elsewhere.

39. The Tribunal has the power and the duty, should the execution of the obligation relied on not be possible, to assess the extent of the damage suffered. In view of the Tribunal's finding that it was not possible to carry out the obligations undertaken by the Organization towards Mr. Fasla, and the existence of very serious damage, the Tribunal should have granted adequate compensation.

In accordance with the principles of law, the existence of injury resulting from a fault involves an obligation to compensate. Where specific relief is not possible, because the person responsible cannot or will not provide it *(nemo potest praecise cogi ad factum)*, there is to be equivalent compensation. Such compensation must cover the *damnum emergens* and the *lucrum cessans*. The amount must be such that the injured party is restored as nearly as possible to the position in which he would have been if there had been no fault on the part of the respondent, and this responsi-

[1] The Tribunal regarded the decision taken by the United Nations Administration, not to employ Mr. Fasla in any event, as not capable of being reversed.

bility must be heavier still if the injury results from dishonest conduct.

The United Nations Administrative Tribunal considered that the promise made to Mr. Fasla in the letter of 22 May 1969 was not kept, and that it could no longer be performed, through fault and ill-will on the part of the respondent. The expectation created by such a promise was strengthened by the report of the Joint Appeals Board (3 June 1970) and remained alive up to the date of the judgement (28 April 1972). The injury suffered by Mr. Fasla thus consists of the loss of his salary up to this latter date, after which he had to look for a position outside the Organization. One must also take into account the damage and the loss of salary during the period he needed to find another post [1].

It should be observed that the Administrative Tribunal failed to examine other complaints concerning injury suffered by Mr. Fasla. It left on one side, without comment, the injury and damage resulting from the injury to Mr. Fasla's professional reputation, deriving from the misleading nature of the uncorrected file and fact sheet; this is a serious fault, for which the Organization is responsible.

It is true that, by virtue of an abnormal and inequitable rule *(odiosa sunt restringenda)* in the Statute of the United Nations Administrative Tribunal, compensation cannot exceed the equivalent of two years' net base salary of the applicant. The Tribunal may, however, in exceptional cases, order the payment of a higher indemnity (*ibid.*, Art. 9, para. 1).

In the case which has been brought before the Court, the injury caused to Mr. Fasla is of an exceptional nature as to its origin and to its extent; there was failure to carry out a promise, and serious damage to Mr. Fasla's professional reputation and career, damage resulting from the dishonest and improper conduct of officials of the Organization.

The Administrative Tribunal therefore appears to have committed a failure of justice by limiting the compensation granted to six months' salary; it should have fixed "what the Court, in other circumstances, has described as the true measure of compensation and the reasonable figure of such compensation" (*I.C.J. Reports 1956*, p. 100, quoting *I.C.J. Reports 1949*, p. 249).

40. *Error in the procedure.* Complaint has been made that the Tribunal did not consider all the applicant's claims, and in particular the claims for compensation concerning damage caused to Mr. Fasla with regard to

[1] In order to determine the extent of the injury suffered, the United Nations Administrative Tribunal has said that it must "consider to what extent the applicant has expectation of continued employment, taking into account the terms and nature of the contract, the Staff Rules and Regulations and the facts pertaining to the situation and must evaluate the applicant's chances of earning a livelihood after separation from the United Nations" (*Eldridge* case, UNAT Judgement No. 39, p. 184; quoted in Koh, *loc. cit.*, p. 85, note 134).

his career prospects and professional reputation, and for his emotional and moral suffering, each due to the fault of the respondent.

It is also complained that the Tribunal did not consider these claims, and dismissed them *en bloc* and without discrimination between them, and without giving reasons, when the Tribunal stated that "the other requests are rejected".

41. *Fundamental errors in the procedure.* In procedural law, lack of correlation between the judgment and the subject-matter of the application is regarded as a fundamental error.

A judgment may be invalid through going too far *(ultra petita)* or not going far enough *(infra aut minus petita)*. It fails to go far enough "if no decision has been given on one of the heads of claim[1]". The Court must render a decision according to the *petitum* in the application *(sententia debet esse conformis libelli)*, and the judgment should not leave out any of the claims made in the party's submissions. A judge does not fulfil his judicial duty *(judex decidere debet)* if he fails to give a decision on one of the *causae petendi* of the application *(non est judex minus petita partium)*.

In municipal law, this failure is considered so serious that the remedies of *requête civile* and *pourvoi en cassation* are available in respect of it. It is fully justifiable to describe it as a fundamental error in the procedure.

42. An error in procedure is fundamental also if it occasions a failure of justice.

Moral damage should be compensated according to the general principles of law, and such compensation is the guarantee of human rights. Its importance in law is well known. The United Nations Charter begins with an affirmation of faith in "fundamental human rights, in the dignity and worth of the human person", a doctrine which is taken further in the Universal Declaration of Human Rights, according to which "No-one shall be subjected to ... attacks upon his honour and reputation" and "Everyone has the right to the protection of the law against such ... attacks"[2]. The protection due to the dignity of the human person applies to honour and professional reputation. But the Tribunal did not look into the injury to the professional honour and reputation of Mr. Fasla, and this defect influenced the whole of its Judgement; it completely distorted the way in which the whole case was envisaged.

43. The Tribunal considered Mr. Fasla's claims as based upon the non-fulfilment of the promise by the administration to do everything

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[1] This is how Article 480 of the French Code of Civil Procedure adopted in 1806 expresses the principle; I quote the French Code because many other codes, which I will not quote in order not to overburden this opinion, were modelled upon it. See also an observation in *I.C.J. Reports 1950*, p. 402.

[2] On the fundamental rights of the human person, see *I.C.J. Reports 1970*, p. 32. The Administrative Tribunal of the League of Nations recognized *a contrario* the right to compensation for moral damage: Judgement No. 13, 7 March 1934. In Judgement No. 99 (*M.A.* case), the United Nations Administrative Tribunal decided to award compensation for moral damage (see Mrs. Bastid, *loc. cit.*, p. 27).

within its power to find him an assignment in the Organization. But this is to take the wrong view of the matter.

It is not the non-fulfilment of the promises which is of major importance. The heart of the matter is the fact that there was damage to Mr. Fasla's professional honour as a result of the improper and dishonest conduct of certain officials, for which the Organization must bear the responsibility, and which brought about the breach of the promise. But in addition and above all, the injury to Mr. Fasla's professional honour was the origin of the financial and moral damage which he suffered; it was the unsurmountable obstacle which prevented him from obtaining an assignment with the Organization, or finding one outside the Organization.

The Tribunal did not directly consider the claim for compensation for injury to professional honour; this is the only possible explanation for its limiting the compensation granted to six months' salary.

44. In the respondent's written statement to the Court, it is stated that the Administrative Tribunal took account of Mr. Fasla's claim for damages in respect of his professional reputation and career prospects, as it included that claim in its recitals of the facts (para. 27).

The respondent's argument is misconceived. The Judgement is not being criticized for giving an incomplete statement of the facts. The criticism made of the Tribunal is that it failed to consider and pronounce in its Judgement upon one of the heads of claim, the one which is the central point of the case. Thus it committed a fundamental error in the procedure which has occasioned a failure of justice.

45. In his statement to the Court, the respondent relies on paragraph 4 of the operative clause of the Tribunal's Judgement ("the other requests are rejected") to support the conclusion that the Tribunal fully exercised its jurisdiction in respect of the claims presented to it (para. 30).

In my opinion (see para. 27 above), the Tribunal did exercise its jurisdiction, but in doing so committed an error in procedure. It did not give a decision on each of the heads of claim, and the very general form of words which it used did not repair this defect.

46. To avoid any misunderstanding, I would add in passing that a distinction must be made between defects or errors in a judgment which render it void (absolutely void, or void *ipso jure*), and errors or mistakes which render it voidable, so that it may be challenged before a higher court or tribunal. Judgments of a court or tribunal of final resort, in respect of which there is no higher tribunal, cannot be challenged on the basis of mere mistakes or errors in procedure.

47. The decision of a tribunal is only justified if it is logically based on the grounds and conclusions which are set out in it.

The respondent claims that non-motivation of a judgment is not a procedural error which can give rise to revision, because Article 11 of the Statute of the Administrative Tribunal does not expressly mention this ground, despite the fact that in the working paper submitted by the

Secretary-General "failure to state the reasons for the award" was included among possible grounds for challenge (see para. 102 of the written statement, referring to United Nations document A/2909, Annex II.A, para. 53). He also claims that in any event this would not be a procedural fault of sufficient gravity to occasion a failure of justice (para. 104).

48. I do not find these arguments of the respondent convincing. The fact that failure to state reasons is not mentioned in the list of grounds for possible revision does not exclude the possibility of this failure being an error in the procedure. Article 11 of the Statute of the United Nations Administrative Tribunal, which uses the words "a fundamental error" in the procedure, is directed to all fundamental errors in the procedure, and it is obvious that failure to give reasons in the procedure of the Administrative Tribunal is a fundamental error. Article 10, paragraph 3, of the Statute, which provides that "judgements shall state the reasons on which they are based", confirms this [1].

49. The grounds, recitals and introductory clauses in judgments and decisions are not there for ornament. The requirement, to be found as well in legislation as in the Statute of the United Nations Administrative Tribunal, to give reasons for judgments is a consequence of the very nature of the judicial function. "It is of the very essence of judicial decisions that they state their reasons [2]."

50. Article 52 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States provides that either party may request annulment of the award on the ground "that the award has failed to state the reasons on which it is based". The written statement filed on behalf of the Secretary-General relies on this Article to buttress the argument that the fact that failure to state full reasons was not mentioned in Article 11 of the Statute implies that such failure is not a valid reason for challenging the Judgement (para. 40).

In my view, Article 52 is rather to be read as a manifestation of the generality of the principle that it is of the very essence of judgments that they state their reasons. The silence of Article 11 of the Statute on the subject of reasons was to avoid repetition; any such mention was unnecessary, since Article 10 of the Statute lays this down as a condition for the judgements to be in proper form.

51. The importance of giving reasons for a judgment has been recognized universally and at all times. Francis Bacon said that *judices sententiae suae ratione adducant* (Aph. 38). The earliest codes of procedure

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[1] See also Art. 9, para. 1, *in fine*. The purpose of these Articles is "to prompt the Tribunal to take care over the reasoning in its judgements and the wisdom of its decisions", Mrs. Bastid, *loc. cit.*, p. 20; this is all the more important because of the members of the Administrative Tribunal "very few have any judicial experience", *ibid.*, p. 25.

[2] Submissions of M. Letourneur (Conseil d'Etat, 27 January 1950) quoted by Juret, "Observations sur la motivation des décisions juridictionnelles internationales", *R.G.D.I.P.* 1960, p. 519.

also require reasons to be given for judgments [1]. The Court has held that giving reasons is a condition appropriate to the judgments of a court of justice and to awards of arbitrators [2]; and the conclusion has rightly been drawn that "it has become a truism to say that a statement of reasons is nowadays obligatory because it is indispensable [3]".

52. A judge does not give his decisions by virtue of a discretionary power *(ex voluntate)* but according to the law *(ex ratione legis)*, and he demonstrates this by giving reasons for his judgments. The reasons are the logical premise of the judgment. A judgment without reasons or with insufficient reasons has the appearance of an arbitrary decision and not of a true judgment [4].

Giving reasons for judgments has another purpose: the reasons also permit the parties to know the grounds for judicial decisions, and thus to know what possibilities are open to them of challenging the judgment on appeal or by way of cassation, and, in appropriate cases, how to go about it.

The Permanent Court stated that "all the parts of a judgment concerning the points in dispute explain and complete each other and are to be taken into account in order to determine the precise meaning and scope of the operative portion" (*P.C.I.J., Series B, No. 11*, p. 30).

53. In the case before the Court, the dismissal of the applicant's claims—and claims of fundamental importance—*en bloc* and without reasons by the Judgement of the Administrative Tribunal was itself an error in the procedure; but it also brings out another error in the procedure, inasmuch as the Judgement failed to give a decision on certain heads of claim.

54. The respondent claims in his written statement (para. 105) that, according to the Court, whatever procedural mistakes the Tribunal may have committed, there is no need to examine them, particularly inasmuch as the irregularities alleged did not "prejudice in any fundamental way the requirements of a just procedure" (*Appeal Relating to the Jurisdiction of the ICAO Council, I.C.J. Reports 1972*, p. 69).

It should be observed that Article 84 of the ICAO Convention, which was applied by the Court in the case just mentioned, makes no mention of procedural irregularities, and that on the other hand Article 11 of the Statute of the Administrative Tribunal, which now falls to be applied, expressly refers to error in the procedure. In the Judgment which the respondent has cited, the Court said: "If there were in fact procedural

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[1] For example Article 141 of the French Code of Civil Procedure of 1806 (re-enacting on this point the law of 16-24 August 1790).

[2] This statement of reasons, which is of "an essentially judicial character" is required by Art. 56, para. 1, of the Statute of the Court (*I.C.J. Reports 1954*, p. 2); an arbitrator's award should contain "ample reasoning and explanations in support" (*I.C.J. Reports 1960*, p. 216).

[3] *Juret, loc. cit.*, p. 568 and *passim*.

[4] This is not the case for other categories of decisions, judicial, administrative or jury decisions.

irregularities, the position would be that the Council would have reached the right conclusion in the wrong way. Nevertheless it would have reached the right conclusion" (*ibid.*, p. 70). In my opinion, not only was the Judgement of the Administrative Tribunal vitiated by a fundamental error in the procedure, and did not produce the right conclusion, but in addition that fundamental error occasioned a failure of justice.

(Signed) F. DE CASTRO.