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THE AMIN CASE
Administrative Adjudication
within
an International Agency

by
Raji H. Sahyem

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THE AMIN CASE

Sahyun

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R. Sahyun

ABSTRACT

This case study is intended as a stimulant and not a solution. It aims at raising a question which the student in the field of Public Administration, in general, and International Personnel Administration, in particular, will find not only interesting, but also a challenging one:

What effective safeguards can be devised to protect staff rights in an international organization against an undue and arbitrary use of the Chief Administrative Officer's extra-ordinary powers in administering the personnel policies of the organization, without prejudicing or weakening those powers?

As will be seen in the course of this study, it has been considered essential to keep the Chief Administrative Officer completely free and independent from all external controls by Member States of the United Nations, in managing and running the affairs of the Organization. Otherwise, the situation is apt to become precarious and susceptible to political jockeying, thus constituting an obstacle in the way of the Organization, in the longrun, and preventing it from performing its great task and noble mission:

....to save succeeding generations from the scourge, of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental humanrights, in the dignity and worth of the human person, in the

equal rights of men and women of nations large and small...¹

Although the case reviewed in this study may give the impression that it was an ordinary one that can, and in fact does, occur in all sub-national, national and international institutions, a more thorough consideration is expected to point to the difference in the situation and the essential need to devise means of protection against arbitrariness. What adds still more to the need in the specific case under review is the nature of circumstances under which the Organization (the United Nations Relief and Works Agency for Palestine Refugees in the Near East) functions. In addition to the important fact that the interests of the staff member - who, as an individual, represents a multitude of people forming the body of staff - should be the concern of regulations and rules legislated to keep up his morale, the staff member was, in this case, a member of the refugee community itself whom the Agency was established to look after.

If it is the duty of the United Nations Secretariat (and its organs) to accord justice to world communities, it should hypothetically be able to do so, in the first place, to its own community - its staff. The degree of impartiality and justice with which the staff are accorded reflects, to

1. United Nations, Charter of the United Nations and Statute of the International Court of Justice (New York: The United Nations Department of Public Information, n.d.), preamble, p. 1.

a large extent, the degree in which the Organization can accord those values to the World at large, and the great cause of peace that it was created to serve.

This study is formed of five parts and a bibliography.

Part I is an introduction that gives some idea of the environmental circumstances of the case, with an emphasis on the significance and thesis of the case.

Part II is more concerned with the legal background showing, in a sequence from the general to the specific, the origin and practice of the system of administrative remedies in international administration.

Part III narrates, in a chronological order and detail, the case - the problem - itself, highlighting as much as possible the salient features that can be of scientific interest to the student in the field.

Part IV carries the decision taken on the case with the various legal and administrative points of significant relevance, and a special stress on the limitations imposed on the advisory board reviewing the case as necessitated by the nature of international administration.

Part V expounds the author's evaluation of the case, as it appeared to him through its circumstantial events and, simultaneously, through the international considerations implied.

A slight remark seems to be necessary about the sources of research. In spite of the fact that a considerable number of the sources in this study are primary ones, resort

has nevertheless been made to quite a number of secondary ones. This is due not only to the complicated nature of international material but also to the unavailability of some of the basic documents and references required for a study like this. Basic United Nations documents such as the General Assembly Resolutions, reports of the Secretary-General to the Fifth Committee, and reports of the Fifth Committee itself to the General Assembly would be of great help, if they could be made available in the University Library.

In conclusion, it is assumed that the importance of this case study would reflect itself clearly enough, if looked at from the viewpoint that every solution attained is expected to help the great world experiment to make a further step toward achieving its goals. In the words of one scholar,

The United Nations is an experiment, 'as all life is an experiment.' It will never completely succeed, because the problems of government are never permanently settled. It will never seem to be a success until the time arises when its success is no longer questioned.¹

1. Eugene P. Chase, The United Nations in Action, 1st ed., 2nd impression (New York: Mc Graw-Hill Book Co., Inc., 1950), p. 394.

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PART I

I N T R O D U C T I O N

I see the judgment of history that, in this present day and for all the future, world peace is necessary to the survival of mankind, and the United Nations, in turn, is necessary to the attainment of a world peace that will endure.

1

Trygve Lie

A. Preambular Note

This study relates, in a narrative form, the "story" of termination of services of a staff member of an international organization which was established by a Resolution of the United Nations General Assembly, in order to carry out a large humanitarian task in the Near East; namely, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, U.N.R.W.A.P.R.N.E., hereinafter called UNRWA (or, the Agency).

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1. Extract from the farewell speech given by him in the General Assembly on 7 April 1953, when he resigned his post as first Secretary-General of the United Nations; quoted from his book In the Cause of Peace: Seven Years with the United Nations (New York: the Macmillan Co., 1954), p. 417.

Although this "story" presents to the reader the case of an individual, its significance nevertheless lies in the kind of administrative relationship between the individual-who, in fact, represents a multitude of people- and the International Organization with which he was associated for a long period of time, the moral responsibility borne by the Organization towards him, as a result of this relationship, and some of the limitations self imposed by the Administration in order to safeguard the interests of the individual. An essential feature of such a relationship should be a sense of "security of tenure", without which no proper career service can be guaranteed in either subnational, national, or international organization,

Security of tenure is an essential feature of career service. Unless there is sufficient safeguard enjoyed by staff against arbitrary termination, no one would consider the service as a career. With the widening of the administration's discretionary power over staff termination...the intensification of staff participation in personnel management would seem highly desirable, not only for the protection of staff but, in the long run, for the development of a balanced and sound institutional tradition in international administration...¹

Obviously, no such protection can be appropriately made without the introduction of adequate rules and regulations that are capable of protecting the staff against

1. Tien-Cheng Young, International Civil Service; Principles and Problems (Brussels; International Institute of Administrative Sciences, 1958), p. 230.

arbitrary measures. This is particularly true in our present day, in international organization which seems to be growing and developing to an increasingly powerful position in world affairs. The maintenance of the rules of order and justice seems to be elemental to the very survival of the Organization itself, let alone the great ideals it serves,

No organization dedicated to law and order in world affairs can hope to survive if its own administrative actions are arbitrary and precipitate, based on mere suspicion and devoid of the due process to which all civilized people are dedicated.¹

B. Significance of Study

The tremendous growth of complexity in modern society and the scientific, technological and industrial requirements of modern government have been placing increasingly large responsibilities on the shoulders of its executive branch. In fact, a constant shift in power to the advantage of this branch has been taking place during the past few decades, gaining particular momentum ever since the inter-war period. To the student of Public Administration, this is almost axiomatic.

If this is true in national institutions, it is even more so in international organization. The great shift in power to the hands of the Executive in national government seems to have served as an excellent experimental work that

1. Byron Price, Statement made on 23 December 1952 on personnel policy of the United Nations (annex 1 to United Nations document A/2364 of 30 January 1953, p. 17); as quoted in Young, ibid., p. 179.

led to the delegation of wide discretionary powers to the United Nations Secretary-General. In designating the work of this great World Organization, the forefounders had clear in mind the requirements "that the staff should meet the highest standards of efficiency, competence and integrity." To achieve this, it was necessary to vest extraordinary powers in the hands of the Secretary-General who is designated as its "Chief Administrative Officer."²

In an enlargement on this statement, the Secretary-General's major duties and responsibilities have been outlined as follows:

The Secretary-General of the UN is, in, first place, the 'Chief Administrative Officer of the United Nations' (Art. 97); he is the Secretary-General of the General Assembly, the Security Council, the Social and Economic Council and the Trusteeship Council (Art. 98). He has to present an annual report on the work of the Organization to the General Assembly (Art. 98). Specific administrative and executive functions are given to him under the Provisional Rules of Procedure of the General Assembly. He has to prepare the agenda, convoke the sessions, provide the necessary staff, prepare the minutes and other documents of the various organs of the UN. He is responsible for the preparation of the various organs and for the execution of their decisions. He has wide responsibilities concerning the financial administration of the UN. He is the head of the Secretariat and appoints all staff members (Art. 101). He alone is responsible to the other principal organs of the UN for

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1. See Report of the Preparatory Commission of the United Nations, PC/20, 23 December 1945, chap. VIII, section 2, para. 7; as quoted in United Nations Repertory of Practice of United Nations Organs (New York, 1955), Vol. V, p.223.
 2. Charter of the United Nations..., op.cit., p. 50.

the work of the Secretariat... He is strictly an international officer..."¹

So wide as this delegation of power is, it is correspondingly difficult to expect the Secretary-General, as a single human individual with a limited span of control, to be able to cope in person with all the functions required of him. The scope of the term "Secretary-General", therefore, goes far beyond the person of the incumbent himself, to apply to all acts done in his name,

...The term [Secretary-General] as officially employed by the United Nations embraces the totality of the activity of the Secretariat in the Organization. Little is done in the Secretariat's name: virtually nothing is done in the name of any member of the Secretariat other than the Secretary-General. It is the Secretary-General who is at once in Geneva and New York, who simultaneously lunches with the Secretary of State and sifts data on tribal autonomy in Togoland, who is legal adviser to the Security Council and the prolific author of a vast number of economic and social studies."²

It, therefore, becomes imperative to devise some safeguards against any undue use of these powers, in the Secretary-General's name. In other words, in order to be able to carry out its duties, with the greatest possible measure of efficiency, competence, integrity and impartiality,

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1. Joseph L. Kunz, "The Legal Position of the Secretary-General of the United Nations," "The American Journal of International Law," XL (October, 1946), p. 786.
 2. Stephen W. Schwebel, The Secretary-General of the United Nations; His Political Powers and Practice (Cambridge: Harvard University Press, 1952), p. vii.

the Organization's set-up must be such as to protect its machinery - its staff members - against arbitrariness internally, and against intervention or pressure by any Member State, externally. Only by providing such safeguards will the Organization be able to carry out its great and ultimate task of peace-keeping and promoting good relations among all countries of the world for a better future of mankind.

This measure, nevertheless, gives rise to some questions in the mind of the researcher - questions which arise in the course of reflecting over the serious consequences that can result from the misuse or abuse of such powers, on behalf of the Secretary-General. This presupposition - sophisticated as it may be considered by some - has no reflective character whatsoever on the personal qualities of either the Secretary-General, or any of his Assistants or top lieutenants. There is no doubt in the least that men of this calibre, who keep in view the well-being of the world at large, are basically men of integrity, efficiency and noble ideals. It is merely human nature and its susceptibility to corruption by power that urges the student of Public Administration to be on the lookout for a sound system of control.

In national administration, the increase in executive power has been counterbalanced by an almost corresponding growth of power in those organs that can provide administrative remedies to staff and protect the individual from abuse of power. Legislatures, Courts, administrative tribunals, public opinion, the press, political parties and other

pressure groups still serve, and shall for a long period continue to serve, as safety valves against any such abuse. There is always something for the individual official in government to resort to whenever he feels that injustice has been done to him by the Executive.

The case, on the other hand, is not exactly so in international organization. Granting the fact that the Secretary-General will personally never intentionally abuse his discretionary powers, what safeguard does a staff member in any of the international organs possess against the undue use of such powers, in the Secretary-General's name, if and when it should occur? What safeguards exist against possible arbitrariness? What controls can be devised to check such arbitrariness without opening the door for political jockeying over the Administration, on the part of Member States and pressure groups? What measures and procedures can be devised to ensure the impartiality of the Organization and its loyalty to its principles and ideals? How does all this situation compare with the authority of the Executive to use extra-ordinary discretionary powers in national administration, and the controls existent to check any abuse of it?

It is obvious that any infringement on the Secretary-General's authority to use his discretionary powers, by setting up checks and controls similar to those in national institutions would constitute a serious risk, not only to the functioning of international administration alone, but more important to the

very existence of the Organization itself, and thence efface whatever contribution it can make towards promoting world peace.

The answer to these basic questions is not only beyond the purpose of this analytical case study; it, admittedly, lies even beyond its competence and ability. Its primary aim, however, remains to open some paths of thought for those scholars in the field who may respond to the challenge, make further exploration and attempt to formulate solutions to this problem.

Let us first focus our attention on the specific United Nations Organ with which this study is concerned.

C. U N R W A

Like all other United Nations organizations, the spirit of Resolution establishing UNRWA emanated from the United Nations Charter which, in part, explicitly states:

Article 7

.....

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter. 1

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions. 2

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1. Charter of the United Nations..., op.cit., p. 7.
 2. Ibid., p. 14.

Accordingly, "during its fourth session, the General Assembly established [UNRWA] to carry out, in collaboration with local governments, direct relief and works programs for Palestine refugees..."¹ Resolution 302 (IV), adopted in this session by the General Assembly on 8 December 1949, on the recommendation of the Ad Hoc Political Committee, and by which UNRWA was established read, in part, as follows:

The General Assembly

Having examined with appreciation the first interim report of the United Nations Economic Survey Mission for the Middle East² and the report of the Secretary-General on assistance to Palestine Refugees,³

7. Establishes the United Nations Relief and Works Agency for Palestine Refugees in the Near East:
 - a) To carry out in collaboration with local governments the direct relief and works programs as recommended by the Economic Survey Mission;
 - b) To consult with the interested Near Eastern governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available...

.....

9. Requests the Secretary-General to appoint the Director of [UNRWA] in consultation with the governments represented on the Advisory Commission;
 - a) The Director shall be the chief executive officer of [UNRWA] responsible to the General Assembly for the operation of the program;

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1. United Nations, Basic Facts about the United Nations, (Sales No. 1957. I. 4) (13th ed.; New York: The United Nations Department of Public Information, July 1957), p. 13.
 2. United Nations Document A/1106; as quoted in United Nations General Assembly Resolutions..., Infra.p.10
 3. United Nations Documents A/1060 and A/1060/Add. 1; as quoted in infra., p. 10.

- b) The Director shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and the Secretary-General shall agree are applicable, and to the extent possible utilize the facilities and assistance of the Secretary-General...¹

In his Annual Report to the General Assembly at its fifth session, the Secretary-General made the following remarks on the help extended to UNRWA by the United Nations Secretariat and the working relationship between the two sets-ups:

Agreement has been reached on the working relationship between the new Agency and the United Nations Secretariat, the Agency operating under its own set of financial rules and regulations and normally selecting and appointing its own staff in accordance with the staff rules and regulations applicable to United Nations missions...²

UNRWA started functioning in the Near East on 1 May 1950, and was joined by the staff member concerned in this study on 5 June 1950; in other words, just over a month after the functioning date of the Agency. As will be later indicated, this early appointment to UNRWA subconsciously formed a main factor which shaped the attitude of the particular staff member figuring in this case study, that is, his attitude towards his supervisors, colleagues and the Agency as a whole. It helped make him feel in a somewhat strong position to contest the decision terminating his services.

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1. UNRWA, United Nations General Assembly Resolutions Regarding Assistance to Palestine Refugees (n.p., n.d.), p. 5.
 2. United Nations, Annual Report of the Secretary-General on the Work of the Organization; 1 July 1949 - 30 June 1950 (GA Official Records, V, Suppl. No. A/1287)(Lake Success, New York, 1950), p. 137.

D. International and Area Staff Members

There are two main categories of employees in UNRWA:

- a) The international staff members who have always formed, numerically, a very small proportion of the total number, not exceeding at any time a maximum of 160 staff members, out of an average total of about 10,000¹ people;
- b) The area staff members (hereinafter referred to as "staff members" only), who form the great majority of UNRWA personnel. They are usually locally recruited, primarily from among Palestinians who, after their evacuation from Palestine in 1948, have taken refuge mainly in the host countries in which UNRWA operates; namely the Gaza Strip, the Hashemite Kingdom of Jordan, the Republic of Lebanon, and the Republic of Syria (known as from 1 February 1958, as the Syrian Region of the United Arab Republic). Their conditions of service are set out partly in their individual letters of appointment, but for the most part in the staff regulations and provisional staff rules applicable to area staff members issued initially in the form of a series of administrative circulars whenever the need was felt to do so, and promulgated on 1 July 1957.²

1. UNRWA, Statistical Summary (Beirut, December 1958), p. 10. Also see other UNRWA six-monthly statistical summaries.

2. Infra, p. 12.

For a statutory differentiation between the two categories, it should be indicated that:

- a) International staff members are defined as those persons who have been appointed to a post which has been designated by the Director as an international post.¹

In his Annual Report to the General Assembly at its Seventh Session, the Director of UNRWA referred to the composition and conditions of employment of this category in the following terms:

...With respect to the terms of employment of international staff members in the Agency as they related to the staff rules and regulations of the United Nations, agreement has been reached with Headquarters for the granting of temporary-indefinite status to all international employees, together with the accompanying benefits, with the exception of participation in the United Nations Pensions Fund...²

- b) Area staff members are defined as those persons who have been appointed to a post which has been designated by the Director as an area post.³

UNRWA Headquarters are located in Beirut, Lebanon; the Agency has field offices in the Gaza Strip, Jordan, Lebanon and the United Arab Republic, and liaison offices in Baghdad and New York. Headquarters comprises: Main Office, Base Warehouse and Post Office, with an average

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1. UNRWA, Staff Regulations Applicable to International Staff Members (Beirut, 1 July 1957), 3rd preambular paragraph (Applicability 2), p.1.
 2. United Nations, Annual Report of the Director of UNRWA Covering the Period of 1 July 1951 to 30 June 1952, (GA Official Records, VII, Suppl. No. 13, A/2171) (New York, 1952), p.11.
 3. UNRWA, Staff Regulations Applicable to Area Staff Members (Beirut, 1 July 1957), 3rd preambular paragraph (Applicability 2), p. 1.

number of 550 staff members, both international and area.¹

The staff member with whom this study deals was a "staff member" of headquarters (Main Office).

E. Additional Responsibilities

In view of UNRWA's large and varied responsibilities towards the Palestine refugees, as set out by the United Nations General Assembly,² and also in view of the fact that the large majority of the staff members (including the one concerned by this study) are Palestine refugees themselves who cannot easily find employment in Lebanon, the importance of this case was a great one in Agency premises; because, alongside with the need for careful application of administrative standards and requirements whenever a termination of appointment is made in any organization of reputable standing, there was also the humanitarian factor which called for extremely careful consideration, lest an abuse of arbitrary power or lack of sound judgment may lead to additional sufferings and difficulties to a staff member who is, at the same time, a member of the very same refugee community which the Agency was specifically established to help.

What added still more to the necessity of such a thoroughly weighted consideration was the international

1. UNRWA, Statistical Summary, op.cit.

2. See Annual Report of the Secretary-General on the Work of the Organization; 1 July 1949 - 30 June 1950, op.cit., pp. 3-4.

nature of the Agency where the complexity of personnel and lack of safeguards usually available in national organization are liable to make the issue a delicate one,

One of the fundamental considerations in modern public administration is to establish ways and means by which an adequate balance between the lawful exercise of administrative power in the public interest on the one hand, and the protection of staff rights against arbitrary measures on the other may be ensured. This is particularly necessary in international personnel management, as the relation between an international organization and its staff is more complex than a purely contractual arrangement.¹

The reason why this relation is more complex than a "purely contractual arrangement" has been well explained by a competent international lawyer who has described it as follows:

...It constitutes 'mutatis mutandis' in the same way as the appointment of national civil servants, a relationship which has invariably been described as a 'rapport d'emploi public'. The fact alone that the Secretary-General wields extensive disciplinary powers over officials of the Secretariat suffices to remove the contract of employment from the realm of private law. Moreover, the United Nations Organization enjoys immunity from suit before the courts of all Member States and such rights as officials may wish to assert against the Organization can be asserted only before the Administrative Tribunal of the Organization itself...²

F. The Thesis

As such it is, therefore, the thesis of this case

1. Young, op.cit., p. 179.
2. Frederick Honig, "The International Civil Service; Basic Problems and Contemporary Difficulties," International Affairs, XXX (April, 1954), p. 180.

study to make a critical illustration, in as direct and tangible a manner as possible, of some of the measures and precautions which form the administrative remedies of staff that contribute to safeguard staff interests against arbitrary action in international organization. Although, as shown above, there is justification for a wider area of discretionary power in international, than in national, organization, this study will reveal that this power carries in it the grave potential risk of being abused in an arbitrary manner against staff interests. This is a point of great significance because (a) international organization is still comparatively young; (b) any abuse of discretionary power will not only reflect badly on the spirit of the peace-making World Organization itself, but can directly affect a large number of people, its personnel, who form an important portion of the Organization's world-wide public;

International civil service is a new profession. Within living memory, we have seen old organizations fall and new ones created, but the time-honored civil service has functioned well on an international plane. Whether the new profession will form a powerful, scheming and anonymous international bureaucracy, a 'new Leviathan' which will cast its shadow over the future of humanity, or whether it will develop into a priestly-learned class in which the individual will work, not directly for his own enrichment, honour or glory, but for the progress of civilization, is for the prophets in administrative science to determine. But whichever tomorrow will bring, it is the duty of today to make international civil service work and work efficiently.¹

1. Young, op.cit., p. 231.

G. Conclusion

In clearer terms, it is the duty of every member of our World Community to see to it that the United Nations, created to strive for the preservation of world peace, should stand on solid pillars of justice, law and order in its internal complex organization. It is the duty of the United Nations to be just not only to Member States and their peoples, but also to the multitude of people who form its huge administrative machinery. As a result of its international staff character, the international civil service has within it a variety of national and cultural heritages which, by interacting, ought eventually to give more colour, strength and value to the Organization. Just as the United Nations, as a world organization, equals more than the sum total of its Member States, its administrative machinery likewise adds up to more than the mere sum total of the individuals working in it. The great cause which the Organization serves is obviously of a higher consideration than the purely mathematical sum totals of its Member States, on the one hand, and its staff, on the other.

...Through organized effort, the end product of united action grows quantitatively and qualitatively far beyond the sum total of independent, individual action by each unit, quite apart from the fact that some problems could not be solved except by organized endeavor.¹

It is the duty of the United Nations to be just. If it is to be the true example of justice, then its operating

1. Warner Levi, Fundamentals of World Organization (3rd printing, Minneapolis: The University of Minnesota Press, 1953), pp. 3-4.

regulations, rules, procedures, etc. should constantly exemplify the noble objectives that it serves. "Charity begins at home"; and if this is hypothetically correct, it should apply not only to the mother organization - the United Nations Secretariat in New York, alone - but also to all international organs and offshoots and their staff, including, of course, UNRWA and its staff members.

In short, the extraordinary executive powers given to the Chief Administrative Officer in carrying out the personnel policies of the Organization are extreme in both nature and degree. The dangers potential in such powers must be obvious to the student of Public Administration, particularly in international organization where the mixture of races, religions, cultures, backgrounds, loyalties, etc. makes it very difficult to devise a uniform yardstick for maintaining justice. This paper will attempt to show the steps made and measures taken, throughout years of great efforts, to strike a balance between the use of those extreme powers and the preservation of staff rights, in international organization. It will also attempt to throw some light on shortcomings in this respect, in an endeavor to stimulate the interest of those who can take the challenge and seek better solutions. Considerable steps have so far been made and measures experimented, modified and amended, as and wherever necessary, and applied by pioneers in the field of international personnel administration; men and women

who have been struggling to pave the way for a great peaceful future for the human race. In the words of ex-Secretary-General Trygv^o Lie, the first engineer-in-command;

Service in the United Nations Secretariat has been - and always should be - regarded as a high privilege, as an honour and as a responsibility sought after by many. That the reputation and prestige of the International service should be fully safeguarded is a constant aim of the Secretary-General's policy and he is convinced that it is the wish of every member of the United Nations.¹

1. Report of the Secretary-General on Personnel Policy (A/2364); as quoted in Young, op.cit., p. 227.

PART II

B A C K G R O U N D

A. Checks on Arbitrary Action in International Organization

It has become almost commonplace knowledge for the student of public administration to cite Lord Acton's maxim that "power tends to corrupt and absolute power corrupts absolutely."¹ It is, therefore, axiomatic to assume that administration must be controlled, if the need is to protect it from corruption, or even more deservedly to protect people - including the machine cogs, the employees themselves - from its inevitable corruption, if uncontrolled.

If this is true in national organization, it has proved to be more so in international organization. This was clear in the case of the League of Nations, where it was realized soon after the establishment of the League Secretariat that the Organization must wield wider discretionary powers in respect of its personnel policies. According to a Committee of Jurists appointed by the League's Council in 1925,

The relations connected with public employment are always governed by the exigencies of public interest, to which the private and personal interest of officials must necessarily give way.

1. John E. Acton, Essays on Freedom and Power (2nd printing, Glencoe, Ill.: The Free Press, 1949), p. 364.

This is particularly true in the case of the League of Nations which is called upon to satisfy requirements which are more complicated in that they are international.¹

It, therefore, follows that, to counterbalance these wide powers and prevent their undue use in an arbitrary manner, some system of control over the Administration must be available, because:

..... In law and practice, any discretionary power must be exercised only for the good of the service and only with the interests of the organization in view. It must be exercised with due respect for the principle of justice so that the due process of law is respected. For, in the first place, in order to avoid administrative absolutism, any administrative act must be subject to a review of its legality. 'The first and most fundamental principle of justice is that a man may not be a judge in his own cause.' Secondly, the legality of an administrative act is dependent on proper motivation. The task of deciding whether an administrative act is properly motivated or not is a question of law, not a question of the administrator's subjective conception of propriety; however noble his intention may be his act may still be considered illegal if there is lack of statutory authorization or if it is unrelated to stated administrative objectives. This cannot be decided without an inquiry into the factual situation. Thirdly, every lawful exercise of administrative power must be founded upon an adequate reason capable of being communicated and subject to review.² Fourthly, it is contrary to natural justice to condemn a man unheard. Fifthly, the relation between an international organization and its officials is primarily based on contract, and the essence is a condition of mutuality. Therefore, unless the official concerned gives his consent, the contractual conditions must not be arbitrarily altered by the Administration. It is only through the due processes of law that such contractual rights may be protected.³

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1. Official Journal of the League of Nations, 1925, p. 1443; as quoted in Young, ibid., p. 181.
 2. The underlining is mine.
 3. Young, op. cit., pp. 181-182.

Accordingly a number of devices of an administrative or judicial nature have been thoughtfully designed to safeguard the legitimate interests of staff against any undue exercise of discretionary power, in an arbitrary manner. As in national administration, this is important to keep up staff morale, through strengthening their sense of "security of tenure", and thence aiding toward the highest possible standards of efficiency, competence and integrity.

B. Origin of Joint Appeals Boards

The principle of staff participation, in an advisory capacity, in controlling arbitrary acts of the Administration in international organization, so far as the purposes of this study allow to go, can be related to the staff regulations in the League of Nations which provided for two paritative advisory committees, one called the Judicial Committee and the other the Administrative Committee.¹

This formed part of a number of internal committees which were created to advise the League's Secretary-General in the course of the proper exercise of the powers given to him by Article 6 of the Covenant of the League of Nations in accordance with the League Assembly Resolution of September 21, 1926.² Examples are:

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1. See, ibid., pp. 184-185.
 2. See David Hunter Miller, The Drafting of the Covenant (New York: G.P. Putnam's Sons, 1928), Vol. II, p. 725.

- a) Committee on Appointment and Promotion, which advised the Secretary-General on cases of appointment, promotion, salary increase, discharge of officials, etc.
- b) The Judicial Committee, which was guided solely by legal considerations to advise the Secretary-General on cases of misconduct, negligence, incapability to perform duties and complaints by staff about unfair treatment on the part of their superiors.
- c) The Administrative Committee, which dealt with all matters relating to general personnel policy and those resulting from the application of Staff Regulations which did not fall within the jurisdiction of the Judicial Committee or the internal¹ advisory committees.

Following the footsteps of this pattern, the Preparatory Commission of the United Nations suggested in 1945 the establishment of an almost identical system. It called on the Secretary-General to "set up machinery with staff participation for enquiry and appeal in disciplinary and termination cases."² The Commission, however, left it for the Secretary-

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1. For further reference on this subject, see Young, op.cit., pp. 182-187.
 2. Draft Staff Regulations 50, 51 and 52 (United Nations Document PG/EX/113); as quoted in ibid., p. 185.

General to arrange for the details of such a machinery.¹
This suggestion was adopted by the General Assembly in the
provisional Staff Regulations (Regulation 23).²

Again, the spirit of delegating this power to the Secretary-General emanates from the United Nations Charter, Article 101 of which provides, in part, for the following:

1. The Staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity...³

The General Assembly has thus vested in the Secretary-General's hands the power of enforcing the staff regulations which are, themselves, restricted to lay down the basic conditions of service and broad principles affecting policy. This power is exercised by the Secretary-General through the promulgation of such staff rules as he may find necessary, as pointed out clearly in the opening paragraph of Staff Regulations adopted by the General Assembly in its sixth session, in accordance with Resolution 590 (VI). This runs as follows:

The Staff Regulations embody the fundamental conditions of service and the basic rights, duties

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1. Draft Provisional Staff Regulation 23 (United Nations document PC/20); as quoted in ibid.
 2. Infra, p. 25.
 3. Charter of the United Nations... op.cit., pp. 51-52.

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.¹

C. The United Nations Joint Appeals Board

In accordance with the provisional Staff Regulation 23 of the United Nations, which states that the Secretary-General shall establish administrative machinery, with staff participation, for enquiry and appeal in disciplinary and termination cases, an Appeals Board was established in the United Nations Secretariat in 1946, for the purpose of advising the Secretary-General on appeals by staff members (i) against administrative decisions related to the application of Staff Rules or of established administrative practices to the termination of appointments; (ii) for alleging non-observance of agreed terms of appointment; (iii) against disciplinary action; (iv) claiming allowances; and (v) appeals of such other character as the Secretary-General may specify.²

Also, in accordance with this provisional regulation, the Board consisted of a chairman appointed by the Secretary-General after consultation with the Staff Committee, two members appointed by the Secretary-General, and two other members

1. Repertory of Practice..., op.cit., p. 249.

2. See Young, op.cit., p. 187.

representing the staff. The Board regulated its own procedure, while the Secretary-General regulated that for filing appeals.¹

The provisional Staff Regulations adopted by the General Assembly in its sixth session were kept for some time under experimentation until, on 2 February 1952, the General Assembly adopted the permanent Staff Regulations. Regulation 11.1 which, in spirit, is a further confirmation of provisional Regulation 23, stipulates the following:

The Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules, or against disciplinary action.²

In accordance with provisional Regulation 23, provision had been made for "a Joint Appeals Board with staff representation to advise the Secretary-General regarding appeals by staff members against administrative decisions."³

Similarly, and in accordance with permanent Regulation 11.1, provision was again made by Staff Rule 111.1 for the formation of a "Joint Appeals Board" as will be seen below.⁴

1. Ibid.

2. Repertory of Practice..., op.cit., p. 256.

3. Rule 145, SGB/81 (25 June 1948), rule 145, ST/AFS/SGB/81/Rev. 1 (16 June 1950), rule 145, ST/AFS/SGB/81/Rev.2 (1 Jan. 1951), rule 145, ST/AFS/SGB/81/Rev.3 (6 July 1951), and rule 111.1 ST/AFS/SGB/94 (1 Dec. 1952); as quoted in ibid., p. 257.

4. Infra., p. 27.

The term "joint" gives significance to the joint Administration-Staff undertaking of the Board.

The new set of staff regulations (including, of course, Regulation 11.1) was adopted by the General Assembly on 2 February 1952, and took effect as from 1 March, 1952, thus marking "... an important advance towards the development of a real career service by replacing the provisional, and to some extent experimental, arrangements on the basis of which the Secretariat had been initially recruited and organized, with a more permanent set of principles defining the rights, duties and obligations of staff members and their basic conditions of service."¹

Like the provisional staff regulations adopted by the General Assembly in 1946, these new staff regulations adopted in 1952 also embodied broad principles only which required for their effective operation the promulgation of more detailed staff rules by the Secretary-General. This had necessitated, for several months, the revision of former staff rules in order to make sure of their conformity to the regulations they were intended to implement and, at the same time, to incorporate whatever changes in policies and procedures administrative experience had shown to be desirable. "...In the process of

1. United Nations, Annual Report of the Secretary-General on the Work of the Organization; 1 July 1951 - 30 June 1952 (GA Official Records, VII, Suppl. No. I-A/2141) (New York, 1952), p. 178.

revision advantage is being taken, to the extent that opportunity permits, of the experience which other organizations have had in dealing with common problems in order that the revised rules, as finally reported to the General Assembly, may reflect the soundest possible practice and the widest possible area of agreement."¹

Accordingly, Rule 111.1² of Staff Rules was issued by the Secretary-General in promulgation of Regulation 11.1 referred to above,³ for the formation of a Joint Appeals Board,⁴ Rule 111.2 provided for its composition, and Rule 111.3⁵ provided for the procedures it should follow. Rule 111.1 specified the Board's terms of reference as follows:

a) A Joint Appeals Board is established to consider and advise the Secretary-General regarding appeals filed under the terms of Staff Regulation 11.1 by staff members serving at Headquarters.

b) In case of termination or any other action on grounds of inefficiency or relative efficiency, the Board shall not consider the substantive question of efficiency, but only evidence that the decision has been motivated by prejudice or by some other extraneous factor.

c) Where its competence is in doubt, the Joint Appeals Board itself shall decide.

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1. Ibid.
 2. United Nations, Staff Rules (ST/SGB/04/Rev.4) (New York, 1955), p. 57.
 3. Supra., p. 25.
 4. United Nations, Staff Rules, op.cit.
 5. Ibid., p. 58.

d) The Joint Appeals Board may make recommendations to the Secretary-General should it desire to change the procedures regarding appeals as set forth in these rules.

In comparison with the Appeals Board which had been existing in the United Nations since 1946, Rule 111.2 provided for the reconstituted one to be formed of three members instead of five: a chairman selected from a panel appointed annually by the Secretary-General after consideration with the Staff Committee, one member appointed annually by the Secretary-General, and the other elected annually by ballot of the Staff. Alternates in the reconstituted Board are selected in the same manner as the members.

According to Rule 111.3, the Board was given authority to call members of the Secretariat who are able to give information regarding the case submitted to it, and was also empowered to ask for the production of documents. Its decisions are taken by a majority vote. The Board should submit a report on every case it considers to the Secretary-General, and any member of the Board may have his dissenting opinion included in the report. When the Secretary-General makes his final decision on the case, this decision shall be passed to the staff member concerned together with the Board's recommendation.

From these terms of reference it is obvious that the Board is not an independent judicial body which has full authority of looking into, and adjudicating, acts made by the

Secretary-General's Administration. As one authority on the subject has stated, "... the joint appeals machinery is not an independent judicial body, but an advisory organ to the chief administrative officer. Nevertheless, since the staff has a voice equal to the Administration in the Board's decision and the chairman is usually chosen from personalities independent of the Administration, the Board has contributed considerably in the protection of staff from arbitrary action."¹

D. The UNRWA Joint Appeals Board

In accordance with the same principle of staff participation, the UNRWA Director issued in 1957, Staff Regulations Applicable to Area Staff Members.² The authority delegating to him the power of issuing these Regulations is clearly stipulated in the following preambular paragraph:

These staff regulations are promulgated under the authority of paragraph 9 of Resolution 302 (IV)³, adopted by the General Assembly of the United Nations on 8th December 1949, and in accordance with the requirements of this paragraph have been agreed to by the Secretary-General of the United Nations and the Director of UNRWA.⁴

Regulation 11.1 of these Regulations stipulates⁵ the following:

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1. Young, op.cit., p. 189.
 2. Op.cit.
 3. Supra., pp. 9 - 10.
 4. Staff Regulations Applicable to Area Staff Members, op.cit., p. 1.
 5. Ibid., p. 9.

a) The Director shall establish a Joint Appeals Board with staff participation to advise him in case of any appeal by a staff member against an administrative decision to terminate him, in respect of which he alleges the non-observance of his terms of appointment including all pertinent regulations and rules, or against disciplinary action under Regulation 10.3.¹

b) The Joint Appeals Board shall consist of three members as follows:

(i) A chairman, selected from a panel of responsible officials of the Agency appointed annually by the Director after consultation with the Staff Association² concerned, if and when formed.

(ii) One staff member appointed annually by the Director.

(iii) One staff member elected annually by ballot by the staff.

c) Any unanimous recommendation by the Joint Appeals Board which is accepted by the Director shall bar the staff member in the case concerned from any further appeal to a special panel of adjudicators.³

1. Regulation 10.3, which is irrelevant to this study, stipulates that "the Director may summarily dismiss a staff member for serious misconduct."; ibid., p. 8.

2. For further reference to the UNRWA Staff Association, see infra., pp.143-145.

3. The special panel of adjudicators is formed in accordance with Regulation 11.2 of the same set of Regulations, which stipulates the following:

"a) The Director shall establish a special panel of adjudicators of high professional and international standing to which staff members may, subject to Regulation 11.1 (c), make application against an administrative decision or disciplinary action referred to in Regulation 11.1 (a).

"b) The judgements of the special panel of adjudicators shall be final and without appeal,";

UNRWA, Staff Regulations Applicable to Area Staff Members, op.cit., pp. 9-10.

E. An Ad Hoc Joint Appeals Board

When the services of Mr. Sadiq Amin, the UNRWA staff member whose case is the concern of this study, were terminated on 23 October, 1957 (as will be shown in Part III below), steps had not yet been taken to form the UNRWA Joint Appeals Board as required by Regulation 11.1¹. Its formation specifically for the arising case would have involved too detailed a procedure of nominating candidates, electing the staff representative on the Board and his alternate, announcing the names of Board members, both the one appointed by the Director and the other elected by the staff, etc.

Immediately after he was notified of the termination of his services, Amin had started to make verbal and written protests against this decision, and it was already obvious to the Administration that he had the intention of appealing against it. In all fairness and justice to him, and in order to keep up staff morale, it was, therefore, essential that some immediate action should be taken that could aid to safeguard the staff member's interests. Under the circumstances, the UNRWA Director issued on 26 October, 1957, a circular embodying the rules governing the formation of an Ad Hoc Joint Appeals Board² whose terms of reference were the following:

1. a) An Ad Hoc Joint Appeals Board will be established as necessary at UNRWA Headquarters to consider and advise the Director in the case of an appeal by a staff member against:

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1. Supra, p. 25.
 2. UNRWA, Terms of Reference of Ad Hoc Joint Appeals Board (Administrative Circular issued by Director) (Beirut, 26 October, 1957).

(i) an administrative decision to terminate him, in respect of which he alleges the non-observance of his terms of appointment including all pertinent regulations and rules; or

(ii) disciplinary action under Staff Regulation 10.3.

b) In the case of an appeal against a decision based on inefficiency, relative efficiency or redundancy of a staff member, the Board shall not consider the substantive questions of efficiency or redundancy, but only evidence that the decision did not comply with the terms of the letter of appointment, including the pertinent Regulations and Rules or that it was motivated by prejudice or by some other extraneous factor.

2. The Ad Hoc Joint Appeals Board will be established as soon as possible after receipt of a letter from the applicant signifying his intention to appeal. It shall consist of three members appointed as follows:

a) One Headquarters official nominated by the Director.

b) One Headquarters official nominated by the applicant.

c) One Headquarters official co-opted as Chairman by the mutual consent of the first two.

3. a) The name of the Agency official nominated by the applicant shall be communicated by the latter to the Director within two weeks from the date of receipt of these terms of reference. Thereafter the two persons nominated shall choose the Chairman within a period of two weeks.

b) The composition of the full Board shall then be notified to the Director who will immediately communicate it to the applicant.

4. The applicant shall submit his appeal in writing in English or French to the Director within a maximum of three weeks from the date of receipt by him of the notification of the composition of the full Board. An appeal shall not be receivable by the Board unless the above time limit has been met,

provided that the Board may waive the time limit in exceptional circumstances.

5. Upon the date of receipt of the appeal the Director will cause it to be transmitted to the Chairman of the Board for consideration, within 24 hours.
6. The applicant may himself present his appeal to the Board or arrange to have it presented on his behalf by a member of the staff.
7. The filing of an appeal with the Board shall not have the effect of suspending action on the administrative decision which is the subject of an appeal.
8. In considering an appeal, the Board shall act with the maximum of despatch consistent with a thorough review of the issues before it. Normally, proceedings before the Board shall be limited to the original written presentation of the case, together with brief statements and rebuttals which may be made orally or in writing. Such statements as the Board may authorize having regard to the time limit specified in paragraph XI below, shall be presented in English or French within a maximum of three weeks from the date of receipt of the appeal by the Board. Any additional statements shall be presented as required and authorized by the Board.
9. The Board shall have authority to call any staff member who may be able to provide information concerning the issues before it and so require the production of relevant documents.
10. The Board shall, by a majority vote, adopt and submit a report to the Director. The report shall be considered as constituting a record of the proceedings in the appeal and shall include a summary of the matter as well as the Board's recommendation. Votes on the recommendation shall be recorded and any member of the Board may have his dissenting opinion included in the report.
11. The Board shall submit its report to the Director within five weeks from the date of being seized of the appeal.
12. The final decision in the matter taken by the Director after he has received the Board's report shall be notified to the applicant. A copy of the Board's recommendation shall be transmitted to him at the same time.

13. A unanimous recommendation by the Board which is accepted by the Director shall debar the applicant in the case concerned from any further appeal to a special panel of adjudicators, as provided in paragraph XIV below.
14. When either the recommendations of the Board are not unanimous or the Director decides not to accept a unanimous recommendation of the Board, the applicant may appeal to an adjudicator, whose decision shall be final. This adjudicator shall be a member of a special panel of impartial adjudicators of high professional standing established by the Director, from persons unconnected with UNRWA.

F. Some Comparison

It can be seen from articles II through XIV that the terms of reference of this Board, although basically modelled on the practice followed in the United Nations,¹ nevertheless include detailed steps, as well as restrictions in the time factor, that the United Nations Joint Appeals Board does not include.

Two other dissimilarities occur to the mind. First, in this case the staff member's representative on the Board was not elected, as the original practice demands. He was merely chosen by the staff member himself. Secondly, no "panel of adjudicators" is required as the case is if the provisions of article XI above apply under similar circumstances in United Nations Headquarters. Only one member of such a panel is required.

1. Supra., pp. 27 - 28.

Another major difference exists between the practice applicable in the United Nations Secretariat and UNRWA: namely the fact that, in the former, staff appeals can further be made from the Joint Appeals Board to a higher body called the Administrative Tribunal. No textual reference was found in UNRWA Regulations whereby such appeals can be made to this Tribunal which is found only at Headquarters, and whose members travel from time to time to the European Office of the United Nations in Geneva, to adjudicate such appeals.

G. The Administrative Tribunal

The Tribunal was established in accordance with its statute as adopted by the General Assembly by Resolution 351 A (iv) on 24 November 1949 and amended by Resolution 782 B (viii) on 9 December 1953 and by Resolution 957 (x) on 8 November 1955.¹

In an advisory opinion given in answer to one of the many questions raised in the Fifth Committee at the eighth session of the General Assembly² on the Tribunal's legal status, functions and powers, the International Court of Justice "held that the Tribunal was an independent and truly judicial organ..."³ Article 2 of the Statute of the Tribunal

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1. United Nations, United Nations Administrative Tribunal; Statute and Rules (United Nations Publication AT/11, Sales No. 1956. X.1) (New York, January 1956), p.1.
 2. GA (VIII), 5th Com., 420th - 423rd mtgs., and 425 - 427th mtgs.; as quoted in Repertory of Practice..., op.cit., pp. 257-258.
 3. Repertory of Practice..., op.cit., p. 258.

provides that:

2. The Tribunal shall be open:

- a) To any staff member of the Secretariat of the United Nations even after his employment had ceased, and to any person who has succeeded to the staff member's rights on his death;
- b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.¹

The Secretary-General represents the United Nations before the Tribunal and is considered party to its decisions, which are also binding to the General Assembly.² According to Article 10 (2) of its Statute, the Tribunal's judgments "...shall be final and without appeal."³ Consequently, in an advisory opinion given by the International Court of Justice⁴ declaring that the Tribunal was established as an independent and truly judicial body, the Court stated:

... As this final judgment has binding force on the United Nations Organization as the juridical person responsible for the proper observance of the contract of service, that Organization becomes legally bound to carry out the judgment

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1. United Nations Administrative Tribunal, op.cit.
 2. Repertory of Practice..., op.cit., pp.164 and 263.
 3. United Nations Administrative Tribunal, op.cit., p. 3.
 4. Effect of awards of compensation made by the UN Administrative Tribunal, ICJ, Reports 1954, pp. 47 and 53; as quoted in Repertory of Practice..., op.cit., p. 264.

and to pay the compensation awarded to the staff member. It follows that the General Assembly, as an organ of the United Nations, must likewise be bound by the judgment.

H. Judicial Review

The important question of judicial review, however, remained. A proposal was submitted to the Fifth Committee, at the ninth session of the General Assembly, suggesting the establishment of a procedure for a judicial review of the decisions of the Administrative Tribunal. Under democratic national legal systems, such a proposal is accepted without opposition, because the process of judicial review is a prerequisite to a mature and sound judicial system. Now, what happens if a grievous error is made by the Tribunal? A long discussion took place concerning this point in the Fifth Committee. Those opposing the proposal argued that "(1) it was necessary to ensure the finality of the judgments of the Tribunal lest its authority be weakened or its administrative efficiency impaired by excessive delay. (2) The omission of a review procedure from the Statute of the Tribunal had been deliberate so as not to affect the morale of the staff adversely."

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1. GA (IX), Annexes, a.1. 48, p. 3 A/G. 5/L. 317, p. 4, A/G. 5/L. 327; as quoted in Repertory of Practice..., op.cit., p. 264.
 2. GA (IX), 5th Com., 474th - 482nd mtgs. and 484th mtg.; as quoted in Repertory of Practice..., op.cit., pp. 264-265.
 3. Repertory of Practice..., op.cit., pp. 264-265.

No decision was arrived at and the matter was left for further study. As a result, in accordance with Resolution 888 (IX) adopted by the General Assembly, Member States were requested to give their views on the establishment of a procedure for review of the Tribunal's judgements. For this purpose, the Assembly established a Special Committee composed of eighteen Member States to report to it on the subject at its tenth session. In collaboration with the Secretary-General, the Special Committee worked out a recommendation to the Assembly for its consideration by 9 votes to 4, with 4 abstentions for "... an amendment to the Statute of the United Nations Administrative Tribunal to provide, inter alia, for the establishment at the Headquarters of the United Nations of a committee composed of Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly..."¹

This recommendation was referred by the General Assembly at its tenth session, to the Fifth Committee for consideration. Following a thorough study and lengthy discussions, two new Articles (11 and 12) were added to the Tribunal's Statute,² and the recommendation was finally submitted again

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1. United Nations, Annual Report of the Secretary-General on the Work of the Organization; 1 July 1954 - 15 June 1955 (GA/Official Records, X, Suppl. No. 1 - A/2911) (New York, 1955), pp.110-111.
 2. United Nations Administrative Tribunal, op.cit., pp. 4-5.

to the General Assembly and adopted by it. Thus the Committee formed of Member States the representatives of which have served on the General Committee of the most recent regular session of the Assembly had the right of reviewing the decisions of the Administrative Tribunal. The Advisory opinion of the International Court of Justice can be sought when necessary.¹

Now, for the practical purposes of this study, how useful could the presence of such a seemingly powerful organ have been in the case we are interested in here? There was no similar organ in UNRWA where recourse could be made to. The Joint Appeals Board lacked the power of the Tribunal. It is a mere advisory organ to the Chief executive officer, while the Tribunal is an independent judicial body.

Could it therefore, be argued that it is more the presence of the Board, rather than its power to act, which has some value? But, of what real effective value can its vote be when arbitrary action is carried through with some force of determination? This is a question that can presumably attract the scholar's interest and urge him to search for better machinery. In a sarcastic statement made by the delegate of Chile at the Fifth Committee of the General Assembly in 1953,

1. United Nations, Annual Report of the Secretary-General on the Work of the Organization; 1 July 1955 - 15 June 1956 (GA Official Records, XI, Suppl. No. 1-A/3137) (New York, 1956), pp.105-106.

when the establishment of another Advisory Board (the Special Advisory Board) was discussed;

It was rather ironical to talk of the independence of a body whose members would have as much reason to fear arbitrary action by the Administration as the person threatened with dismissal. Such a body, which would be unable to make observations and recommendations, would be as useless as the Joint Appeals Board.¹

Even if the rules and procedures laid down for the "working relationship" between UNRWA and the United Nations Secretariat were such that an appeal could still be made to the Administrative Tribunal, the doubt would still exist regarding the effective practicability of such an appeal,

A staff member who appealed to the Administrative Tribunal had to live in New York without salary, pending the Tribunal hearing of his case. The delay could last for months, while the file of the person concerned was examined by various committees which sometimes did not hesitate to burn their records, by organs that were anything but independent. The Administration had only to allow the case to drag on in order to ruin the applicant.²

I. Conclusion

In going from the general to the specific, the main purpose of this part of the study is to highlight the salient features in the advisory and judicial machinery set up in the

1. United Nations, Official Records, Fifth Committee, 412th meeting, on 25 November 1953, para. 62; as quoted in Young, op.cit., pp. 186-187.
2. Statement made by Mr. Ortega Masson (Chile) before the 412th meeting of the Fifth Committee, 25 November 1953, (United Nations Official Records, para. 63; as quoted in Young, op.cit., p. 203.

United Nations, and similarly the advisory one set up in UNRWA, whereby considerable attention was paid to safeguard staff interests against the abuse of extraordinary powers by the Administration, in the name of the Chief Administrative Officer (the Secretary-General) in the Secretariat, or the Chief executive officer (the Director) in UNRWA.

It will, however, be seen after reading Part III below, that in spite of all available precautions, the use of discretionary powers in an undue arbitrary manner can still be exercised. Although, as will be seen in a while, the termination of services in this case was made on the basis of relative efficiency, evidence can nevertheless be substantiated from a legalistic point of view, that the underlying power instrumentalized was the use, in the Director's name, of his discretionary powers in an arbitrary manner.

What can the student of Public Administration do about a situation like this? What remedies can he devise in order to reform this weakness? In contesting the initial premise of urging for such a solution, it may be argued that this problematic situation is not unique to international administration. It can, and as a matter of fact does, occur in national administration as well. So long as administrative machinery is unavoidably formed of human beings, the human element is apt to demonstrate itself in an undue manner, whenever circumstances call for such demonstration.

True. But in national administration an effective

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It will, however, be seen after reading Part III below, that in spite of all available precautions, the use of discretionary powers in an undue arbitrary manner can still be exercised. Although, as will be seen in a while, the termination of services in this case was made on the basis of relative efficiency, evidence can nevertheless be substantiated from a legalistic point of view, that the underlying power instrumentalized was the use, in the Director's name, of his discretionary powers in an arbitrary manner.

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True. But in national administration an effective

system of controls over the Administration and administrative remedies has been effectively formulated, more or less corresponding to the growth of the powers of the executive. In international administration this system is of a mere advisory character.

Should, therefore, the employee be constantly subject to this threat in international administration? With the growth of its importance in world affairs, is it not advisable that something should be done to promote the sense of tenure, and thence the morale, of the staff, particularly when we know that,

...International organization is a tender plant which must be nursed carefully if it is not to wither before it has had a chance to grow. There is little evidence as yet that it will receive the care it needs, and a small beginning might perhaps be made to assist the growth of an international service tradition by carrying out certain reforms which would go some way towards lessening the present feeling of doubt and instability...1

1. Honig, op.cit., p. 185.

PART III

THE PROBLEM

A. The Case

On 23 October 1957, Mr. Sadiq Amin,¹ staff member of the Audit Branch of UNRWA Finance Division, who occupied the post of Audit Assistant, was unexpectedly informed by the Head Auditor that it had been decided to terminate his service on grounds of redundancy, as from the close of business on 30 November, 1957. The reason for termination, as given by the Head Auditor, was "general suitability".²

The shocking news came to Amin - an oldtimer in the Agency, and the sole supporter of a family composed of wife, daughter, mother and himself - at a time when he had apparently hardly expected it at all. In fact, at the time he received it, he was not only happily carrying out some urgent and important duties assigned to him in Beirut, but still more had been officially informed by his immediate superiors to prepare himself for a duty tour to Jordan, along with a team of auditors.

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1. This name, as well as all others used throughout this study are fictitious ones.
 2. Letter from Sadiq Amin to UNRWA Comptroller, Headquarters, Beirut, Lebanon, 23 October, 1957.

Immediately upon receiving this verbal notification, Amin contacted the Secretary of the Staff Association Executive Committee who advised him to address a letter to the Comptroller, in his capacity as Chief of Finance Division, and indicated to him the lines along which the letter should be based. The letter was written and sent to the Comptroller without any loss of time. In this letter, Amin requested the Comptroller to reconsider his case in the light of the following points:

a) That he had joined the service of the Agency, in the Finance Division (Audit Branch) on 5 June, 1950 (i.e. just over one month after UNRWA had started to function); and, throughout the whole period (5.6.50 - 23.10.57), he had endeavored to carry out his duties honestly and conscientiously to the best interests of the Agency. At no time throughout this period of long service had he received any adverse criticism in his work;

b) While he appreciated the fact that it might have been necessary to affect reduction in the scope of Finance operation, he believed that the Director had, at an earlier date, publicly established that the efficiency of the employee should be the major criterion along which redundancy should be

1. Ibid.

¹
decided. In his case, he added, his termination of service had not been judged fairly along this line;

c) He was a Palestinian refugee - the sole supporter of a family of four persons - who had no other source of income whatsoever apart from his salary from the Agency. He also added his belief that a number of his colleagues were in a better financial condition, drawing pension from previous service in the ex-Mandatory Government of Palestine; and

d) That the term "General Suitability" mentioned to him by the Head Auditor as the decisive factor in his termination, seemed to indicate a very loose conglomeration of possible criteria, and that he would appreciate knowing the various factors that led to his selection for termination of services.

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1. Amin was referring here to a public address made by the UNRWA Director to Headquarters staff, at the UNESCO Hall, Beirut, Lebanon, on 3 May 1957, and recorded on tape. The following is the extract referred to by Amin: "...In making reductions, we will, of course, and we must do it [sic] very carefully by an evaluation of all the functions that the Agency carries in [sic], and also an appraisal and evaluation of the individuals who have been carrying on the functions.

This is a tedious job. It's something which must be done carefully and very thoughtfully, and, I can assure you, there is going to be no sharp cleavage or arbitrary action which is going to be done without very very full thought..."

This tape is found in UNRWA's Recordings' Library, Headquarters Beirut, List of Radio Recordings Available in Public Information Division, Tape Recording No. 4.

Furthermore, Amin, feeling that the matter was of a very urgent and pressing nature, asked for an immediate interview with the Comptroller during which he explained that all factors (priority in service, income, family and refugee status, age, etc.) had not been taken into consideration when the decision was taken. By doing so, Amin had covered the second step in Administrative appeals; namely the "recours hierarchique". "The first step, "recours gracieux" had already been covered when he interviewed the Head Auditor.¹

In reply, the Comptroller said that he was not prepared to take "second hand information", and was also not prepared to reconsider the matter. In discussing his case with the Comptroller, Amin was aware not only of what the Director had said about the steps which must be taken before terminating the appointment of any staff member,² but also of the contents of the circular issued on this subject by the

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1. For a further study of administrative recourses, see C.J. Hanson, Executive Discretion and Judicial Control; An Aspect of the French Conseil d'Etat (London: Stevens and Sons Ltd., 1954), p. 148.
 2. Director's public address to Headquarters Staff; See footnote, supra., pp. 45.

Executive Committee of the Staff Association. ¹ He, therefore, drew the Comptroller's attention to all this, and tried to discuss with him the four points raised in his (Amin's) letter

1. UNRWA Staff Association Executive Committee, "Circular No. 6/57 addressed to Headquarters Staff (Beirut, 25 May, 1957) which explicitly says the following:

"...Following the Director's address to the staff members on 3 May, during which the Agency's budgetary problems and needs for administrative changes were indicated, the Executive Committee held two meetings with the Director for the purpose of clarification of the policy involved and its interpretation to the staff members. The Executive Committee indicated that it was anxious to assist both the staff members and the Administration in order to minimize hardship which could result from a reduction program. This, the Committee felt, could be achieved by establishing equitable criteria for termination of staff when this was inevitable... As a result of the discussions, the Executive Committee is satisfied that, within the policy of inevitable terminations of staff, the Director has established principles which, when implemented, should ensure that the problem is dealt with in the fairest way possible.

"The Agency's re-organization program involves: (a) abolition of certain units; (b) reduction in scope of others; (c) re-organization of others to perform more efficiently.

"In the case of abolition of certain units staff declared redundant will be considered for filling vacancies existing in other units in HQ. Whenever this is not possible, every effort will be made by the Administration to assist staff members in finding employment through its placement services and any other appropriate means. In case of reduction in scope and/or re-organization of units, the most efficient and the most suitable persons will be retained. In cases where two or more staff members are judged to be equally efficient and suitable for the remaining tasks in the unit, consideration will be given first to refugee status, and then to such factors as seniority and the number of direct dependents.

to him, but felt that the Comptroller was not inclined to accept such an argument and was trying to cut the interview short.

According to Amin, the Head Auditor had stated that the decision was taken by the Comptroller, while the latter said that it was the Head Auditor's decision. Finally Amin was told by the Comptroller that he should choose somebody else to reconsider the decision, and that he (the Comptroller) was prepared to change it if the Head Auditor agreed.

In addition to the interview, Amin also received a reply to his letter from the Comptroller, dated 25 October, 1957, stating the following:

... As I have already informed you, the reduced scope of the Agency's activities and its critical financial position have made it necessary to effect certain reductions in the Audit Branch. In accordance with the explicit instructions of the Director, the persons selected as being redundant as a result of this reduction in staff have been selected solely on the basis of their relative ability and value to the Agency. I regret to inform you that, after thorough consideration of the staff members concerned, it has been decided that you must be released from the service with the Audit Branch.

I also regret to inform you that there is no other vacancy in the Finance Division to which you might be assigned, and that you have therefore been declared redundant to the needs of the Finance Division...¹

Amin now realized that it was no use debating any longer with the Comptroller and the Head Auditor, particularly

1. Letter from Comptroller to Amin, No. CO/3/4 dated 25 October, 1957. Refer to UNRWA Personnel Division's Records, Beirut.

when he furthermore received a letter from the Chief of Personnel Division confirming the decision of termination on behalf of the Director, this time. This letter had the legal significance of expanding the area of dispute with the staff member from the Finance Division alone to the Agency, as a whole, and included the following:

... I believe you have already been advised that, as a result of the financial difficulties in which the Agency finds itself, a reorganization and curtailment of some parts of UNRWA's program is necessary. This has had the unfortunate result of rendering your present post redundant.

I sincerely regret that, although every effort has been made to find you an alternative post in the Agency, I am obliged to advise you that at present there is no vacancy commensurate with your qualifications and experience, and neither is it likely that there will be one in the foreseeable future.

In view of this, the Director has decided that you will be separated from the Agency at the close of business on 30 November, 1957. However, it is understood that the Comptroller will release you from active duties around 15 November.

The Director is anxious to assure you that the decision to separate you from the Agency in no way reflects on the way in which you have performed your duties.

... I take this opportunity, on behalf of the Director, to thank you very sincerely for the long and faithful service you have given to the Agency
...¹

B. The Appeal

Upon receiving this letter, Amin decided to make an appeal to the Director against the Agency's decision. He

1. Letter from Chief, Personnel Division to Amin, No. A/90135/2635, dated 30 October, 1957.

felt that (a) this decision was motivated by prejudice; and (b) other factors were not taken into consideration.¹ He decided to approach me and ask whether I would agree to represent him on the Ad Hoc Joint Appeals Board. Having concluded from his strong assurances that prejudice could be established as the motivating factor, I accepted his request.

Upon my advice and the advice of the Secretary of Staff Association Executive Committee, Amin launched his appeal on the following day in a letter addressed to the Director.² In this letter of appeal, he condensed the facts of his case as well as his point of view. In conclusion, he asked for administrative remedy, stating firmly his belief that the decision of the Head Auditor was biased and expressing his confidence to prove that the decision was not based on recommendations of, or even consultation with, his immediate superiors. He even quoted two of his supervisors as having only recently expressed their satisfaction with his work, as well as the surprise of one of them at the decision taken. He also mentioned to the Director that he had been regularly receiving his yearly increments, and that his work performance and "general suitability" had been given particular appreciation in a recent official meeting held by the Finance Division in the Comptroller's Office to discuss the Annual Audit Report.

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1. See Amin's letter to Comptroller, supra., pp.45-46. Also see Staff Association Executive Committee's Circular to Headquarters Staff, footnote, supra., p.47.
 2. Letter from Amin to Director, dated 31 October, 1957.

He ended his letter by reassuring the Director that he had sufficient evidence to prove to the Ad Hoc Joint Appeals Board that the termination of his services was motivated by prejudice, and by reasons other than efficiency.

Amin's request for appeal was duly accepted by the Director, on whose behalf the Agency's General Counsel wrote back to him on 8 November, and communicated to him a copy of the terms of reference of the Ad Hoc Joint Appeals Board.¹ In accordance with these terms of reference, the General Counsel asked Amin to communicate to the Director, within two weeks from the date of his receipt of them, the name of his nominee on the Board.

On 14 November, Amin replied communicating to the Director my name as his representative on the Board. Upon receipt of this communication, the Director immediately appointed one of the Legal Officers in the General Counsel's Office, Mr. Jean Berger, as the Agency's representative on the Board. In accordance with the Board's terms of reference, the Agency's representative and myself met the following day and co-opted Mr. Rafiq Tayeb to act as Chairman of the Board. Mr. Tayeb concurred and the Board was thus formed, and Amin was duly informed of its formation, by a letter from the General Counsel,² on behalf of the Director.

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1. General Counsel's Letter to Amin, No. LEG/250/01 (2) dated 8 Nov. 1957.
 2. General Counsel's letter to Amin, No. LEG/250/01 (2), dated 15 Nov. 1957.

In this letter, the General Counsel furthermore drew Amin's attention to paragraph IV of the Board's terms of reference regarding the time limit for submission of his¹ appeal.

On 4 December, Amin submitted to the Director his written appeal which a private lawyer and myself took part² in preparing, and which can be summed up as follows:

LETTER OF APPEAL

After expounding his case in a chronological order and referring to the various official communications so far had between him and the Agency, he proceeded to bring up the points which, in his opinion, carried legal relevance:

1. Gross Irregularity by the Comptroller's Decision

a) The Head Auditor, who was the first to inform him of the decision, communicated it to him as having been based on the grounds of "general suitability". Upon reviewing the Agency's Regulations, Amin failed to see that "general suitability" was contemplated as grounds for termination of service, "even after seven and a half years of service."

b) In the interview with Amin, the Comptroller said bluntly that he was not prepared to review the case or alter the decision, except if the Head Auditor did so. In other words, the Comptroller - who was the Chief of Finance

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1. Terms of Reference of Ad Hoc Joint Appeals Board, Supra, p. 31-34.
 2. Letter of Appeal from Amin to Director, dated 4 December, 1957.

Division - left the power of decision in the hands of his subordinate, the Head Auditor, against whose decision itself Amin was making a complaint to the Comptroller; hence no "recours hierarchique",¹ in the effective and proper sense.

e) According to Amin's information, two out of his three immediate supervisors were not consulted before the decision was taken. He furthermore contended that he was given no opportunity to defend himself against a decision which had apparently been based on the merits of "general suitability", and without taking "other factors"² into consideration. This, Amin maintained, was a basic reason why he considered the decision to have been motivated by prejudice.

2. Relative Ability and Efficiency

When, upon reconsidering the matter, the Comptroller apparently discovered that a grave mistake had been committed in having attributed the termination of services to the merits of "general suitability", he shifted to another term in his letter to Amin dated 25 October, and wrote the following:

In accordance with the explicit instructions of the Director, the persons selected as being redundant as a result of this reduction in staff have been selected solely on the basis of their relative ability³ and value to the Agency.⁴

1. Hamson, op.cit., p. 148.

2. Refer to Circular issued by Staff Association Executive Committee - footnote, Supra., p. 47.

3. The underlining is mine.

4. Supra., p. 48.

In contesting this point, Amin referred to his ability vis-a-vis his colleagues, and concluded that, by having singled him out for termination, the motive of prejudice was the decisive factor.

He then proceeded to point out in brief, the status, ability, background, income, etc. of each of his colleagues in the same grade, contending that he was superior to them in qualifications and that he also had a more deserving sociological case for retention in the Agency's service.

3. Economy

a) While Amin fully appreciated the fact that the exigencies of service may sometimes demand a reduction of staff on the grounds of economy, he on the other hand strongly maintained that justice and good government likewise demanded that such reduction should not effect the most senior man in any given grade. He expressed his pride at having spared no efforts to perform his duties in a very satisfactory manner, and could not accept the decision, accusing those who took it of having been not only unfair to him, but also unfaithful to the institute to which they were accredited.

b) He asserted that, by terminating his services, the result would be increasing the Agency's expenditures rather than economizing in them, the reason being a purely mathematical one: by disposing with his services, the number of days for which travel allowances were to be incurred would entail amounts of money larger than his salary. "Besides", he continued, "one would have thought that the decision to reduce

staff in any institute for any economical measure should leave the Audit Branch to the last."

In his opinion, the Branch was already understaffed, especially that its budget had provided for three posts which, until then, had never been filled. ¹ Still more, no other staff reduction had yet been made in any of the Agency's basic functions. Under all circumstances, however, auditors should be the last to be reduced.

4. Prejudice

a) To prove further that prejudice itself was the motivating factor, Amin complained that, out of all staff members in Finance Division, he was terminated without an examination of each individual case.

b) His efficiency was never questioned before. On the contrary, he felt that he had been continuously appreciated by having normally received all his promotions, increments, salary increases, etc., and, of course, by his retention in the service for more than seven and a half years. Prior to his termination, he had never been criticized or reprimanded, or even accused of having committed a mistake or conducted himself in any way other than with complete devotion to his service. He, therefore, felt entitled to know the reasons of this sudden adverse change, and refused even to think that the

1. Amin proved to be correct when, towards the end of May, 1959, a new member of staff by the name of Jack Roberts was recruited to occupy an international post in the Audit Branch.

seven long years and more of the prime of his youth that he had spent with the Agency, had been spent "in vain and severely and abruptly cut by a very irregular and unjust decision."

In conclusion of his appeal, Amin said: "If, for personal convenience or for other personal reasons, you will consider my return to my original post inadvisable, I request without prejudice to my previous request for reinstatement, that you order my transfer to the Education and Training Division, to fill the vacancy created by the death of the late Mr. Alex Babakian."

THE AGENCY'S REPLY

Amin's appeal was transmitted to the Chairman of the Board, who duly referred it to the General Counsel for reply on behalf of the Director. This was done on 18 December, and can be summed up as follows:¹

The Facts

a) Amin's post was declared redundant to the Agency's requirements after 30 November, 1957:

b) Having carefully reviewed all other possible vacancies in the Agency, there was no suitable one in which the Agency could offer him continued employment;

c) Amin was given 30 days' written notice of his²

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1. General Counsel's Letter to Chairman of Ad Hoc Joint Appeals Board, No. LEG/250/01 (2), dated 18 December, 1957.
 2. This is wrong. Amin was actually given 38 days' notice (from 23 October until the close of business on 30 November); refer to the letter from Chief of Personnel Division to Amin, supra., p. 49.

separation from the Agency's service. This was in conformity to his letter of appointment.

The Competence of the Board

The General Counsel requested the Board to recall paragraph I (b) of its terms of reference,¹ which denied it the power of considering the substantive questions of efficiency or redundancy, and limited its authority to termination cases which do not comply with the terms of the letter of appointment, or those motivated by prejudice or some other extraneous factor.

The General Counsel also maintained that the Appellant failed to show by a preponderance of the evidence the validity of his allegations, for the following reasons:

Compliance with the Terms of Letter of Appointment

Including Pertinent Regulations and Rules:

a) The Appellant's letter of appointment stated inter alia in paragraph 4 that: "This appointment may be terminated on 14 days' notice by the Agency at any time."²

b) This letter of appointment is subject to the Agency's Staff Regulations and Staff Rules applicable to area staff members, and in particular to Staff Regulation 9.1 which provides that:

1. Supra., p. 32.

2. Letter of appointment addressed to Amin by Administrative Officer, No. Pers/ SA dated 15 June, 1950. Reprinted on standardized form, and addressed to Amin by Personnel Officer, on 1 July 1952, para 4.

The Director may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.¹

Prejudice and Extraneous Factors

a) The Agency's decision was not motivated by prejudice or by any other extraneous factor, but was based on the necessity of securing the highest standard of efficiency within the financial limits imposed upon the Agency by the availability of funds. The manner in which the Agency achieves this is necessarily a matter for its sole judgement. In declaring the post redundant, the Agency reached its decision properly and without prejudice after a consideration of all factors.

b) The reference made by the Appellant in his statement to certain conversations and correspondence between himself and members of the Finance Division is irrelevant to the appeal "firstly because they do not in any way establish that prejudice or other extraneous factors motivated the finding of redundancy, and secondly because they relate to internal decisions which were taken by Finance Division and not to the official decision taken by the Agency to terminate the applicant."

Conclusion

In conclusion, the General Counsel submitted that the Board should:

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1. Staff Regulations Applicable to Area Staff Members, op.cit., p. 7.

a) Find that the Agency's decision was properly taken and fully complied with the terms of the applicant's letter of appointment including all pertinent regulations and rules, and was not motivated by prejudice or by any other extraneous factor; and

b) Recommend to the Director that the appeal should be dismissed and the Agency's decision be upheld.

THE APPELLANT'S REBUTTAL

The General Counsel's reply was referred by the Chairman of the Board to the Appellant for rebuttal. His rebuttal, which I again took part in preparing along with the Appellant and a private lawyer, came to the Board on 2 January, 1958, and can be summed up as follows:

The Facts

a) The Appellant expressed his regret that the Agency's statement considering his post redundant was unacceptable to him because of the need for auditors that any organization required until the close of its business. He reiterated his point of view that the motivating factor was prejudice and "... to be more explicit, I will say, without fear of being contradicted, that I was the target of that decision and not my post, for I cannot see how any accounting system can service without proper auditing. Your Board can very easily verify this fact and see for themselves that,

1. Letter from Amin to Chairman of Board, dated 2 January, 1958.

in our Division, I was singled out for discharge, and no re-organization in the routine of the work or the order of its execution, was ever done.

b) As regards his request for transfer to an alternative post in the Agency, he challenged the allegation that a careful review of all possible vacancies was made, and that it was certainly true to say that, before 30 November 1957, the period which must be considered as part of his employment with the Agency, there was (and, as a matter of fact, continued to exist throughout the consideration of this appeal) a vacant post to which the Appellant maintained that he could be suitably transferred, in the Education Division. He thus contended that, had there been any inclination to help him on the part of Finance Division, the matter of his transfer, far from creating any embarrassment or financial difficulty, would have been a satisfactory arrangement to all concerned.

The Competence of the Board

Amin did not dispute this competence; on the contrary, he affirmed that the evidence submitted by him was sufficient to help the Board to decide in his favour.

Compliance with the Terms of Reference of Letter of Appointment Including All Pertinent Regulations and Rules

Amin did not allege that these terms were a cause of controversy in the appeal, but strongly maintained that, together with whatever the discretionary powers of the Director may be, they should at all times be governed and interpreted

by the principles of justice and good administration. It was not the text of regulations and rules which really counted, he said, but the spirit implied therein. "Indeed, the promulgation of regulations allowing appeals from decisions taken in such matters proves that any decision taken by, or on behalf of, the Director is not impeachable."

Prejudice and Extraneous Factors

On this point, Amin made his major attack on the General Counsel's reply, for the following reasons:

a) The General Counsel's phrase "necessity of securing the highest standard of efficiency"¹ was to him "...a most irreconcilable statement to make" if compared to Chief of Personnel Division's commendation of his work, on behalf of the Director.² In addition, Amin assured that, when his qualifications are compared to those of his colleagues, it would appear at once that he was the best qualified of all, that he had used his qualifications and energy to give the best results, that he had in fact taken an initial part in setting up the Audit Branch, and had served in it the longest period of all.

b) Challenging the General Counsel's statement of "financial limits imposed upon the Agency by the availability of funds,"³ the Appellant went on to say "...I do not want

1. Supra., p. 58

2. Supra., p. 49

3. Supra., p. 58

to be rude in my reply, but I must say that this is the flimsiest cause ever submitted, when you know that budgetary provisions were already made and approved for my post up to, at any rate, the end of December 1957. The sudden change and abrupt way which cut me off by the end of November 1957, alone testify to the overwhelming prejudice which even blinded the eyes of those who entertained it against me that they have even disregarded this single fact."

c) Amin then refuted the General Counsel's serious claim that that "is necessarily a matter for its [the Agency's] sole judgment,"¹ for, in Amin's opinion "...while it is true to say that the Agency can, in its judgment, terminate the employment of any of its employees, it is equally true and important to say that that judgment shall not be influenced by any prejudice (and in my case there are mountains of it)."

d) He then defied the General Counsel's statement that he had been declared redundant "after a consideration of all factors."² He submitted to the Board that such consideration was not taken at all. "...I say this," he added, "because neither the factor of my qualifications, nor the factor of my long and satisfactory service, nor indeed the factor of the subsistence of my family have ever been taken into that consideration."

e) In connection with the conversations and correspondence between him and members of Finance Division -

1. Ibid.

2. Ibid.

including, of course, the Comptroller - the Appellant defended that these could not be so easily brushed away on the grounds of irrelevance. Although they represented the viewpoint of the Division - indeed, the one mainly concerned with this dispute in the Agency - they, and the facts which could be elicited from them, nevertheless constituted an important part of the issue. "I cannot appreciate the assertion made by the General Counsel," Amin said, "that internal discussions have no bearing on the case. The decision terminating my appointment originated in the Division and whatever was said or written must be enquired into and fully investigated. This is even more important because I base my appeal on personal prejudice, and what better evidence can be submitted than what was said and discussed in the Division concerned about my case."

Conclusion

In conclusion, the Appellant submitted that the Board should recommend to the Director to set aside the decision terminating his services and restore him to his previous post, or to such other post commensurate with his qualifications and long standing with the Agency.

THE AGENCY'S REMARKS AND COMMENTS

The Appellant's rebuttal was, in turn, referred to the General Counsel for any remarks or comments, on behalf of the Director. In his reply of 7 January, 1958, the Deputy General

Counsel said what can be summed up as follows:¹

a) There was nothing new in the Appellant's rebuttal, and the "allegations" contained in it had already been presented in substance in his (Amin's) memorandum to the Board dated 4 December, 1957. "The rebuttal makes it clear," the Deputy General Counsel said "that the applicant is attempting to substitute his judgment for that of the Agency in determining when a post is redundant." He, therefore, submitted that this involved a "substantive question" which, in accordance with paragraph I (b)² of the Board's terms of reference, was beyond its competence to consider.

b) The point raised by Amin regarding his transfer to another vacant post had already been dealt with.³

c) The Appellant did not produce any evidence whatsoever to the effect that, in having decided to terminate his services, the Agency failed to comply with the terms of letter of appointment including all pertinent regulations and rules, or that it was motivated by prejudice or by some other extraneous factor.

The Deputy General Counsel, therefore, submitted that the Board should find as already indicated in his earlier reply dated 18 December, 1957.⁴

1. Letter from Deputy General Counsel to Chairman of Board, No. LEG/250/01 (2), dated 7 January, 1958.

2. Supra., p. 32.

3. Supra., p. 56.

4. Supra., p. 59.

With all written documents in hand, the Board now felt itself in a position to proceed and make its investigations and hold the necessary hearings.

C. The Board

Before making an account of this, however, it is worthwhile stopping for a moment to give some brief descriptive background information of the Board's Chairman and members.

The Chairman (Mr. Rafiq Tayeb) was a man highly reputed for his integrity, ability and straightforwardness, not only among Agency staff alone, but also in the various Arab countries. This was due to his personal background as an Education Specialist who had been in high Education posts for many years before. He was himself a prominent national of one of the Arab host states, of Palestinian birth, who had held the rank of Minister of Education for a long period, with also the portfolio of Minister of Foreign Affairs for some time. Prior to that, during the British Mandate in Palestine, he had occupied for many years the post of Inspector of Education.

In his early youth, after having completed his secondary education with high success in Palestine, he was one of the few lucky Palestinians whose family could afford to send abroad for higher education. He joined the American University of Beirut for several years and, after obtaining his B.A. degree in mathematics, he also proceeded to London where he joined the London University and obtained its Master's

degree in the same field with "high honours".

Although a mathematician, he nevertheless combined his knowledge of mathematics with a strong command of Arabic literature and a deep sense of humor. These embellishing qualities ingrained in him were inherent in his talented family which is still well-known for the good writers and poets it had produced. His brother was one of the best poets in the Arab countries.

With a background like this, he unquestionably commanded a high fatherly respect and full confidence in the Agency from both international and area staff members alike.

In UNRWA, to which he was transferred on loan from UNESCO (The United Nations Educational, Scientific and Cultural Organization), he occupied the high position of Education Advisor.

Mr. Jean Berger, the Director's representative on Board, was a French lawyer who occupied the post of Legal Advisor in the General Counsel's Office. A middle-aged Frenchman, he was a scholarly character reputed for his integrity, hard work and competence, with a vast theoretical and practical knowledge in law. In addition to his job in UNRWA, he was also a member of the Faculty of "l'Institut des Sciences Politiques" of St. Joseph's University in Beirut.

The author of this study, who was the Appellant's representative on the Board, is an Arab Palestine refugee himself. As townmates, he had known the Appellant and his

family ever since his childhood. In Palestine, after having completed his secondary education, he joined the teaching profession in government schools for a few years. Later on, he joined the Broadcasting profession for many years, as a news announcer and commentator, thus becoming somewhat popular among his countrymen. He joined UNRWA in May 1955, as Public Relations Officer (Radio). In the meantime, he had embarked on a plan for higher education at the American University of Beirut which, for three full scholastic years, he carried out alongside with his full-time work.

D. The First Hearing

In all fairness to the Appellant, upon my request as his representative on the Board, and in accordance with article VIII¹ of its terms of reference, the Board agreed to give him the opportunity of reporting to it verbally whatever additional evidence he still had in mind in order to prove that, as already claimed by him, his termination of service was motivated by prejudice. The Board consequently held the first hearing on 15 January, when a full and detailed verbal statement was given by the Appellant.

Although Amin's statement before the Board comprised mainly of points and arguments already included in his written appeal and rebuttal to the Agency's reply to it, as well

1. Supra., p. 33.

as of the relevant sequence of correspondence involved in the case, it nevertheless included some new points which, he thought, could add to the strength of his attempt to establish prejudice as the motivating factor. The following is a brief account of Amin's verbal statement:

a) Amin gave a detailed account of his official status with UNRWA ever since he was appointed on 5.6.1950 in the Pre-Audit Section of the Chief Accountant's Office. His starting salary was LL. 350 p.m.; on 1.1.1951, his salary was raised to LL. 400 p.m. to be further raised on 1.4.1951 to LL. 500. After that he obtained his increments regularly within the same grade (Grade 10), until 1.6.1954 when he was promoted to grade 11, at a monthly salary of LL. 575. From that date onward he was kept in grade 11 until his salary reached LL. 655 on 1.6.1957.

b) He then went on to point out that, at some date, it was decided that those who did the same work in the Audit Branch should be placed in the same grade, with the result that three of his colleagues were promoted enough to become on the same level like him. Later, one of them was even promoted to a higher grade. Being older in appointment date, however, Amin's salary continued for quite a time to be actually higher than that of the colleague promoted to the higher grade.

By stating this, Amin was trying (a) to establish his right to priority in the service, and (b) to indicate an old injustice done to him, which could have probably

constituted some kind of prejudice resulting from personal dislike to him on the part of some of his superiors.

c) He presented photostatic copies of his academic qualifications, as well as certificates from firms with which he had worked prior to his employment with UNRWA, and which spoke well of his efficiency and cooperative spirit.

His purpose here was to prove his efficiency and qualifications.

d) Amin narrated a few incidents where "political discussions" had been held in the office with his supervisors (who were international non-Arab members of staff) and colleagues. These discussions were particularly held during the Anglo-French attack on Port Said in November 1956, when almost everybody in the area was deeply concerned.

He strongly maintained that these political discussions with some of his supervisors, particularly Mr. Ralph Smith,¹ were in the background of his later termination of services.

In saying this, the Appellant was trying to establish bias and lack of impartiality among his superiors, thus questioning their international loyalty.²

e) He then narrated a few incidents, starting January 1957, giving the impression that Mr. Smith was trying

1. Infra., pp. 88-89.

2. The question of "loyalty" in international civil service is discussed in some detail below; see infra., pp. 126-135.

to "put sticks into his wheels". This, Amin said, the supervisor did by having often given him either an extremely difficult job here, or an embarrassing one there, or refusing to give him a pleasant one at all, as the case may be.¹

His purpose here was, again, to prove (a) prejudice mounting up against him from the rank of some of his immediate supervisors to reach at a later date the Head Auditor, and eventually the Comptroller, and (b) discrimination between him and his colleagues who, for one reason or another, seemed to have been getting along much better than he did with the supervisors.

f) Amin then proceeded to state that the manning table of the Audit Branch was not fully recruited at the time of his termination. There were three vacant posts unoccupied: two for international employees and one for a junior staff member.² He also affirmed that no financial saving could possibly be made by terminating his service, because work had already been accumulating, and the staff members who were retained in the service would thus have to make more duty visits to the field, and stay for longer durations, thus costing additional expenses to the Agency at least equal to, if not more than, his salary.

Here, the Appellant was not only trying to refute the

1. Infra., pp. 73-74.

2. This statement was confirmed by the Comptroller when he later appeared before the Board; infra., p. 83.

excuse of economy made through his reduction to justify his termination as redundant to the Agency's needs,¹ but also to prove that more staff were needed to cope with work requirements.

g) He then stated that arrangements had already been made for four members of the Audit Branch, including himself, to proceed to Jordan on a duty tour in November 1957 (i.e. the month following his termination notification). The necessary advice, clearance and travel authorizations had all been prepared. Upon inquiring from one of his immediate supervisors (Mr. Edward Cook) whether he (Amin) was also included in the group proceeding to Jordan, he was informed in the affirmative.

According to Amin, this point proves that the decision to terminate his services must have been taken so abruptly as a result of personal rivalries existing against him in the undercurrent, and taking effect at a time when this decision was not expected at all.

h) On 21 October 1957 (i.e. only two days prior to the date when the Head Auditor notified him of the decision to terminate his services), Amin was asked by the Head Auditor himself to do a specific auditing job at Base Warehouse and Post Office. He immediately put himself to the task and, upon fulfilling his job, reported back to his office two days later with a happy sense of accomplishment. As

1. Comptroller's letter to Amin, supra, p.48.

he was writing down his audit report on this mission, he was suddenly called into the Head Auditor's office to be told by the latter, only to his great disappointment, that the Comptroller had asked him to reduce by one the number of employees in grade 11. The matter was considered, continued the Head Auditor, and it was decided that he (Amin) should be selected for termination. The Head Auditor stated that the decision was taken on grounds of "general suitability". Amin objected and argued that (a) such a factor was never contemplated by the Agency as a reason for termination; (b) the Audit Branch should be the last where reduction of staff should be made; and (c) he could not see the justification of having been singled out for such a measure. The Head Auditor told him that the decision was final, but he did not specify that it was taken by the Director. In point of fact, the Head Auditor clearly stated that it was the Comptroller's decision, himself.

1) Continuing his story to the Board, Amin then proceeded to explain the steps followed by him to defend his case. As mentioned earlier in this study,¹ he contacted the Secretary of the Staff Association Executive Committee who advised him to address a letter to the Comptroller, and indicated to him the lines along which it should be written. The letter was written and sent to the Comptroller without

1. Supra., p. 44.

any loss of time.¹ Feeling that the matter was urgent and pressing, Amin also asked for an interview with the Comptroller in which he explained that all factors (e.g. qualifications, income, family and refugee status, priority in service, etc.) were not taken into consideration when the decision of termination was taken. His impression was that, in this interview, his recourse to the Comptroller was not given serious attention.²

j) Amin then quoted two of his supervisors (Messrs. Edward Cook and William Brewer) as having said to him that, in the meeting held for this purpose with the Head Auditor, little discussion had taken place and that, in their opinion, he was as efficient as the other Assistant-Auditors.

In stating this he had a two-fold purpose.

- (i) To prove that the factor of relative efficiency was not discussed; and
- (ii) To prove that Mr. Smith must have played a big role in motivating the decision, because the Head Auditor himself - who had only recently joined the Agency - did not have much chance to know and evaluate Amin's efficiency sufficiently enough.

According to Amin, it must have been prejudice mounting up at an earlier stage, and stimulated by Mr. Smith, that had

1. Supra., pp. 44-45.

2. Supra., p. 48.

motivated the decision.

k) Amin then mentioned to the Board a few examples of work assignments given to him by Mr. Smith to embarrass him. One of them was in Gaza Field Office where he was able to discover some substantial financial discrepancy, an auditing operation, which others were trying to avoid taking up. Another was with the Travel Office where he also claimed to have spotted some serious irregularities. These and similar assignments were carried out by him not only well and promptly enough, but, according to him, to an extent that, if due investigation had been made, it would have led to some serious disciplinary measures against a number of personnel, including some members of the Accounts and Audit branches themselves.

In this connection, he quoted a senior member of Finance Division (Mr. Alic Howards) as having commended him for his help and cooperation.

l) In order to supplement as thoroughly as possible his defence of his efficiency, Amin then stated that, in a meeting which he had with the Head Auditor sometime in December, 1957 (i.e. two months after the decision of his termination, and when his appeal was still in the hands of the Ad Hoc Joint Appeals Board), the latter suggested that he was prepared to recommend him for work at the Comptroller's Office in the American University of Beirut. The Head Auditor even informed him that he had also recommended him to fill the vacant post of Accountant in the Education and

Training Division of UNRWA.

In conclusion, the Appellant submitted to the Board that his case should be remedied by reinstating him in his post, even if such reinstatement had to be done at the cost of terminating the services of his elderly colleague, Mr. Sarkis. Although he again pointed out that he objected to the principle of termination in the Audit Branch, at this stage of the Agency's work, he nevertheless maintained that, if termination of one staff member was unavoidable, his retention in the service would be much more useful and beneficial to the Agency's interest than retaining Mr. Sarkis "whose health and old age did not permit him to travel and carry out the essential field work." He also added that Mr. Sarkis received additional income from both his pension from the ex-Mandatory Government of Palestine and the salary of his wife, while he (Amin), who was still at the prime of his youth, had no income whatsoever but his salary from UNRWA, and had to support three other persons at home.

E. Problem of Time Limit

In accordance with article XI of its terms of reference,¹ the Board was now faced with the problem of time limit. Upon seeking the advice of the Deputy General Counsel in his capacity only as the Agency's Acting legal advisor, at the time, in a meeting held purposely with him on 13 January,

1. Supra, p. 33

1958, he expressed his legal opinion that the Board could not consider itself of having been "seized of the appeal"¹ until it was in possession of the necessary documents concerning this appeal; in other words, until the two essential statements were received, namely the appeal from the Appellant and the Agency's reply to it. Since the Agency's reply was received on 18.12.1957, the period of five weeks within which the Board had to submit its report to the Director should then begin to be counted as from that date.

In addition, the Board also noted in the same meeting the Deputy General Counsel's viewpoint (interpreting Article IV of the Board's terms of reference)² that an extension of the period mentioned in Article XI was possible, if the Board found such an extension necessary.

F. A Delicate Stage

After having carefully studied the written statements of both the Appellant and the Agency, the Board considered that there was a delicate situation concerning the procedure followed in the termination of the staff member's service, as well as the grounds for it. The Board, therefore, found it more advisable to report its views on this delicate point to the Director, requesting him to find an outlet for the critical situation before the Board proceeded any further in the case.

1. See Board's terms of reference, art. XI, ibid.

2. Supra., p. 32-33.

Accordingly, it submitted a confidential report to the Director¹ and decided unanimously that, having submitted it, its proceedings should be suspended until a reply from the Director was received.

In its report, the Board first gave a full account of Amin's case, including his employment history in the Agency. After that, it pointed out to the Director how, when Amin was notified by the Head Auditor of the decision as having been taken on grounds of "general suitability", and when he made his objection, no chance was given to him at the time to rebut the adverse comments. The Appellant made his objection on the grounds of (a) efficiency, qualifications, and seniority of service; (b) the fact that "general suitability" was never contemplated as a basis for staff reduction; (c) that "other factors" (priority in service, refugee status, other income) were not taken into consideration; and that (d) the Audit Branch should be the last place in the Agency where staff reduction should be effected. He therefore concluded that, in having singled him out for reduction, the decision was, at a certain supervisory level, motivated by prejudice. Finally, he asked to be either reinstated, or appointed to fill a suitable vacant post in the Education and Training Division.

The Board then proceeded to point out the Agency's reply to Amin negating and disproving the point of prejudice. It explained the General Counsel's defence that the decision

1. Confidential Report from Chairman and Members of Board to Director, dated 9 January, 1958.

(a) was taken in the interest of the Agency by the application of Regulation 9.1 of Staff Regulations;¹ (b) was not motivated by prejudice or any other extraneous factor; (c) was dictated by reasons of economy; and (d) complied fully with the Appellant's letter of appointment including all pertinent staff regulations and staff rules.

"As the decision taken was not based on the Director's discretionary powers," the report continues, "the Board considered it within its competence to examine whether or not the termination of the Appellant's appointment was in conformity with the terms of his employment. As a result, the following facts were therefore found relevant:

a) The invocation of Regulation 9.1.² of UNRWA's Staff Regulations in connection with "the interest of the Agency" - in the sense required by the Regulation - was mentioned for the first time in the Agency's reply dated 18 December, 1957.³

b) The Administration appeared to be uncertain as to the grounds on which the Appellant's appointment should be terminated.

The Board, at this stage, found it premature to comment on the Appellant's contention that the termination of Amin's appointment was motivated by prejudice or bad intention. Nevertheless, the absence of prejudice could not have made

1. Supra., p. 58.

2. Ibid.

3. Supra., pp. 56-59.

regular the measure taken. In view of this the Board concentrated its argument on the procedural weakness of the case, and said the following:

In our opinion, the procedure followed was not based on any written text of regulations. There is no doubt that the Administration is unquestionably empowered to assess the competency of everyone of its staff. But, as the rules stand, such assessment by itself cannot be taken as the only criterion for terminating the appointment of an employee. The result of such a procedure is bound to affect adversely the professional record of the employee and appears to have in a way the same ultimate effect of termination for cause.

Moreover, the Secretary-General is bound in similar cases to apply staff Rule 109.Lc.¹ which provides that '...if the necessities of service require abolition of a post or reduction of the staff... due regard shall be had in all cases² to relative competence, to integrity and to length of service...' In the opinion of the Board, the text just quoted should constitute the optimum power conferred on the Director, unless, by some explicit constitutional text of which we are not aware, he has actually been given more extraordinary power.

Consequently, the Board unanimously considers that the termination of Amin's appointment has not been in accordance with regular procedures and that it should report the matter to you...³

In conclusion, the Board, aware as it was of the difficult financial circumstances of the Agency, and in order not to overlook the strong reasons which might dictate a policy of staff reduction, suggested the following for the purpose of avoiding any compromise in the Director's serious task, and at the same time to reserve what the Board members believed to be justice:

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1. United Nations, Staff Rules, op.cit., pp.47-48.
 2. The underlining is mine.
 3. Confidential Report from Chairman and Members of Board to Director, supra, p. 76.

a) That a study be made to lay down a procedure embodying and explaining in full not only the criterion of competency, but also other relevant criteria so that decisions of termination based on them shall be uncontestable. (In the opinion of the Board, such a proposed procedure might be arrived at by the institution of an ad hoc consultative committee).

b) That administrative steps be taken which would remedy the situation and consequently make it unnecessary for the Board to proceed further.¹

In this respect, the Board went as far as telling the Director that it had to report its viewpoint to him, at this stage, before proceeding any further with the case and probably, as a result, finding itself obliged to reveal in a scandalous manner the procedural mistakes committed in a scandalous manner the procedural mistakes committed by the Administration.²

For reasons that will be explained later on in this study,³ the Board's suggestions were refused by the Acting Director, and it was asked merely to proceed with the case as it stood.

G. Written Evidences and More Hearings

It was now the Board's duty to conduct the necessary investigation into all points and circumstances, and with all persons, mentioned by the Appellant.

For my part, although I was his representative on the Board, I nevertheless had another moral responsibility

1. Ibid.

2. Ibid.

3. Infra., pp. 101-102.

to the general interest of the Agency and its whole body of staff. In other words, it was my duty to make sure that the decision taken was a carefully considered and fairly justifiable one, even if it had to be upheld to the personal detriment of the Appellant himself whom I was representing.

(1) Written Evidences

On more than one occasion the Appellant claimed that at least two of his immediate supervisors (Messrs. Brewer and Cook who had apparently been misinforming him) were not consulted before the decision was taken.¹ Nevertheless, to my surprise, when the Chairman of the Board asked for Amin's personal file from the Personnel Division, a confidential written statement from each of the supervisors (including, of course, Brewer and Cook) was found enclosed in it. The following is a summary of these statements (all of which seem to have been written on 24 October, 1957, at the request of the Head Auditor) which deal with Amin's relative ability vis-a-vis his colleagues:

They all agreed that Amin was a hardworker, and that, although his work tended to be inconsistent, it could nevertheless not be qualified as inferior to that of his colleagues. They nevertheless raised the following points of evaluation:

a) Amin is temperamentally not well-suited to be an auditor. There have been cases of heated dispute between him

1. See in Amin's letter of appeal to the Director, supra, p. 53 ; and also in his verbal statement before the Board, supra, p. 73.

and other people, and he was constantly "at odds" with members of the Agency staff with whom he had to deal in his work. Loudly shouting and disputing during office hours, he creates difficulty for all concerned. This is especially unfortunate when it involves an auditor since, by nature of his work, an auditor must be able to cooperate with other people in order to carry out his duties. Apart from academic qualifications, an auditor must possess certain qualities such as tact, politeness and a satisfactory working relationship. Unfortunately, Amin did not have an adequate command of such qualities. Consequently, his temperament and working ability were elemental in his termination.

b) Amin always seemed to be the least satisfied member of Staff in the Audit Branch complaining frequently about assignments, both in location and type, as well as transportation.

Upon studying these statements, I raised the point in the Board that they carried the date 24 October, 1957; i.e. one day after the decision had been transmitted to the Appellant by the Head Auditor. This, in my opinion, supported the Appellant's contention that his immediate supervisors had not been consulted prior to taking the decision.

The Chairman took up my point but was informed by the Head Auditor that the verbal consultation had taken place in due time. The written statements were later on placed in Amin's file, in confirmation of the verbal ones, and the delay

looked as a matter of routine.

(2) Verbal Evidences

The Board then proceeded to call those persons mentioned by the Appellant to appear before it and answer certain questions arising in the case.

On 26 February, the Comptroller was the first to appear before the Board. A stout, intelligent, professorial and self-confident man, of American nationality, who had been in the teaching profession as professor of Advanced Accountancy in an American university before he became an international civil servant and who seemed to be so sure of the correctness of the decision taken, Mr. George Thomas explained that there was no question that the Audit Branch was faced with the problem of having to reduce the number of its staff for reasons of economy. Two international and two area staff posts were declared redundant. Of the two international posts, one was vacant and an incumbent had been found to fill the other. But, before his arrival, the post was cancelled and he was told that his appointment was abolished. As to the two area staff posts, one was vacant, and the second had to be selected for termination from among the occupied posts.

The opinions of all three immediate supervisors, continued the Comptroller, were sought before the decision was taken. They all arrived separately and independently at the same conclusion, namely that it was Amin's post which should be cancelled. Their conclusion coincided with the Head Auditor's

views, as well as with his own as well.

According to the Comptroller, the three Audit-Assistants were technically almost all of the same calibre. Other criteria had, therefore, to be considered. In this respect, he emphasized that Amin's working relationship with people whom he had to audit was below that of his colleagues. This was the decisive factor in the decision. The "other factors" were not relevant, since relative efficiency was the point under consideration. In the Comptroller's opinion, a proper working relationship between an auditor and those he has to audit is not only essential but constitutes a major part of the auditor's efficiency.

In reply to a question by me, the Comptroller admitted that Amin had never been reprimanded or warned in writing. He also admitted that such a reprimand or warning could have possibly adjusted his behavior to a certain extent, but nevertheless, he added, temperament was a basic psychological quality and called for more than a mere reprimand or warning to adjust-possibly a special attention that should continue for years.

Mr. William Brewer

One of Amin's immediate supervisors, Mr. Brewer, also appeared on the same day: an American citizen, but with a strong background as an international civil servant, who had joined UNRWA in 1953, and had thus known the Appellant for several years. Amin's work, he stated, lacked consistency.

He would sometimes perform a good job, and sometimes a poor one. Temperamentally, he was quarrelsome, and the other two auditors were more reliable and more suitable.

In Mr. Brewer's opinion, no great knowledge of accountancy was required in audit work. A good knowledge of regulations, and adequate experience were necessary. Temperament and good working relationships were most important.

He affirmed that, on a previous occasion, Amin was verbally advised by him to watch his temperament and relations with people.

Mr. Roy Brown (Head Auditor)

A Canadian strong type and an obviously intelligent and challenging young man, who gave the impression of having been offended when he had to appear before the Board to answer some questions which he must have most likely qualified as "nobody else's business", Mr. Brown appeared before the Board on 7 March. He had been the first to transmit to Amin the decision to terminate his appointment.

He explained that, from the point of view of technical efficiency, it was difficult to decide who of the three Audit-Assistants should be terminated, simply because none of them possessed remarkable qualifications. The only remaining reasonable question to ask, he authoritatively "instructed" the Board, would be: "Who of the three, if terminated, would cause the least effect on the work of the Audit Branch?" In

his opinion, it was Amin.

In turn, he also affirmed that a good working relationship with people formed an integral and essential part of an auditor's work. It is such a relationship which would make a good auditor win people's confidence and cooperation. Amin was temperamentally not suited in that sense. The Audit Branch, the Head Auditor assured the Board, would maintain its same efficiency standard without Amin, "as has been amply illustrated since Amin had left."

Other points were also raised by Mr. Brown: Amin's unwillingness to work overtime; reluctance of his supervisors and colleagues to accompany him on assignments in the field; disputes with Travel officers, field staff members, etc. He said that, on one occasion, he had drawn Amin's attention to these points and told him to address his complaint directly to him, as his boss, and not to quarrel with people.

The Appellant, Mr. Brown concluded, was capable of doing good accounting work, and he admitted that he had recommended him for such work to the Deputy Chief of Education and Training Division.¹ But, he continued, if he were asked to give the Appellant a written recommendation for a job outside UNRWA, he would only give a limited one, and would probably mention Amin's tactlessness in it.

1. Refer to this point in Amin's verbal statement before the Board, supra, p. 74-75.

Mr. Edward Cook

Mr. Cook belonged to a category of officials existent in every organization of sizable magnitude, whose power of decision and line of action lied much less in their own hands than in those of their superiors and colleagues . A Palestine Arab, by birth and origin, Mr. Cook had migrated to the United States of America years earlier where he married an American girl and consequently acquired the American nationality. This gave him the advantage of being recruited by the Agency in 1955, as an international civil servant, but added nothing to his average capacity and mediocre personality. He was comparatively young, but lacked the vigour of youth, not to speak of its ideals, brilliancy and life. His main criterion at work was apparently to seek his superiors' blessings, somewhat regardless of what the means to such an end were.

In Amin's case he seemed to have played a little drama of "double-face" - not that he was a dramatist by talent as much as he was weak by personality. He and Mr. Brewer, both kept telling Amin one thing all the time, while they were at the same time actually doing contradictory things, on the other side of the fence.

When he appeared before the Board on 7 March, Mr. Cook had almost nothing to add to either what he had already said in his written statement to the Head Auditor, or to what his colleagues and superiors had said before the Board. The

same story was repeated: good relationship with people is a trait most essential to an auditor, and friction with them would affect adversely his work. He considered tactlessness to be Amin's weak point, and also claimed to have hinted to him on one occasion in that sense. When, however, he was asked to specify, he failed to mention any specific incident.

Mr. Ralph Smith

This was the supervisor to whom Amin had attributed the source of his trouble.¹ A cunning, cold blooded youngman who gave the impression of a ruthless Casino manager, who would have the guts to watch, from behind a cold wooden counter, people falling from their glory, or putting an end to their lives without giving the matter more than a slight nod of the head, or shake of the shoulders, he also appeared before the Board on 7 March to give his evidence. It was Amin's allegation that Smith, having been an ardent supporter of the American Democratic Party, was prejudiced against Arab national causes, in general, and the Palestine Arab refugee case, in particular. This, Amin emphasized, was not in keeping with the behavior of an international civil servant. When asked whether he had ever had any political discussions with the Appellant during office hours, he replied that, during the Suez crisis in November, 1956, practically all members of staff commented on the news. It was only natural to do so, he said, and he preferred to call them "talks" rather than "political

1. Ibid., p. 69.

discussions".

He did not recall a discussion which, according to Amin, had taken place between them in Amman, and in which the strength of the Arab armies was compared by him unfavorably to that of the Israeli army. He, however, admitted that he could have indeed made the comment attributed to him by Amin to the effect that "the Israeli army alone could defeat all those of the Arab states fighting together." By making this declaration, Smith was clearly careless about the significance of his being outspoken, contrary to the standards and ideals of international civil service standards.

He nevertheless concluded by affirming that, in having recommended Amin as the staff member to be terminated for redundancy, he was not at all influenced by his political differences of opinion with the Appellant. Whether or not it is possible for a human being to rid himself completely of such influences is, however, a matter to be argued. Finally, Mr. Smith stated that Amin's general disposition was such as to make it difficult for him to get along with people without friction.

H. Conclusion

Of what value is this case to the student of Public Administration? On the surface, it looks as if it is no more than the mere narration of the "story" of a cranky employee who is dropped when budgetary requirements seem to necessitate a reduction in work force. He naturally objects

and attempts to "fight" for his daily bread. Evidences, statements, correspondence, etc. go back and forth all the time, in a hot race to win the "battle". As such, the case is an ordinary one common to any organization, subnational, national or international.

But, looking deeper into the case, we should be able to spot some problems in its context, typical of multi-national organization and which are not ordinarily encountered in national administration. In part I of this study we hypothesized that international personnel brought different cultural and national heritages with them when they entered into administration with other nationals in a multi-national organization. We also hypothesized that the extra-ordinary powers appropriately given to the Chief Administrative Officer in international organization carried with them the risk of being unduly used in an arbitrary manner, in the name of that officer. We also mentioned that advisory machinery was set up to safeguard staff interests against any possible abuse of such power.

How far then have these hypotheses been carried throughout the case? What points of scientific interest arise in the case from the viewpoint of management-staff relationship? What effect can the mixture of nationalities, languages, cultures, backgrounds, etc. have on the work of a multi-national organization?

Other questions also seem to arise in connection with: (a) the substantive question of evaluating the staff

member's efficiency and incorporating his work relationship as an integral part of it; (b) legality of procedures followed by the Agency in terminating his services; (c) staff integrity, loyalty, impartiality and bias; and (d) the psychological effect of "refugee status" on the staff member's behavior in the Organization.

It is to such questions that the following two parts of this study will try to give some answers.

PART IV

THE DECISION

A. The Board's Reluctance

As we have seen in Part III, above, the Board was somewhat reluctant to give its recommendations on the Amin case.¹ This reluctance resulted, not as yet from a definite conviction that prejudice was itself the motivating factor (the Board said that, at that stage, it was too early for it to voice its opinion on this matter), but because, in terminating the Appellant's services, the Agency's Administration seemed uncertain about the grounds upon which the termination was to take place.²

As we had seen earlier, when the Head Auditor first communicated the decision to Amin he said to him that it had been taken on the basis of "general suitability".³ When, later on, the Comptroller realized the mistake done in attributing the decision to this vague reason, he shifted over to another one, "relative ability".⁴ The facts of the case,

1. See Board's Confidential Report to Director dated 9 January 1958, supra., pp. 76-80.

2. Ibid., p. 78.

3. Supra., p. 43.

4. Supra., p. 48.

however, when impartially and objectively laid down, lead to the strong suspicion that there was a basic intention of getting rid of the staff member, with the attitude that excuses can be coined, when it was necessary to do so. Moreover, the Appellant was neither granted a "recours gracieux", nor a "recours hierarchique" in the proper and effective sense.¹ Also, it seemed doubtful whether proper consultation with the immediate supervisors was duly made. These and other conflicts in the spirit of communications and correspondence made between the Appellant and various Agency Divisions concerned reflected the Agency's procedural inadequacies in the whole case.

Most important of these inadequacies were perhaps:

a) The lack of periodical reports in the staff member's personal file about his work performance and other norms essential to the evaluation of his efficiency, competence and integrity; and

b) Lack of any written reprimand or warning in the staff member's file, or even the mere confirmed indication that his attention had ever been drawn to the inferior quality of his work relationship and its serious impact on his work performance.

It, therefore, seemed as if arbitrariness was the decisive element in terminating the staff member's services - an arbitrariness used in the name of the Director, the Agency's

1. Supra., p. 46.

Chief Administrative Officer, thus clearly putting forth to the student in the field the danger potential in the use of such discretionary powers, without the presence of adequate counter-measures of control, existent to a considerable degree in national administration.

To turn back for a moment, and judge the value of the term "suitability", used by the Head Auditor, reference can be made to a somewhat similar case which had been considered by the United Nations Administrative Tribunal.¹ The Tribunal had met at the European Office of the United Nations at Geneva from 23 July to 11 August 1952 to consider two appeals. In one of them the Tribunal ruled that "... the Administration was bound to furnish a specific reason for the nonrenewal of the contract and, for that purpose, a general term such as "suitability" was not sufficient ..."²

In other words, the Tribunal was implicitly asking the Administration to make a specific reason for the decision of termination. Such specification, in the writer's opinion, cannot be made by either of the usages "suitability" or "relative efficiency" unless a substantive evaluation of the factors composing such "suitability" or "efficiency" is made in advance, thence the need for an objective personnel

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1. Supra., pp. 35-40.
 2. United Nations, Annual Report of the Secretary-General on the Work of the Organization; 1 July 1952 - 30 June 1953 (GA /Official Records, VIII, Suppl. No. 1 - A/2404) (New York, 1953), p. 160.

formula,

The need for an objective personnel formula, so as to reduce prejudice in the evaluation of qualifications, is more necessary in an international organization, with staff members from many nationalities thrown in together, than in any national institution... However imperfect such a formula may be as an absolute measure of worth, it would be better than any procedure, at present followed and which does not attempt to arrive at a quantitative appraisal. A rudimentary objective formula could be evolved if those responsible for personnel appraisal would at least list the relevant factors that have a bearing on a group (category) of posts, assign a maximum and minimum score for each factor, and allot a score for each staff member within the scale. It would thus be possible to place staff members at different levels according to the total score they receive... However... the utilization of quantitative formulae does not preclude consideration of personality factors, e.g. initiative, resourcefulness, adaptability, which, though subjective, have a bearing on the overall evaluation of any candidate.¹

B. Some Comparative Notes

Apart from the procedural apparent weaknesses referred to above in terminating the Appellant's appointment, it was also considered by the Board that the extraordinary power itself delegated to the Director under Regulation 9.1 of UNRWA Staff Regulations Applicable to Area Staff Members² seemed to be not only contestable, but even more arbitrary than that delegated to the Secretary-General under similar circumstances, in accordance with Article 9.1.c.³ of the

1. K.T. Behanan, Realities and Make-Believe; Personnel Policy in the United Nations Secretariat (New York: The William-Frederick Press, 1952), p. 54.

2. Op.cit., p. 7.

3. United Nations, Staff Rules, op.cit., p. 47.

Staff Regulations of United Nations Secretariat. For comparative purposes, the following texts of the two regulations are cited:

Regulation 9.1 (UNRWA)

The Director may at any time terminate the appointment of any staff member¹ if, in his opinion, such action would be in the interest of the Agency.

Regulation 9.1.c. (United Nations Secretariat):

In the case of all other² staff members, including staff members serving a probationary period for a permanent appointment, the Secretary-General may at any time terminate the appointment, if, in his opinion, such action would be in the interest of the United Nations.

This Article (C) of Regulation 9.1. of the Secretariat's Staff Regulations was adopted by the General Assembly at its sixth session as Resolution 590 (VI), upon a recommendation from the Fifth Committee.³ The Committee had made this recommendation after having received the following statement made by the Secretary-General to the General Assembly proposing the clarification of his authority to terminate temporary-indefinite appointments:

... It is evident from the records of the General Assembly... that it was always intended that the Secretary-General have the right to

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1. The underlining is mine. It is considered important here to remind the reader that the term "staff member" refers to "area staff members" who form the great majority of UNRWA employees; see supra., p. 11.
 2. The underlining is mine.
 3. See Repertory of Practice..., op.cit., p. 245.

terminate temporary appointments freely and in his discretion, in order to improve the calibre of the staff and to develop eventually a permanent staff which would meet the high standards envisaged by the Charter. In the Secretary-General's opinion such authority is undoubtedly necessary in order to enable him to replace the temporary staff with better personnel qualified in all respects to become permanent career officials in the organization.¹

The term "other" in Regulation 9.1.c. (Secretariat) above, excludes those categories mentioned in earlier parts of this Regulation, namely those holding "a permanent appointment and whose probationary period has been completed" (9.1.a.)² and those holding "a fixed-term appointment prior to the expiration date"³ (9.1.b.); in other words, the remaining category of indefinite-temporary appointments who do not form the majority of staff at the United Nations Secretariat,

The indefinite appointment is a temporary appointment which does not have any specific expiration date and which continues in effect until terminated or converted into another type of appointment.⁴

In contrast, it is explicitly clear from Regulation 9.1 (UNRWA) above that "the Director may at any time terminate any staff member...". In UNRWA, these "staff members" form the great majority of personnel.

1. GA (VI), Annexes, a.i.45, A/1912/Add.1, para. 6; as quoted in ibid., p.244.

2. United Nations, Staff Rules, op.cit., p.47.

3. Ibid.

4. Repertory of Practice..., op.cit., p. 243.

In its confidential report to the Director dated 9 January, 1958,¹ the Board had, of course, discussed this point and considered, by a unanimous vote, that:

Regulation 9.1. (UNRWA)² based as it was on Regulation 9.1.c. (Secretariat),³ was applicable to the overwhelming majority of UNRWA personnel (namely, those with indefinite-temporary appointment), in contrast to the conditions prevailing in the Secretariat where such type of employment tended to be the exception.

The Board, therefore, expressed its opinion that Regulation 9.1. (UNRWA), which gives the Director the possibility to use such extraordinary powers should be invoked with a great deal of prudence; otherwise, the safeguard given to staff members would be reduced to nothing, and consequently their morale, as a result of a precarious sense of tenure, would drop to minimum standards, thus affecting their initiative, efficiency and productivity.⁴

By doing so, the Board was trying to be sincerely consistent with the spirit of its advisory capacity to the Director, as well as its overall attitude towards the general interest of the Agency, where the Director's interests and those of his staff were identical.

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1. Supra., pp. 76-80.
 2. Staff Regulations Applicable to Area Staff Members, op.cit., p. 7.
 3. United Nations, Staff Rules, op.cit., p. 47.
 4. Confidential Report from Chairman and Members of Board to Director, Supra., Pp. 76-80.

The principle that the head of an international organization should be given full responsibility for the administration of which he is in charge... has been generally accepted and is, I believe, right. This implies in practice that such machinery as may be established to assist him must, apart from a final court of appeal, be advisory in character. In consequence, the danger presents itself that such an administrative officer who wishes to act in an arbitrary or autocratic manner may endeavour to weaken the machinery or may simply ignore the advice he has received. The first of these two dangers is by far the more serious.¹

Fortunately, as we shall see below, it was the less serious danger that resulted in this case, but all the same the Board's advice was simply ignored.

C. Other Factors to Consider

What added still more to the Board's reluctance was, of course, the special humanitarian consideration due to UNRWA staff members being refugees themselves - a consideration which indeed called for increased care and thoughtfulness. After all, the salaries received by most staff members from the Agency constituted practically their only means of livelihood and family subsistence. The Board, therefore, could not have possibly failed to draw the Director's attention to this delicate point in connection with the invocation of Art. 9.1. of UNRWA Staff Regulations²; otherwise, any misinterpretation of the intention behind its legislation, whatever its good intentions were, would eventually only

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1. A. Loveday, Reflections on International Administration (Oxford: The Clarendon Press, 1956), p. 119.
 2. Op.cit., p. 7.

endanger the relation of trust and feeling of confidence which strongly existed between the Director and his staff,

...Whatever the good intentions and the good judgment of the head of an administration, he is always open to a ttack... The risk of attack will be greater when the standards on which judgments are based are undeveloped or open to honest contention. The interests of the wise and well-intentioned head and those of his staff are therefore identical. Both he and they need the protection afforded by regulations that are clear and easily enforceable, by standards that are generally, if not universally, recognized to be reasonable and just.¹

In doing so, the Board was quite aware of the forces of circumstances with which the Director was faced at the time. The financial situation of the Agency was so bad that it seemed to everyone responsible that an enormous reduction of staff was inevitable. The Board could not have overlooked this strong reason that was to dictate such a policy and lead to subsequent decisions of termination. At the same time, however, the Board was also interested in seeing to it that the case under review should constitute no precedent for Chiefs of Divisions to pull strings and do injustice to staff members. Otherwise, if the norms of confidence between the Staff and the Director (including, of course, those who take action on his behalf) are not respected, the whole efficiency of the administrative machinery becomes liable to crumble,

When these norms are not respected... the confidence of the staff and the smooth working of the administration may be adversely affected. The regulations must be drawn up with the primary purpose of controlling the behaviour of the Staff,

1. Loveday, loc.cit.

but they should be formulated in such a way as to have some restraining effect on the head of the administration.¹

In other words, the Board was tactfully attempting to draw the Director's attention to the potential danger that may damage the sense of confidence between him and his staff as a result of an undue arbitrary use of his extraordinary powers against the staff. In this specific case, it was the Board's opinion that such an abuse was being made because of a lack of procedure "...embodying and explaining in full not only the criterion of competency, but also relevant criteria so that decisions of termination based on them shall be uncontestable."²

It was the Board's opinion that this defect should be remedied by the institution of an ad hoc consultative committee which should make a thorough study of the relevant criteria, and not merely leave the matter in the hands of the respective Chiefs of Divisions or Branch Heads.³

D. Advisory Board or Rubber Stamp?

To its surprise, the Board found out that the response to its "advice" was absolutely contrary to its expectation. Instead of giving rise to a favorable attitude, the "suggestion" led to a severe reaction on the part of the Deputy

1. Ibid., pp. 108-109.

2. Confidential Report from Chairman and Members of Board to Director, Supra., p. 80.

3. Ibid.

Director (in his capacity as Acting Director, at the time), because its implementation was considered by him a risky one, for the following reasons, which were made verbally to the Chairman of the Board:¹

- a) It was based on no existing staff regulations or rules;
- b) No such practice existed at the United Nations Headquarters or any of the other United Nations organizations; and
- c) It would largely curtail the Director's powers when the need arose to use them.

The Acting Director, of course, did not miss the opportunity of drawing the Board's attention to its terms of reference and "requesting" it to abide by them. However, by so reacting, the Acting Director who, from the point of view of bare legality, was within his right, must have overlooked the following important factors:

- a) The existence of an Administrative Tribunal at the United Nations Secretariat;
- b) That the Board's "suggestion" was of mere advisory character, and aimed at blocking the way for the occurrence of a serious precedent where arbitrariness was apparently being made in an undue manner; and
- c) The advantages obtainable from proper cooperation with the Board, based on an objective, impartial and liberal

1. Interview between Deputy Director and Board Chairman on 13 March, 1958.

attitude. The following are some of the major advantages¹
in this respect:

- (i) The fact that the Board, although of an advisory character, could wisely serve as a useful instrument to check the Director's judgment;
- (ii) That the Board was a means for promoting among the staff a spirit of cooperation, a sense of being engaged in a joint undertaking;
- (iii) That the Board was a means for stimulating staff interest, as anxious as the Director himself was, to participate in formulating and implementing standards of efficiency and conduct;
- (iv) That the Board was a means for safeguarding staff members against national or cultural discrimination or any other form of injustice; and
- (v) That the Board could serve as a good instrument to protect the Director himself against suspicion or attack from staff members or any other parties interested or concerned.
- (vi) That the Board could relieve the Director of the burden of work, by conducting itself the many inquiries, which he could not conduct himself.

The Deputy Director's reaction can be easily understood. A man of considerable practical administrative ability

1. For this part, see Loveday, op.cit., pp.129-130.

who knew almost every staff member down to the very lowest of echelons in the hierarchy, he always looked so confident of himself and of his strong command on the Organization. He, therefore, refused to accept the "insinuation" that any Division Chief, or Branch Head, could ever attempt to make the Director victim of a "d'ètournement de pouvoir". He was an Englishman with high culture, and belonged to a family that had spent at least three generations in one of the Arab countries. He therefore, knew so well not only the mentality, traditions, and problems of the area, but could even speak and read Arabic to an extent that always made him feel "at home", within Agency premises.

In view of this strong background, the Deputy Director was so widely, and highly, connected in the Arab countries that he practically knew the ins and outs of all matters related to his staff attitudes.

What added still more to his strong "power consciousness" was his "power of continuity". Like the Comptroller in the federal government of U.S.A., and the permanent Under-Secretaries in the British Government, Directors came and went but he was always there to "hold the castle" and keep the show going all the time.

It was obvious to the Board that the Director (a prominent, very able and popular American citizen, who was away from the Agency on an extended duty tour in America and Europe at the time the Board's suggestion was made) would only

acquiesce to his Deputy's point of view. If the Deputy Director's background in the area and sense of "power of continuity" gave him a strong feeling of self-confidence, the Director's popularity among the staff, and refugee community as a whole, gave him nonetheless a still stronger one.

In view of all this, and insofar as it attempted to urge for a basic reconsideration touching on the roots of regulations and procedures, the Board, therefore, was unfortunately fighting a losing case. It realized that, although it was not basically intended to serve as such, its role in the case was restricted to nothing more than a Rubber Stamp for the Administration.

Having realized this, the Board found that there was only one path left open for it - all others were closed - namely, to formulate its decision basing itself merely on the objective and purely mechanical fact-findings it had made.

E. The Board's Findings

After a thorough study of all documents, correspondence, written and oral evidences, and all other material directly or indirectly related to this appeal, including of course, the Appellant's personal file of service, the Board proceeded to place its "findings" on record.

A comprehensive summary was first made of all facts, statements, points of view, communications, written and oral

evidences and all other material made available to the Board. Basing itself upon all this information, and bearing well in mind its terms of reference, the Board's "findings" were the following:¹

a) Amin's post was not the only one declared redundant to the Agency's needs. Two international, and one other area staff posts in the Audit Branch alone were at the time also declared redundant.² A limited number of area staff posts were also declared redundant in other Divisions, both at Headquarters and in the Fields (including the post of Accountant in the Education and Training Division, which the Appellant had applied for transfer to,³ and which was filled up at a later date only by an internal transfer of another member of the same Division).

b) Amin's contention that at least two of his immediate supervisors were not consulted prior to his termination could not be substantiated. On the contrary, it was proved to the satisfaction of the Board that arrangements were made by the Head Auditor to obtain, not only verbally, but also in writing, the opinions of all supervisors as to who of the three Audit-Assistants was to be terminated on the basis of relative

1. Letter from Board to Director, dated 11 March, 1958.

2. Refer to Comptroller's verbal evidence before the Board, supra., 83.

3. Letter of appeal from Amin to Director, supra., 56.

¹
efficiency. All of the three supervisors arrived, separately and independently, at the same conclusion.

c) The incidents to which the Appellant alluded in his verbal statements and qualified as "political discussions"² seemed to be merely of the nature of general comments on current news. The Board could not establish that those comments or "talks" could have in any way influenced the decision to terminate Amin's services, particularly if Amin's services called for real appreciation on the part of the supervisors, and also when the three independent recommendations referred to in (b) above are taken into consideration.

d) Amin's personal file presented for the Board's perusal contained no reports about his efficiency or performance. Two separate periodical reports were, however, produced by the Agency which seemed to be the only documents of this nature available. In one of them dated 24 March, 1952, Amin's "technical or professional competence" was assessed as "very good"; "industry, neatness and regularity of attendance" was styled as "very good"; his resourcefulness, judgment and willingness to accept responsibility, "very good"; his devotion to duty, "very good"; comparison with other staff members, "above average": overall rating, by Supervisor,

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1. Summary of supervisors' written recommendations to Head Auditor, supra., p. 81-82.
 2. Refer to Amin's verbal evidence before the Board, supra., p. 69.

"very good".¹

In the other periodical report, dated 2 April 1953, the assessments referred to previously were respectively rated as "average", "average", "not outstanding", "keen on accurate results", "average" and "satisfactory".²

e) The Board nevertheless noted that, since 1953, nothing in the nature of a report about Amin's work performance was available in his file. Moreover, the Board failed to obtain any concrete indication that his attention was ever called to the need for improving his relations with people with whom his work brought him in contact. Such an indication was absent (except for the fact that some of the supervisors claimed before the Board to have drawn the Appellant's attention verbally to it on one or two occasions) in spite of the fact that, throughout his years of service in the Agency, the supervisors - including the Head Auditor and Comptroller - seemed to have been forming the impression that tactlessness was Amin's weakest point. It was in fact jeopardizing his whole career as an Audit-Assistant to the extent that it was eventually established by the Division concerned as the basis for his termination.

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1. Confidential Report on Staff Progress from Head Auditor to Chief, Personnel Division, dated 24 March, 1952 (Placed in Amin's personal file at Personnel Division.)
 2. Confidential Report on Staff Progress, from Head Auditor to Chief, Personnel Division, dated 2 April 1953 (Placed in Amin's personal file at Personnel Division.)

F. The Board's Recommendations

Under the general principles of Droit Administratif for annulment of administrative decisions of this nature, the Board arrived unanimously at the conclusion that the Appellant failed to give adequate proof that the decision against which he had appealed was applicable to any of the following reasons: ²

a) Was taken by an incompetent authority (incompetence);
b) Was not taken in conformity with essential forms or procedures (vice de forme);

c) Was motivated by abuse of authority (détournement de pouvoir); or

d) Considering UNRWA's staff regulations and rules, as they stood at the time the appeal was submitted and considered, and with which regulations and rules the Ad Hoc Joint Appeals Board was bound, there was no violation of them when the decision to terminate the Appellant's appointment was taken (violation de la loi).

The Board then proceeded to point out how, in terminating Amin's services on grounds of redundancy after taking into account the relative efficiency of staff members in the same grade, the Agency considered that, in the nature of audit work, relative suitability so far as working relationship was concerned must be taken into account when the efficiency

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1. Letter from Board to Director, dated 11 March, 1956, supra, pp. 105-108.
 2. For an interesting discussion of these reasons, refer to Hampson, op.cit., pp. 148-172.

of an audit employee is assessed. Taking this into consideration, the Board noted the Agency's point of view that the termination of Amin's services would least affect the efficiency of its Audit Branch.

In pointing this out, the Board drew the Director's attention to the fact that its terms of reference did not permit it to go into the substantive question of how the Agency arrived at that opinion.

Likewise, the Board's terms of reference did not allow it to ask to what extent "other factors" (e.g. length of service, family, refugee status, income, etc.) would have modified the decision taken to terminate the Appellant's appointment. In fact, based as it was on ground of relative efficiency, and so long as the Board was not authorized to go into the details of efficiency evaluation, the decision was considered by the Board to have been taken in the interest of the Agency.

Consequently, the Board unanimously agreed to recommend to the Director:

(a) That the appeal be dismissed and that the Agency's decision be upheld.

(b) That the attention of the Administration be called to the fact that, in the Board's opinion, the termination of Amin's appointment was not based on any professional fault for which he could have been held responsible. In the circumstances, and in conformity to the practice followed in the United Nations, (Staff Rule 109.1.c.)¹ the Appellant is entitled to priority

1. United Nations, Staff Rules, op.cit., pp. 47-48.

of consideration for employment in the Agency if the opportunity now existed or whenever any opportunity arose in the future, provided that his qualifications and general suitability made him fit to fill such vacancies; and

(c) That instructions be given for the issue to (Amin) of a certificate of service as favourable as possible, so that he shall not be made to suffer in consequence of a necessary measure which the Agency had taken through no fault of his, and so that his future as a refugee and head of a family shall not be jeopardized after having served the Agency for a period extending over seven and a half years.

G. A Conclusive Remark

The situation must have not become clear. Here was a case of a staff member, and, simultaneously, a member of a refugee community working for an International Organization, whose long services in the Organization were abruptly cut off under the apparently legitimate excuse of the "interest of the Agency". The question remains, however, whether or not (a) the procedure followed in terminating his services was correct; (b) the real motive behind the termination was indeed "the interest of the Agency", or prejudice; and, deducting from this, (c) the regulations and rules legislated to safeguard the staff member's interests were of any, or no, help to contribute towards his protection against what can be qualified as an arbitrary use of the Chief Administrative Officer's extra-ordinary powers.

The all important question to the student of Public Administration is the following:

In a situation like this where a great risk lies in reducing the Chief Administrative Officer's extra-ordinary

powers in an international organization, what means of protection could be devised to protect the individual from a similar abuse of these powers in an arbitrary manner?

PART V

GENERAL COMMENTS AND EVALUATION

A. The "Administrative Finality"

Now, that we have come to this point in our study, the question should be asked: In what sense does this case interest the student in the field of Public Administration? What paths of thought does it open to him?

On its surface, the case is a mere narrative of the story of an employee of an International Organization, whose services were terminated in a manner abruptly cutting off the only source of livelihood, for himself and his family. As a refugee, he belonged to the very community after whose members the Organization itself was established to look. This fact added to the legal aspect of this individual problem a humanitarian one.

So far, there seems to be no reason calling for a serious criticism of the Director's administrative powers. The power of hire and fire is one of the well-established prerogatives of the chief executive in any organization, and is by no means the point of contest to be challenged here. This prerogative, it has been admitted, is even far more important in international, than in national, administration,

in spite of the belief that "... whenever a conflict develops between power and the rule of law, or more generally morality, the latter is in peril."¹

But the corresponding growth of safeguards and administrative remedies in national administration ordinarily reflects, to a large extent, a strong sense of security and ease-mindedness on the part of the staff. There is always some refuge to resort to. What, on the other hand, happens in international organization where this kind of "protection" seems to be lacking?

This question does not imply that every administrative action taken by the chief administrative officer must necessarily be reviewed by a higher body or court for the purposes of control and check. No administrator would be willing to work under such conditions. It is essential for him to have a degree of authority at least commensurate to his degree of responsibility. Similarly, no organization can function up to efficiency standards, under such restrictions. "Everywhere there is a point which the courts and the law hold to be unreviewable and unchallengeable; this is what is called variously "discretion", freies Ermessen ... [which] means that the courts act with an eye to the reasonable conduct of reasonable men... They allow, in

1. Levi, op.cit., p. 12.

American terms, 'administrative finality.'¹ Beyond this point of "finality", the courts refuse to act. In other words, "somewhere... the law courts must leave the official's judgment free of challenge - not on law, not altogether on procedure, but on facts and expediency of action."²

Now, insofar as the Amin Case is concerned the issue should be one of great interest to the scholar, not only because it is difficult to determine where exactly the point of "administrative finality" exists, but because no higher judiciary body exists. As we have seen, the Ad Hoc Joint Appeals Board had nothing more than an advisory capacity. Even this is questionable. What then is it that could have safeguarded the staff member's interests against the apparent abuse of the Director's extraordinary powers? This is, in short, the question that this study aims at putting forth to the student in the field.

B. National and International Administration

The case furthermore seems to offer an opportunity for making a brief comparison of some characteristics of international organization as well as some similarities and dissimilarities existent between national and international

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1. J.W. Landis, The Administrative Process (Yale, 1938), chap. IV; Wilton Katz, Cases and Materials on Administrative Law (St. Paul, 1947), chapter VII; as quoted in Herman Finer, Theory and Practice of Modern Government (rev. ed.; New York: Henry Holt and Co., 1949), p. 930.
 2. Ibid.

administration. The following are a few points of relevant significance:

a) The first characteristic of international work lies not only in the fact that it is "concerned with international affairs but is conducted by an international staff. So long as that staff is actuated by a common purpose and common ethical beliefs, that fact gives rise to no insuperable difficulties. But it does very largely determine the principles on which the whole system of administration must be based. When the staff contains any considerable group of persons who pursue some object other than that of the institution that employs them or believes that the end justifies the means,¹ then very serious difficulties do present themselves..."

b) The second characteristic seems to be an adjusted sense of loyalty required by a staff member in an international civil service. This will be discussed in some length below.² Nevertheless, the following quotation from the United Nations Advisory Board's Report on Standards of Conduct in International Civil Service, may for the present serve as a guiding description of the requirements for a good sense of loyalty in international work:

...An international outlook... flows from understanding of and loyalty to the objective and purposes of the international organization as set

1. Loveday, op.cit., pp. 30-31.

2. Infra., pp. 126-135.

forth in its Charter or Constitution. The acceptance of the oath of office and of the basic obligation to serve wholeheartedly and completely the organization's interests needs to be worked out in many directions. It involves willingness to try to understand and to be tolerant of different points of view, different cultural patterns, and different work habits. It also entails willingness to work without prejudice or bias with persons of all nationalities, religions and cultures. It means a readiness to be continually conscious of how proposals, events and statements of opinion may appear to a very wide range of nationalities... In fact, the highest type of loyal international civil servant is one who finds that whatever his personal views he can willingly conform to the observance of his international obligations and support the decisions of the international organization he serves... What is essential is not the absence of personal, political or national views but rather restraint at all times... in the expression of such views.¹

c) The third characteristic seems to be the difficulty of linguistic communication where "the majority of the staff are compelled to work in a language they have not acquired in infancy and which, therefore, does not give automatic expression to their thoughts and personality."² What applies to language in this respect also applies to other background ingredients, such as culture, religion, social traditions, not to overlook, of course, the national methods of administration with which many staff members are already

1. U.N. Doc. Coord/ Civil Service; as quoted in Maxwell Cohen, "The United Nations Secretariat - Some Constitutional and Administrative Developments," The American Journal of International Law, IL (July, 1955), p. 316.

2. Loveday, op.cit., p. 31.

influenced.

An international organization must also struggle with the difficulties created by the fact that in drawing its officials from more than [80] different countries, it draws into itself dozens of different concepts of proper methods of administration...¹

Or, as another scholar puts it, an international agency finds life more complicated in that,

The officers of the ship [who are sailing the ship while building it] are being required to study new methods of navigation as they sail, to transmit orders in strange tongues, and, finally... [to] proceed full speed over an unknown course to a none-too-well defined destination.²

This perhaps explains why it is so far not easy to determine a definite solution for the inflammable problem of loyalty in international administration. It originates from the nature of mixture in international work,

International administration... is still in an experimental stage and is likely to remain empirical for a long time to come. To be dogmatic is to be stupid.³

d) Unlike the national official, the life of a staff member in international administration is largely determined by the locality in which the organization is situated.

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1. Philip C. Jessup, The International Problem of Governing Mankind (Claremont, California, 1947), pp. 11-12.
 2. Robert I. Biren, "Staffing an International Agency," Public Personnel Review, July 1, 1947, p. 124; as quoted in William E. Mosher, J. Donald Kingsley and O. Glenn Stahl, Public Personnel Administration (3rd ed.; New York: Harper & Brothers, 1950), pp. 592-593.
 3. Loveday, op.cit., p. viii.

He has been "uprooted", socially isolated, and compelled to lead a life disconnected from all his childhood influences that shape character, habits of thought, tastes, outlook, etc. Consequently, he "... must remain external to the country in which he lives. He is not a working partner; he can play no part in either municipal or national policies. He must accept the social organization for better or worse as he finds it. He is always in the final analysis a guest. As a guest he must act and speak with circumspection."¹

In order to avoid dangers resulting from this social isolation (e.g. the staff dividing into national groups, or confining themselves outside the organization to discussing the same subjects they discuss within it), it is the duty of the international administrator to promote an international community with a real sense of unity, wide interests and diverse activities. No such problem exists to the national administrator.

e) The staff member in international administration lacks to a considerable degree the sense of security which his national counterpart has. What contributes to this insecurity is the fact that, despite the substantial progress made, international work is still largely experimental. Being the sport of politics, it is typified with a basic insecurity of tenure that affects staff morale,

1. Ibid., p. 3.

and it may have been reasonably maintained that "... there are no good grounds for assuming that any international organization will continue to function indefinitely..."¹

This unattractive postulate for a career also reflects itself in difficulties to recruit new and young capacities, and in increased staff requirements for special benefits, such as safeguards for the future of their families, education of their children, expatriate privileges, and the like.

f) In cases of political conflict or aggression the problem of "divided loyalties" presents itself within an international organ. Staff members are confronted with a serious difficulty: if they maintain their faithfulness to the principles of the Organization they serve, they become liable to be looked at with an evil eye by their compatriots at home. If they behave the other way round, they will most likely be ostracized in their "international society" for having failed to keep up to their international obligations.

Obviously, national administration is free of a problem of this nature.

g) In dealing with his national colleagues on a national plane, a national official unconsciously shares with them their national qualities. In international work,

1. Ibid., p. 13.

on the other hand, a staff member must penetrate beyond these considerations and adjust his conduct to a greater degree of suitability to the feelings of others.

h) In international work, a staff member in a higher supervisory post, has much more immediate responsibility for formulating policies than his national counterpart. He has no minister, or cabinet, permanently resident and in charge of departments, with whom he can discuss the initial formulation of policies. "...The absence of ministerial responsibility... makes a profound difference, and the head of an international organization may suffer from the inadequacy of protective political mechanism when dealing with an Assembly, Council, or executive board."¹

i) In view of the fact that international civil servants are normally not subject to local law, the supervisor is morally responsible for their personal behaviour - a point which, outside the course of duty performance and the impact of personal conduct on the efficiency of his department, a national administrator does not really have to worry about.

j) Perhaps the most distinctive difference between the two lies in their relationships to their respective legislatures. National administration, in this respect, has the advantage (some consider it a disadvantage) that Parliaments are in session for the major part of the year, and the Cabinet, the executive organ, is in constant being. In international

1. Ibid., pp. 27-28.

organization, on the other hand, the General Assembly meets ordinarily once, and for a minor part of, a year. This absence of constant contact between the permanent staff and representative body "...throws upon the higher officials a heavy weight of responsibility and a demand for constant but cautious initiative. To do nothing may at times be a plain neglect of duty, though to act may inevitably incur criticism..."¹

This is a mere highlighting of only some of the differences between national and international administration, and this study does not by any means claim to have exhausted all this large area of study.²

We shall now turn over to the case we have in hand, and analyze some of its significant aspects:

C. Some Psychological Attitudes

a) A socio-psychological aspect. The staff member, who was an intelligent, industrious and a hardworking youngman, suddenly looked around him to find himself abruptly cut off from any means of earning income. In UNRWA, he was struggling as hard as he could for a reasonable living until, in his view and the views of the hundreds of thousands of his co-refugees, some solution is found for his political problem.

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1. Harold B. Butler, "Some Problems of an International Civil Service," Public Administration, X (October, 1932), p. 381.
 2. For further details on this point, refer to Loveday, op.cit., pp. 1-38 and 115-116; Mosher, Kingsley and Stahl, op.cit., pp. 590-602; and Butler, ibid., pp. 376-387.

Only then would he be able to either return to his homeland, where he can feel more secure, or receive a certain lump sum of money in compensation for the lot he had left back behind him, in Palestine, in 1948.

Looking at the case through this humanitarian angle, we will find that, with the flow of time, refugee status had formed a major psychological attitude that has been increasingly shaping his, and his fellow countrymen's thinking - an attitude of dislike and resentment to the forces that they believed to have interplayed to bring about their tragedy.

During the several years that I spent in UNRWA, I had the opportunity to observe closely this attitude, gradually and constantly growing among the large community of the Agency's refugee-employees themselves. At times, I would even find myself inclined to have the same tendency. "After all", a staff member would often grumble, "what am I but a mere refugee, victim of the United Nations and the Great Powers which have failed to implement its resolutions and restore my rights to repatriation and compensation? Whatever income I am getting in the form of salary through UNRWA is only a narcotic to dope me, and as such it is my right to go on receiving this income." Or, as analyzed in a socio-psychological study made by one scholar:

...72% of the total sample resented most either Britain and/or the United States as the bearers of the chief responsibility for the refugees dispossession, and believed that, financially, refugee care and maintenance was a duty and responsibility

of the West...¹ Condemnation of the United Nations, too, appears practically unanimous in respect to U.N. action or lack of action in the Palestine conflict. This condemnation is extended to U.N. agencies such as UNRWA... A very frequent response was that UNRWA services were like the 'giving of a shot of morphine' (and UNRWA's headquarters building in Beirut was called 'the narcotics castle'), that UNRWA's help was nothing but a palliative curing none of the basic ills but perpetuating the misery of refugee life, and that UNRWA had failed in its main task which was that of helping the refugees to go home.²

Such an attitude, coupled with Amin's ill-temper (which was probably augmented by his chronic illness from an ulcer in his stomach), perhaps explains why he left the deep impression around him about his tactlessness and his being "a difficult person to deal with." It seemed as if he was all the time generating around him a reaction of dislike: and, later on, when it came to represent him on the Ad Hoc Joint Appeals Board, I very well realized why those working with him had developed their impression about him. My personal knowledge of him, his background and personal problems was quite helpful in overcoming the difficulty of dealing with him. Basically, he was a remarkable human element.

1. The underlining is mine.
2. "A Socio-Psychological Study of Arab Refugee Attitudes," a research study prepared by Fred G. Bruhns (c/o George W. Moore, 109 Newton Street, Bridgeport, West Virginia, USA), Sociology Department, AUB, with funds granted by the Ford Foundation (Beirut, October 1954), (Mimeographed). (Unpublished), Chap. V, pp.32-33.

It should be indicated that the last sentence (i.e. "...that UNRWA had failed...etc.) is an overstatement. There is nothing in any of the relevant General Assembly Resolutions that supports the premise that UNRWA's task is "that of helping the refugees to go home."

Unconsciously driven by the general attitude described above, throughout his years of service in the Agency, Amin had obviously carried too far the assumption (a psychological attitude) of having had an established right of quasi-ownership of the Agency.

b) Sense of Continuity. Another similar phenomenon could also be traced from the fact that, uprooted as he was from his homeland where his fathers and ancestors were born and had lived, he had taken for granted the fact that he was the first staff member to be employed in the Audit Branch, and therefore must have over-developed, also unconsciously, a "sense of continuity" resulting in a "sense of power" towards his superiors. He, therefore, underestimated the possibility of being one day ousted by one or two international employees, who would normally not remain in the Agency's service for a period exceeding 2-3 years. In other words, his sense of continuity in the service which, in national organizations usually does offer some strong sense of "security of tenure", was of an adverse effect in his case.

c) Sense of "mechanical" ability. A third attitude on the part of the Appellant seemed to have emanated from his misunderstanding of the nature of his job. So far as he was concerned (and he repeatedly said this to me) he was an Audit-Assistant; and, as such, so long as his "figures" were correct, and his "performance" faithful, serious and honest, there remained nothing else for him to worry about. Until

the very end of his appeal, the factor of his "working relationship" never appealed to him as a genuine and inseparable part of his work, by the very nature of it. In spite of the fact that his attention was verbally drawn to it on one or two occasions, this overconfidence of "mechanical" ability left him with no scruples whatsoever about his supervisor's personal reactions. The human factor did not mean a thing to him. In point of fact, as was shown by the course of his case, this very factor, itself was the rock against which his sails were destroyed. His superior stood up to the argument that a good "working relationship" was essential to an auditor, and it was beyond the Board's jurisdiction to contest this technical assessment of his efficiency. It was considered a "substantive question" in assessing an auditor's efficiency, or relative efficiency, and the Board was literally paralyzed, in the course of its investigations and study, from going into the substantive grounds of this assessment.

D. Loyalty in International Organization

These psychological factors, in toto, give rise to the difficult problem of "loyalty" in international work. To whom should a staff member in an international organization be loyal? How should this loyalty reflect itself? Can this loyalty clash with another, and, if the answer is in the affirmative, what should the staff member do about it? How far can, and must, an international official conciliate

his national pride to his international obligations? To whom should his loyalty first go? Is international loyalty incompatible with the national one? These and many other questions present themselves calling for a thorough study of the objectives of international organization as well as a deep survey within the human element in administration. In presenting the following brief analysis of the subject, this study does not in the least claim to have fulfilled all its requirements. Far from it; it would have hardly even scratched the surface. Once more, it merely aims at opening new paths of thought to those interested in the field of research. In this specific study of Amin's case, most of these points offer some analysis that can help us make a better grasp of the problem of loyalty, particularly the loyalties of Amin and Smith.

Staffed as it is with incumbents from a variety of nations, international administration offers problems characteristic of its own. Staff members do not only come into friction with one another on account of clashes in national feelings, cultures, backgrounds, etc., but are often exposed to moral obligations towards their respective countries if and when they come into conflict with those of other staff members in the Organization. If, in the course of performing his duties, every staff member were to be left to be driven by such conflicting emotions, what would then happen to the World Organization and its great contribution to world peace?

How far, on the other hand, can we objectively expect people to be free from partiality and bias? To what extent is it practically possible to put into practice the Secretary-General's own words:

Inherent in the pledge of loyalty to the United Nations, and in the prescribed standards of conduct, is the obligation of the staff member to maintain impartiality, to avoid bias, in his work and in his behavior.¹

But, how practically possible is it to fulfil the requirements of such an international outlook? Whether or not the answer lies in the following solution suggested in one of the studies on this question, is a matter for time to confirm, and for students in the field to consider:

... The manpower required for the building of a cooperative world community, must have thorough technical competence, absolute personal integrity, and a genuinely international outlook. Of these three attributes the last is perhaps the least prevalent today and the most difficult to develop. The goal of every national educational program for the public service should be to inculcate a deep respect for and an understanding of cultural and national differences as they affect common international purposes.²

Although, as already stated, it is not the object of this study to solve the problem of "dual loyalty in international organization, it nevertheless can be contended that

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1. United Nations, Secretary-General's Report on Personnel Policy to the General Assembly in its Seventh Session, GA (VII), Annexes, A.L. 75, p. 3, A/2364, para. 25; as quoted in Repertory of Practice..., op.cit., p. 186.
 2. "Report of an Inquiry Conducted Jointly by the International Institute of Administrative Sciences and the United Nations Educational, Scientific and Cultural Organization," National Administration and International Organization (Brussels, 1951), p. 66.

that staff members in this organization are not meant to be deprived of their right to maintain this national loyalty, so long as it does not genuinely conflict with their loyalty to the overwhelming cause of world peace which the organization is ultimately supposed to serve. This naturally gives rise to the question if, in the long run and wider orbit, there is any real contradiction between the two loyalties in a world getting smaller and smaller everyday and, yet, more and more threatened with destruction and annihilation. In answer to this question, some scholars in the field have said:

... International administration is but the projection of national administration on to a higher plane with wider dimensions.¹

The noble ideals implied in this statement are undoubtedly invaluable. But how feasible the application can be is a matter that calls for some deep thought in our present time, and would probably continue to call for such thought for years to come.

The difficulty may become clearer when we require a relatively simple and junior staff member to fulfil the following requirement:

... What is essential is that the international official should be able to slough his national prejudices, make himself an integral part of a group composed of elements at first quite unfamiliar to him and work faithfully for it. In order to do this he must be capable of understanding persons

1. Ibid., p. 8.

with cultural backgrounds different from his own and of sympathizing with them. He must be able to realize that there are world interests and a world point of view more important than those of his own country and to accept the fact that his employment in an international institution implies that he will work for those interests and for them alone in all circumstances.¹

Now, to return here for a moment and reflect on the Case under study, let us ask ourselves a few questions and see how applicable they are to this statement.

In the first place, how practical would it be to expect Amin - who represented the average staff member of UNRWA "to slough his national prejudices" for the international cause which the Agency took part in serving?

In the second place, how far can we expect Amin "to realize that there are world interests and a world point of view more important than those of his own country?" In fact, if this statement applied to other situations and world problems, how applicable could it basically be, and how true, to a whole population that had been completely uprooted from its homeland without feeling any signs of international enforcement of the rules of justice and peace?

In the third place, is it true that when Amin - and the multitude of his colleagues - had accepted to work in UNRWA, they had also accepted "the fact that [their] employment in an international institution [implied] that [they would] work for those interests and for them alone

1. Loveday, op.cit., p. 32.

in all circumstances?" The challenge to this argument has already been made when the psychological attitudes involved in this case were made.¹

Even if, for argument's sake, Loveday's statement can be applied to international civil servants, its applicability to an average UNRWA staff member who is also a Palestine refugee is, therefore, very doubtful. After all the majority of the Palestine refugees attribute their deplorable condition to the United Nations itself (and, of course its major component powers) which they are demanded to pay allegiance to.

Following the pattern of the United Nations Secretariat,² and in accordance with Regulation 1.1 of its Staff Regulations Applicable to Area Staff Members,³ UNRWA has embodied in its standard Letter of Appointment a "declaration" of loyalty which runs as follows:

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1. Supra., pp. 122-126.
 2. The United Nations "oath" reads as follows: "I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Organization"; as quoted in Repertory of Practice..., op.cit., p. 185.
 3. Op.cit., p.1. This Regulation stipulates the following: "Staff members by accepting appointment pledge themselves to discharge their functions with the interests of the Agency only in view."

I solemnly declare that I will exercise in all loyalty, discretion and conscience, the functions entrusted to me as a member of the staff of (UNRWA) and that I will discharge those functions and regulate my conduct with the interests of the Agency only in view, and that I will not seek or accept instructions in regard to the performance of my duties from any authority external to the Agency.

This declaration was naturally made by Amin, when he signed the standardized Letter of Appointment on 1 July, 1952. Nevertheless, did that prevent his sense of loyalty from being impaired when the cumulative effect of the psychological factors mentioned in this section was exposed to the test, together with the national pride rising in him in reaction to his political discussions with Mr. Smith?

On the other hand, how much impartiality and freedom from bias did Smith himself who, as an international staff member, was supposed to have a better sense of loyalty to the Organization, show under such circumstances, in compliance with the letter and spirit of the Charter:

Article 100

1. In the performance of their duties the Secretary-General and the staff shall... refrain from any action which might reflect on their position as international officials responsible only to the Organization.¹

The spirit of this article was enlarged upon in the United Nations Staff Regulations which imposed upon staff members of the Secretariat obligations concerning their personal conduct. Regulation 1.1. requires them "to regulate their conduct with the interests of the United

1. Charter of the United Nations..., op.cit., p. 51.

Nations only in view."¹ This obligation is further amplified in Staff Regulation 1.4 which provides the following:

Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and in particular any kind of public pronouncement² which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status.³

In UNRWA, Regulation 1.4 of Staff Regulations Applicable to International Staff Members,⁴ and Regulation 1.4 of Staff Regulations Applicable to Area Staff Members⁵ carry a similar undertaking.

How far, therefore, were Amin and his supervisor, Smith, actually bound by their oath of loyalty to the international work they were both serving? Is the spirit displayed by these two staff members a practical demonstration of a statement once made in this respect by the United States Chief delegate to the United Nations, Ambassador Lodge, that

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1. United Nations, Staff Rules, op.cit., p. 3.
 2. The underlining is mine.
 3. United Nations, Staff Rules, op.cit., p. 4.
 4. Op. cit., p. 2.
 5. Op.cit., p. 2.

"no American who works for an international organization puts himself above the law of the United States... There's no allegiance at all¹ to the United Nations... it has none of the attributes of government"²? Or is it an application of Secretary-General Dag Hammarskjöld's words:

Loyalty to the U.N., in the sense in which I understand the board to have used the phrase clearly reflect³ does not bring a staff member in conflict with the duties of a good citizen of a member nation, which has pledged itself to observe the terms of the Charter.⁴

This is a question left for interested students in the field to challenge. Nevertheless, in the writer's opinion, the second opinion seems to be the correct one because allegiance, or loyalty, is a continuous process, and it would be considerably below human standards not to expect a person to grow some sense of it to an institution with which he is associated, without dropping his loyalty to his own country.

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1. The underlining is mine.
 2. See U.N. International Civil Service Advisory Board, Report on Standards of Conduct in the International Civil Service, Doc. Coord./Civil Service/5 (1954), pp. 3-5, 11-14; as quoted in Francis O. Wilcox and Carl M. Marcy, Proposals for Changes in the United Nations (Washington, D.C.: The Brookings Institution, 1955), p. 414.
 3. This phrase was used by the Civil Service Advisory Board in the following sentence: "...in any conflict between national and international loyalties, the conduct of the international civil servant must 'clearly reflect' his obligation to the international organization."
 4. New York Herald Tribune (October 12, 1954); as quoted in ibid.

This was even more confirmed by the Preparatory Commission of the United Nations itself, when it stated that, in serving the United Nations, the staff member was in fact "serving the higher interests of his own country."¹ The International Civil Service Advisory Board also expressed a similar point of view when it said that "legitimate national interests could only be served by the promotion of world peace and prosperity and the successful progress of the international organization toward these objectives."²

As dramatically described by an authority on the subject,

...Loyalty to international service may seem what Plato called a 'watery affection' compared with the strong wine of patriotism, if only because it is a reasoned rather than an instinctive faith. It is none the less a reality, and... the two loyalties, so far from being incompatible, are complementary...³

E. Prejudice or No Prejudice?

This brief discussion of the problem of loyalty in international organization may have probably thrown some side light on the Amin Case. Added to his specific psychological attitudes explained earlier, the mixture of nationalities, languages, backgrounds, cultures and political

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1. Report of the Preparatory Commission of the United Nations, FC/20, 23 Dec. 1945, chap. VIII, p. 85, para. 4; as quoted in Repertory of Practice..., op.cit., p. 213.
 2. Report of the UN International Civil Service Advisory Board, COORD/CIVIL SERVICE/5, para. 22; as quoted in Repertory of Practice..., op.cit., p. 213.
 3. Butler, op.cit., p. 386.

outlook, have all apparently played a part, somewhere in the deep undercurrent, in motivating the decision to terminate his appointment. This impression was dominant in the minds of the Board's Chairman and members; but the problem that faced them was how to establish that Amin was made victim of prejudice generated by these factors?

Everytime the Board tried to dig deeper in this direction, it was reminded of its terms of reference. Tactlessness and "working relationships" were technically assessed by the Division concerned as part of an Auditor's efficiency and, consequently, the Board could never challenge the genuinity of the assessment because "in the case of an appeal against a decision based on inefficiency, relative efficiency or redundancy of a staff member, the Board shall not consider the substantive questions of efficiency or redundancy, but only evidence that the decision has been motivated by prejudice or by some other extraneous factor."¹

The situation presented a deadlock which this study cannot claim to have the solution for. Nevertheless, in stimulating the reader's interest, the following suggestion will also be carried, having once been made by someone who seems to have been himself a victim of a similar case at the United Nations Secretariat:

...It is the writer's belief that the minimum requirement is the creation of a permanent Civil Service Commission (or Board), appointed by and

1. Board's Terms of Reference, supra., p. 32.

directly responsible to the General Assembly, with powers to establish principles and procedures for recruitment and standards of efficiency...¹

F. Formal and Informal Organization

As earlier stated I had a dual responsibility on the Board: one towards the Appellant whom I was representing on the Board, and simultaneously another one towards the Agency, as a whole, by seeing to it that the general interest of the staff was safeguarded, even if it had to be so done to the detriment of the Appellant himself. What made this attitude of mine more imperative was the fact that, shortly after I accepted to represent the Appellant, I was elected member of the Staff Association Executive Committee, and as such could not have possibly overlooked my representational status. It had been given to me by the Staff Assembly in a free election. Happily enough, this sense of dual responsibility was also shared by Mr. Berger, who formally represented the Agency on the Board, and the Chairman, Mr. Tayeb. In the general interest of the staff, we took it upon ourselves to see to it that Amin was not being made victim of prejudice. Otherwise, the case would form a precedent whereby any officer in a supervisory position could get rid of a subordinate of his, under the pretence of "redundancy", "economy", "relative efficiency", "general suitability", or whatever other similar term could

1. Behman, op.cit., p. 5.

2. Supra., pp. 80-81.

be coined to serve an illegitimate end. This indeed formed our guiding principle in following up Amin's appeal to the minutest detail, because,

...In human relationships, particularly between an administration and a staff member in an international institution, the line between justifiable and prejudiced action can sometimes be very thin, and in such embarrassing situations the administration may be tempted to use epithets and phrases like 'difficult', 'he did not get along', etc.¹

G. Management-Staff Relations

Before proceeding forth, it is now thought appropriate to give a brief account of what the UNRWA Staff Association was, its origin and the purposes it was created to serve.

Although comparatively new in international administration, management-staff relations are not incidental. Since the early days of the modern century, not to go back even earlier in history, these relations have been continuously gaining ground mainly as a result of the growing diversity of society, the development of industry and its complex requirements from both employer and employee. In an age where democracy is the underlying concept of a prospective peaceful and orderly world, the growth of such relations is only a reflection of the everlasting human desire for a respectful and productive life compatible with man's innate love for freedom. No group action can normally be directed with a unity of purpose to make the eventual and solid

1. Behanan, op.cit., p. 13.

achievement of positive results, unless each of the individuals forming the group himself feels that, to a certain extent, he has "his say" in his work and his personal conditions involved.

Since social organisms consist of groups of human beings, each of whom is activated by varying motives, no administration can fulfil its obligations if it is not supported wholeheartedly by its staff at all levels. It follows that a staff association is not an 'instrument' of the organization but an essential part of it. Such an association ensures that problems can be resolved in a way satisfactory to all. Therefore, a staff association is an essential requirement of a 'democratic administration.'¹

This is true in international, as well as national, local and private administration. In having organized themselves to protect their interests and improve their working conditions, staff associations (and leagues, unions, etc.) have in fact rendered a great service to the march of civilization and played a prominent part in promoting human welfare and social well-being.

The case of the Whitley Councils in England offers specific significance in this connection. In seeking to improve relations between organized labor and capital and between Employers and Employed, the Whitley Councils were invented and started to function in 1918, as a method of handling staff claims and grievances, of inviting staff co-operation and of applying the ideas of conciliation and

1. Luther H. Evans, Statement made before the opening meeting of the fourth session of the Executive Council of the Federation of International Civil Servants' Associations, on 4 September 1954, Paris; as quoted in Young, op.cit., p. 207.

arbitration to a public service which, for generations earlier had been dominated by authoritarian traditions. This task was discharged "by the formulation of an elaborate plan of joint industrial councils, each responsible for continuous efforts to adjust the interests of workers and employers in a particular industry."¹ Although they fell short from fully achieving their objectives in the first few years, the Whitley Councils nevertheless formed an important development in pointing the way to management-staff cooperation in industry.

On 8 April 1919, and after many efforts, the British Chancellor of the Exchequer, speaking for his government, publicly announced the government's welcome to the introduction of the system into the British Civil Service, and on 23 July 1919, the first meeting of the National Council for the Administrative and Legal Departments of the Civil Service was held. "This event marked the beginning of a new era in the life of the civil service."² The acceptance of the system, however, did not imply that government which, constitutionally speaking represents the taxpayer, had surrendered its right to take executive action in managing the public service. But, with the elapse of time, a conventional situation has obviously been developed whereby

1. Leonard D. White, Whitley Councils in the British Civil Service; A Study in Conciliation and Arbitration (Chicago, Illinois: The University of Chicago Press, 1933), p. 3.

2. Ibid., p. 8.

the staff side has become a real partner in the conduct of the British administration, attending to a large number of matters ranging from "reorganization, assimilation, cost of living, promotion, temporary staffs, and further education... [to] subsistence rates, appeals in disciplinary cases, lunchrooms, age of retirement, and the like."¹

Although it is not the purpose of this study to make an evaluation of the advantages and disadvantages of Whitleyism to each of the two parties concerned, it could nevertheless be safely said that it clearly possesses substantial advantages from the management point of view. It has provided it, at least with a machinery for a better staff attitude.²

Whitleyism soon started to feel its way beyond the national British Civil Service when, in 1928, a staff committee consisting of six members elected by the staff, was created in the International Labour Office at Geneva "... for the purpose of representing staff interests before the Administration and making proposals to the Administration for the improvement of the situation of the staff, both as regards their work and their general living conditions."³ It was indeed the composition of this committee that carried Whitleyism over to the international field; in more specific terms,

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1. Ibid., pp. 338-339.
 2. For a detailed study of advantages and disadvantages, see ibid., pp. 337-350.
 3. Article 90, Staff Regulations of the International Labour Office, 1928; as quoted in Young, op.cit., p. 208.

... Perhaps the fact that the workers' representatives constitute one of the three parts of the sovereign structure of the Organization, and that Mr. Albert Thomas, the first Director-General of the International Labour Office, had come from the ranks of the workers and had graduated through trade-union work to become an international figure, contributes in no small measure to the introduction of staff unionism on an international plane.¹

The system was thus applied, with a remarkable success, in the International Labour Office in 1928, but unfortunately to a much lesser extent in the League of Nations in 1930.² When, however, an identical set-up was recommended to be created in the United Nations Secretariat in 1945, by the Executive Committee of the Preparatory Commission,³ this recommendation was not embodied in the provisional Staff Regulations adopted by the General Assembly in 1946. The unhappy experience felt in the League Secretariat had apparently influenced the thinking of the members of the Preparatory Commission. The Commission, however, did suggest that staff participation on a limited scale (i.e. in matters affecting appointment, promotion and disciplinary measures) "should be sought through established machinery in the new international organization."⁴

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1. Statement by Mr. Rao, Acting Director-General of the International Labour Office, before the first session of the Council of the Federation of International Civil Servants' Associations on 20 September 1952 (FIGSA/G/SRI/1, p.4); as quoted in Young, p. 208.
 2. Young, op.cit., pp. 208-209.
 3. The Committee's Draft Staff Regulations, 53 (PC/EX/113 Rev. 1, 12 November 1945, p.94), as quoted in ibid., p. 209.
 4. Report of the Preparatory Commission (PC/20), pp. 92, 93; as quoted in ibid.

The actual constitution of a Staff Committee in the United Nations Secretariat took place in 1947. According to the provisional Staff Rules made by the Secretary-General, this Committee was in principle only consulted¹ on questions relating to staff administration and welfare."

In 1950, the permanent Staff Regulations adopted by the General Assembly provided for the establishment of a Staff Council elected by the staff thus making it a permanent feature of the United Nations Secretariat. Regulation 8.1 stipulates the following:

- a) A staff Council, elected by the staff, shall be established for the purpose of ensuring continuous contact between the staff and the Secretary-General. The Council shall be entitled to make proposals to the Secretary-General for the improvement in the situation of staff members, both as regards their conditions of work and their general conditions of life.
- b) The Staff Council shall be composed in such a way as to afford equitable representation of all levels of the staff.
- c) Election of the Staff Council shall take place annually under regulations drawn up by the Staff Council and agreed to by the Secretary-General.²

H. The System in UNRWA

In accordance with the same principle, a provisional committee was formed in UNRWA in 1954 to draw the provisional

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1. United Nations, Staff Rules, 135 (United Nations Document A/551 of 13 May, 1948); as quoted in ibid.
 2. United Nations, Staff Rules, op.cit., p. 45.

Statute of the Staff Association for Headquarters.¹ The Statute was drawn and approved by the Director of the Agency and promulgated on 11 August 1955.²

Article 2 of the Statute stipulates the following:

The purposes of the Staff Association are:

- a) To contribute to the promotion of the objectives of the UNRWA [sic] by the efficient and loyal discharge of the functions assigned to the Agency;
- b) To promote and safeguard the rights, interests and welfare of the staff;
- c) To promote recreational and social activities among all members of the Staff.³

The first Staff Assembly was convened on 3 October 1955, at the UNESCO Hall, Beirut, and the first Executive Committee of Staff Association was elected during the meeting

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1. No administrative circular or written evidence was found in UNRWA records. This information was obtained verbally from Mr. Salem Sa'id, Chairman of the Executive Committee of UNRWA Staff Association.
 2. Memorandum from UNRWA Director to All Staff Members at Headquarters, dated 11 August 1955, together with the Statute of Staff Association of the Headquarters of UNRWAPR (12 chapters, 25 articles), and Rules of Procedure of Meetings of the Staff Assembly (10 rules) issued in compliance with Article X of the Statute which stipulates as follows: "The proceedings at any Staff Assembly shall be governed by the rules of procedure especially adopted by the Assembly, and in any situation not covered by these rules reference will be to Robert's Rules of Order."
 3. Statute of the Staff Association of the Headquarters of UNRWAPR, ibid., chap. I (Name & Objectives), p. 1. Also embodied in UNRWA Staff Rules Applicable to Area Staff Members (Beirut, 1 September 1957) chap. VIII, p. 43.

for the calendar year 1956. This practice has continued yearly ever since, but with the Staff Assembly convening at the invitation of its Executive Committee, "not later than the 15th day of December of each year."¹ Similar Staff Associations were subsequently also formed in the field offices.

On 1 July 1957, the system was regulated under the provision of Staff Regulation 8.1 which stipulates the following:

Staff Associations, with appropriate organs, may be established by the staff for the purpose of ensuring contact between them and the Director. Representatives of the staff associations shall be entitled to make proposals to the Director for improvements in the situation of staff members both as regards their conditions of work and their general conditions of life.²

The implementation of this Regulation has very recently been further clarified in Rule 108.1³ of the permanent Staff Rules, which has covered it in some detail.

I. Effect of System in International Organization

What now, to the reader's mind, is the significance of staff relations in international organization? In reply to a question like this, it would not be sufficient to state that, in the United Nations Secretariat, the Specialized Agencies and UNRWA, the progressing achievements made through

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1. Ibid., chap. IV (Staff Assembly), Art. 7 (c) p. 2.
 2. Staff Regulations Applicable to Area Staff Members, op.cit., p. 7.
 3. UNRWA, Staff Rules op.cit., pp. 43-44.

staff councils and associations have been more than satisfactory. Apart from the representational character of these associations, their advisory capacities, and improvements in the "conditions of work" and the "general conditions of life" of staff members (e.g. salary scales, increases and increments, loans, housing conditions, appeals against administrative decisions, transportation and the like), a special characteristic remains to be mentioned. Management-staff relations in international organization, where a variety of languages, cultures, backgrounds, etc. exists, seem to reflect most favorably the international character of the United Nations and its organs, by bringing about concerted and interacting multinational efforts towards an effective, although painstaking and time-consuming, functioning of the administrative machinery. Higher morale, co-operation and efficiency are thus eventually developed only to typify an efficient international civil service which unilateral and administrative decisions alone cannot attain.

The Staff Committee of the United Nations European Office at Geneva once put it as follows:

No other working method could produce more favourable results than those methods used with the best co-operative spirit.¹

Or, in the words of a competent authority on the subject:

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1. Annual Report of the Staff Committee to Staff Assembly for 1954 (C.S.G./b/A.P. of 12 February 1954), p. 12; as quoted in Young, op.cit., p. 219.

... This quite extensive machinery represented a compromise between the concept of strong managerial authority on the one hand, and, on the other, protection of staff interests in their posts as well as the encouragement of staff participation in the development of Secretariat personnel policies and the maintenance of high standards of discipline and morality.¹

In spite of the fact that Management-Staff relations in UNRWA did not actually carry all this weight from the staff point of view (and this can be largely attributed to the unusually delicate problem which the Agency handles), it can nevertheless be safely said that the cooperative spirit and guiding principles referred to in this section, formed the criteria which the Board adopted in considering the Amin Case.

J. The Need for Staff Reduction

Turning back to the Case, the question now arises whether or not there had been any real necessity to terminate Amin's services on grounds of redundancy to the Agency's needs. It is true that, due to financial stringency, a reduction of staff on a somewhat large scale was contemplated by the Director. This would have entailed, if it materialized, several hundreds of staff members (including the discontinuation of a number of the Agency's functions). In his talk to the Staff on 3 May, 1957, the Director had alerted the staff to this possibility, but with the utmost assurance

1. Cohen, op.cit., p. 301.

that (1) he would resort to it as a last measure, only if and when inevitable. His guiding principle, under such circumstances, would primarily be the general welfare of the one million refugee population; and (2) a thorough¹ study would be made for every case of staff reduction.

Fortunately enough, UNRWA was able to pull through its financial crisis, and its budgetary needs for the following year were adequately secured. It, therefore, followed that the situation called for no need for a staff reduction.

Thus, although the excuse given for Amin's reduction came somehow as an implicit dejure response to the Director's announcement, it nevertheless carried a defacto significance in the sense that it formed an abuse of the opportunity. Consequently, the argument of redundancy must be refuted.

K. Significance of Checking Effect

It should, however, be placed on record that a great service was done to the staff, in general, by Amin's case. At its early stages, information had started to leak to the Board that some Chiefs of Divisions and Heads of Branches were already contemplating similar steps and planning to get rid of some staff members in the same manner. They were only waiting to see if the matter was an "easy" one. Fortunately for the staff members "listed" for termination, the case did not turn out to be so "soft". The serious trouble taken by

1. Supra., p. 45.

the Board in studying Amin's case very carefully, the time consumed, the amount of correspondence involved, the hearings held for senior employees of supervisory capacity with the tough time they were given when crossexamined by the Board, the detailed questions they had to answer and facts and dates to give, the strictly legal attitude required by the Board from the General Council's Office, and all other work entailed - all this formed a kind of a control - although of an advisory nature - over the Administration.

It is true that the Board's final recommendation did not call for a reversal of the decision to terminate Amin's services; but, nevertheless, the Board's mere power to investigate and advise was in itself an effective deterrent against similar recurrences in the future. In other words, as one authority on the subject puts it:

Whether these internal judicial committees have had any effect in protecting staff rights against the administration's arbitrary decisions or not is a matter of opinion. It is probably not far off to state, as observed by Mr. Ranshofen-Wertheimer, on the League of Nations experiences,² that the importance of these rested in their existence rather than in their operation, because, by

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1. Referring to the Joint Appeals Board, the Judicial Committee, the Joint Disciplinary Committee and the Staff Committee in the United Nations Secretariat.
 2. E.F. Ranshofen-Wertheimer, The International Secretariat; A Great Experience in International Administration (Washington: Carnegie Endowment for International Peace, 1945), p.263; quoted in Young, infra.

their very set-up, the Administration must do everything possible to avoid the charge of arbitrariness in its exercise of discretionary power...¹

L. Some Miscellaneous Remarks

Some miscellaneous remarks remain to be made:

a) Although the practice followed by the Agency in cases of termination of service is to give fourteen days' notice, it was noticed that the notice period given to Amin extended from 23 October until the close of business on 30 November, 1957.² It is considered that this longer-than-usual period (for which the staffmember was fully paid while he had actually ceased to work on 23 October) was only given as a compensatory measure for an act which the Agency must have felt to be unfair.

b) The fact that the written statements made by the three supervisors were dated 24 October (i.e. one day after Amin's verbal notification of the decision by the Head Auditor) again calls for some suspicion, at least in the efficiency of the Administration if not in the very intentions of the Division concerned. What could have possibly prevented this measure to take its normal chronological course, other than the attempt to cover up a mistake in

1. Young, op.cit., p. 186.

2. Letter from Chief, Personnel Division to Amin, supra., p. 49. Amin's letter of appointment (para. 4) stipulates that "this appointment may be terminated on 14 days' notice by the Agency...."

procedure which was apparently realized in the last minute of 23 October?

c) Amin's personal file included no reprimand or warning whatsoever. His temperamental problem, as already evidenced by several responsible people, was an old one. It could not have been a sudden product of the last week, month, or even year. If such a reprimand or warning had been officially effectively forwarded to him, it could have presumably made a reasonable effect of adjustment on him. Lack of such a document reflects badly on the efficiency of both the Branch and Division he belonged to, and more so on the soundness of administrative system of the Personnel Division, thence the Agency in general.

d) Although considered a "substantive question" and assessed by the Comptroller and his responsible lieutenants as part of an auditor's efficiency, thereby preventing the Board from enquiring any further into this "technical" matter, it is felt that such the staff member's work relations should not have necessarily led to the termination of his service, unless serious efforts had been made to adjust this "technical weakness".

This point has even more significance. In the writer's opinion, it reflects disadvantageously more on the administrative system of the Agency than on the capability of the staff member himself. It shows a lack of modern techniques in selecting, training and developing personnel. It furthermore reveals the lack of surveys to find out staff

problems, thence the need to consult with them for the purpose of solving them. It also reveals the lack of proper communications between the Chief Administrative Officer and his staff, as well as the lack of incentives and such other norms that are capable of stimulating initiative and interest in the work, on the part of the staff.

The proper managerial attitude towards the staff in personnel administration should be a positive one that can help promote the interests of democratic management. In other words, it is more the "do" rather than the "do not" that gives fruition in running an institution. Otherwise, if the negative attitude alone is followed, and disciplinary measures are taken as a result, the result will probably be frustration and low morale.

Even if bureaucratic behavior alone were to be the criterion in Amin's case, on the part of Management, a mere warning, fine, demotion, stop of salary increase, or any similar administrative measure could have sufficed, at least for a first procedural step towards his termination.¹

e) At least two of Amin's immediate supervisors, Messrs. Brewer and Cook, gave the impression of having somehow misled him in the case. While, on the one hand, they would deny to him having been consulted on the decision - with even one of them expressing his surprise at it -

1. For an interesting discussion on this subject, refer to Mosher, op.cit., chap. XII, pp. 285-317.

investigation revealed that they had clearly given their recommendations against his retention in the service.

f) Until the case was taken up by the Chief of Personnel Division, on behalf of the Director, there seemed to have been some wavering of responsibility with both the Comptroller and Head Auditor trying to place it on each other. The Comptroller even went to the extent of having accepted to change his decision if the Head Auditor was willing to do so.¹

g) The question of "relative ability" was first embodied in the Comptroller's letter to Amin dated 25 October, 1957.² Up till then the exact cause for termination did not appear to be well-grounded. It was varying between "redundancy", "staff reduction", and "general suitability".

h) Amin's contention that the Audit Branch was understaffed proved in later days to be correct. On 29 May 1959, a new member was added (Mr. Jack Roberts) to the Branch's strength as an international employee, while, in his evidence before the Board, the Comptroller had stated that two international and two area staff posts had been declared redundant to the Agency's needs.³

M. Some Adverse Remarks

In the meantime, some comments can also be made on the weaknesses of Amin's appeal. In addition to his tactlessness

1. Supra., p. 48.

2. Ibid.

3. Supra., p. 83.

- the gap through which he was attacked - the following points can be specified:

a) Although intelligent and industrious, Amin lacked the ability of precision. It was necessary for me at almost every step of the case to draw his attention that he must be precise in the information and statements he gave either to me, or directly to the Board. His hot temper and tendency to generalize, and oversimplify facts constantly constituted a great difficulty in bringing forth a successful end to his appeal. His physical illness had apparently much to do here.

b) In my strong opinion, his request for transfer to Education and Training Division did weaken his case. It left the impression on the Chairman and the other member of the Board that he was not fully convinced of his right to reinstatement in his original post. Upon his insistence, however, it took me quite a deal of effort to convince the Board to use this argument with the Agency as "a face saving device" for the Administration. Nevertheless, the whole thing looked like bargaining - not even a compromise.

c) In his contacts and correspondence with the Comptroller, first, and then with the Agency, at large, Amin again lacked precision and tact. Although I did help him in the preparation of a large part of his correspondence, he nevertheless always insisted on hitting too hard and, often, pointlessly. In my opinion, he should have concentrated more on the facts and given more specific proofs of his "relative efficiency" than he did.

N. Some Conclusive Remarks

This study is expected to have presented a problem, without offering a solution. It has illustrated, through the direct narration of a real case, the existence of danger potential in the extra-ordinary powers of the Chief Administrative Officer in international organization. It has so far been agreed by almost all scholars in the field that, in the interest of world peace, no restrictions should be laid on the right of the officer to use these powers. The author of this study cannot but add his voice to this almost unanimous agreement on the issue.

Nevertheless, insofar as the welfare of the individual staff member - and consequently the whole body of international staff - is concerned, this study aims at stimulating the interest of students in the field to be on the lookout for solutions. A clear abuse of the Chief Administrative Officer's powers has been made in the Amin case, without leaving a single means by which the Ad Hoc Joint Appeals Board could have remedied the situation. There is no reason to suppose that such injustice cannot recur under similar, or other, circumstances, whether in UNRWA, the United Nations Secretariat or any other United Nations Organ.

What then could be done to check the use of the Chief Administrative Officer's powers without prejudicing his essential independent status in, and obligations to, the World Community, as a whole?

It is not in the least assumed that the solution will be an easy one. The tiring search for it, however, will certainly be an exceedingly interesting and beneficial one. It will surely be a new contribution to the study of international personnel administration where the mixture of nationalities, diverse influences of national administrative systems, and the complexity of languages, cultures, religions, races, backgrounds, etc. have a weighty bearing not only on the organization's standard of functioning, and success, but also on its very survival itself. One scholar has elected to express his viewpoint as follows:

«.Habitually, organizations improve as they function. The persons least worried about either survival or success for the United Nations are those members of the Secretariat ..who spend most of their time on its affairs. The United Nations best approaches the job of establishing itself by doing the duties that fall to it, by going ahead where possible and by drawing back where it is necessary, by assuming a greater future and preparing for it. Every job well done counts in the tally toward better jobs better done in the future. So far the prospects are good. The United Nations will grow by growing, it will succeed by a series of successes.¹

True. But, for the academic researcher, there should be no justification whatsoever for declining to take the challenge on the grounds that the United Nations is a unique set-up whose complex administrative problems will only be solved with time. The solution of these problems should be

1. Chase, op.cit., p.390.

more the product of hard work and thorough research, than the product of trial and error covered by the elapse of years. Whatever applies to the United Nations Secretariat in this respect will also apply to all international organs including, of course, UNRWA.

...Making allowance for the fact that easy solutions are not readily to be found for the complex problems involving a multitude of nationalities, surely, after fourteen years of the existence of the Organization, one is entitled to ask whether or not any earnest efforts have been made to build a truly international Secretariat in the spirit of the Charter and the recommendations of the Preparatory Commission of the United Nations.¹

1. Behanan, op.cit., p. 1.

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