The Abolition of Article 11 (1995)

10.1 The Abolition of Review Procedure under Article 11

Introduction
Towards the end of the 1980s and beginning of the 1990s, it had become apparent that the system of internal justice in the United Nations was less and less satisfactory to most of the actors or parties concerned, whether individual Governments or the staff members of the Secretariat. Although the system was composed of three layers, namely the first layer of the Joint Appeals Boards and Joint Disciplinary Committees, the Tribunal as the second layer, and the review procedure before the Committee on Applications as the third layer, none of the three could be considered to satisfy adequately the fundamental judicial requirements for rendering justice to aggrieved staff members. While more and more appeals were made for an overhaul of each of the three layers, the General Assembly did no more in 1995 than abolishing the third layer of the system.

At the time the recourse to the ICJ was set up in 1955, neither the staff members nor Governments believed that there was need for an appeal procedure against UNAT judgements for the purpose of upholding the rights of staff members. The recourse to the ICJ was adopted for the protection of Member States, who did not any longer feel the need for it after the 1980s. Indeed, Governments did not use directly this procedure more than once, and supported the use of it by staff members only in two other cases, without in any of these three cases obtaining an advisory opinion against UNAT judgements. But when it appeared, in view of the way UNAT delivered its mandate during the following decades, that some form of appeal by staff members against UNAT judgements was increasingly needed, it had become politically difficult for Governments to abolish such review procedure without at least appearing to deal with the root of the problem, namely the major judicial shortcomings of UNAT. Therefore, the two issues had to be addressed at the same time but, as it would clearly appear afterwards, they would be addressed as separate issues, and it was only for cosmetic reasons that the reform of UNAT was then considered. In the end, the recourse to the ICJ would be swiftly abolished, without the establishment of any alternative system of appeals by staff members against UNAT judgements, while the necessary concomitant reform of UNAT was only discussed, without any meaningful action being taken.
**Early Dissatisfaction of the United Nations Top Management with the Review Procedure**

It should be recalled that Resolution 957 (X) establishing the review procedure under new article 11 of the Tribunal’s Statute had not been unanimously adopted in 1955. Not too long after the adoption of article 11, the review procedure began to be criticized, in particular by the Secretary-General through the Legal Counsel of the United Nations. At its Sixth Session on 16 December 1968 when the Committee on Applications was considering the application for review made by a staff member, the Legal Counsel was the first to take the floor, offering comments on how the Committee should implement its mandate, and after five representatives (from the United Kingdom, Italy, the United States, France and Canada) spooked on the case under examination, he took the floor again to state, as was reported in the formal Summary Records of the Committee, “that practice had shown that the present appeal procedure was not helpful to either the Secretariat or the staff. It tended to mislead staff members; and so far it had always ended in a negative decision, since there were very few cases exceptional enough to justify a request to the International Court of Justice for an advisory opinion. The Committee might therefore wish to consider the possibility of suggesting that the matter should be studied and placed on the agenda of the General Assembly.”

For the sake of accuracy, he should have stated that there had not been so far one single case “exceptional enough to justify a request” to the Court. He came back to this issue four days later at a subsequent meeting of the Committee on Applications on 20 December 1968, stating that “the Secretariat had often considered the possibility of suggesting that that question should be placed on the agenda of the General Assembly, but had feared that a suggestion of that nature coming from the Secretary-General might be misunderstood.” The representative of Canada immediately commented that “it was important that it should be realized that misgivings about the existing appeal machinery had been voiced by Member States as well as by the Secretariat.” He added, however, that “it would naturally be odd for the Secretariat to seem to be trying to evade its obligations under the existing system.”

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461 Ibid, p. 18, 3rd paragraph.

462 Ibid, p. 18, 4th paragraph.