INTRODUCTION

Rationale for a United Nations Administrative Tribunal

An independent and effective system of internal justice is a prerequisite for democratic governance of the United Nations Organization and for the independence of its Secretariat. Under a system of democratic governance, the wide discretionary power enjoyed by the Secretary-General must be exercised with due respect to the UN Charter, General Assembly resolutions, staff rules and regulations and other relevant administrative issuances, and with due respect to universally accepted general principles of law and due process. Otherwise, this discretionary power would be an arbitrary power, which it tended at times to be. Only an effectively independent United Nations administrative tribunal may have the necessary power to check such natural tendencies of abuse of power.

The Immunity of the United Nations from Legal Action

The Convention on the Privileges and Immunities of the United Nations adopted in 1946 endows the United Nations Organization with total immunity from legal action by staff members in their national jurisdictions or in the local jurisdictions of the country where they may be assigned to one of the various United Nations duty stations around the world. However, under section 29 of this Convention, this immunity supposes that the United Nations should make provisions “for appropriate modes of settlement of...disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party...” As emphasized by the International Court of Justice in 1954, “it would, in the opinion of the Court, hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the United Nations Organisation to promote this aim that it should afford no judicial remedy or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.”1 The representative organs of the staff members of the United Nations Secretariat and of the secretariat of other international organizations have on

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many occasions drawn the attention of the executive and legislative organs of these organizations to the inadequacy of the legal and judicial protection granted by them to their employees.\footnote{For the views of the staff representatives on the immunity of international organizations and the legal protection conceded by them to their employees, see in particular: “Views of the staff representatives of the United Nations Secretariat,” Note by the Secretary-General, General Assembly document A/C.5/46/21, 23 October 1991, section “VII. Administration of justice – Present deficiencies,” paragraphs 53–68; United Nations Common System, Comments by the Federation of International Civil Servants’ Associations, Note by the Secretary-General, General Assembly document A/C.5/50/23, 8 November 1995, Annex, pages 2–14.}

**The Wide Discretionary Power of the Secretary-General**

The Secretariat of the United Nations is composed of two distinct and totally different entities: first, the Secretary-General who is elected-appointed by the General Assembly, upon the nomination of the Security-Council which plays the major role in his selection and appointment; and, second, the staff, who are all formally appointed by the Secretary-General. In appointing the staff, the Secretary-General actually acts as the proxy for the community of employers, the governments of the member States of the United Nations, in particular the great powers and major contributors to its budget. Inasmuch as he is not independent from these Governments, because he depends on them for his re-election, or rather re-appointment or continuation in office, he is more a representative of the employers than by rank the first staff member of the Organization. It is natural, in this regard, that the UN Charter accords wide discretionary powers to the Secretary-General. To some extent, therefore, this wide discretionary power is that of the employers, the Governments. The latter have a clear interest in protecting his discretionary power vis-à-vis their employees, the staff members of the secretariat.

**The Utmost Importance of Protecting the Independence of the United Nations Staff**

However, in the absence of an effective tribunal to protect the staff members from possible abuses of power by the UN Administration, they would have no alternative but to depend upon their national governments for this purpose. Therefore, in order to ensure that their national governments would come to