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Part Two. Legal activities of the United Nations and related intergovernmental organizations

Chapter V. Decisions of administrative tribunals of the United Nations and related intergovernmental organizations

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Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[2]

1. JUDGEMENT NO. 514 (23 MAY 1991): MANECK V. UNITED NATIONS JOINT STAFF PENSION BOARD[3]

Applicant's request for retroactive application of interim measures for calculation of periodic benefit under the Pension Adjustment System—Question whether limiting applicability of the interim measures violates the principle of equal rights—Jurisdiction of the Tribunal with respect to cases involving the United Nations Joint Staff Pension Fund—Validity of various aspects of the Pension Adjustment System in the light of Judgement No. 400, Connolly-Battisti (1987)—Legislative authority of the General Assembly in developing and making changes in the Pension Adjustment System

The Applicant, a former UNESCO staff member whose periodic benefit from the Pension Fund was being paid in accordance with the provisions of the Pension Adjustment System applicable at the time of his separation from service, 1 June 1981, had claimed that he should have been paid in accordance with the provisions of interim measures in effect for those who had separated from service during the period 1987-1990 and payable effective 1 January 1988. Not to have done so, he asserted, was a violation of the principle of equal rights guaranteed by the Charter of the United Nations and the Universal Declaration of Human Rights.

The Tribunal noted that the Applicant had received pension benefits calculated in accordance with provisions in effect at the time of his separation from service. The Tribunal observed that its jurisdiction with respect to cases involving the United Nations Joint Staff Pension Board applied to applications alleging non-observance of the Regulations and Rules of the Pension Fund arising out of decisions of the Pension Board. The Tribunal was not empowered to rewrite existing regulations or to create new regulations for the Pension Fund since that was the function of the General Assembly. The Tribunal likewise had no authority to extend to the Applicant an interim measure adopted by the General Assembly which did not apply to him since that again was a matter for the Assembly's legislative authority.

The Tribunal found that the General Assembly did not act contrary to the Charter or human rights principles when it decided to limit the application of the interim measures to participants who had separated from service during 1987-1990, observing that the interim measures had been established in conformity with the decision in Judgement No. 400, *Connolly-Battisti* (1987). Discussing the role of the General Assembly in developing and making changes in a Pension Adjustment System, the Tribunal, quoting Judgement No. 378, *Bohn, Coeytaux and Vouillemont* (1986), and Judgement No. 379, *Gilbert, Hyde, Ishkinazi and Michel* (1986), pointed out that modifications "must not be arbitrary. They must be reasonable and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members." The Tribunal concluded that those words were relevant as a general principle and the General Assembly's action in establishing and limiting the interim measure in question was not in conflict with them.

For the above reasons, the application was rejected in its entirety.

2. JUDGEMENT NO. 516 (28 MAY 1991): SATITE AND WILLIAMS V. THE SECRETARY-GENERAL OF THE INTERNATIONAL MARITIME ORGANIZATION[4]

Applicants' request for recalculation of salary upon promotion from the General Service category to the Professional category as provided for under the Staff Regulations as interpreted by Judgement No. 451, Young (1989), before staff rule 103.5 was amended—Principle of hierarchy of norms—Secretary-General of IMO exercised his authority properly in amending staff rule 103.5

The Applicants, staff members of the International Maritime Organization, had claimed that the Secretary-General of IMO had acted improperly when he amended staff rule 103.5 by adding paragaph (iii), because in their view it contradicted the Staff Regulations. They argued that the amendment provided for the formula "net salary plus post adjustment" to be used in the calculation of the salary adjustment upon promotion from the General Service category to the Professional category, whereas only "net salary" was specified under paragraph 3 (*b*) of annex I to the Staff Regulations. The Applicants, asserting that the Staff Regulations were norms of a higher level than the Staff Rules, further claimed that the relevant staff regulation, as interpreted by the Tribunal in Judgement No. 451, *Young* (1989), should continue to be applied in calculating remuneration upon promotion from the General Service category to the Professional category regardless of the amended staff rule 103.5.

The Tribunal firmly upheld the principle of the hierarchy of norms and, therefore, observed that a norm of inferior level could not lawfully contradict one of a higher level. However, bearing in mind that principle, the Tribunal found that amended staff rule 103.5 in no way contradicted the Staff Regulations. It also found that the IMO Secretary-General had acted within the limits of his competence when he added paragraph (iii) to staff rule 103.5.

Similarly, the Tribunal found no inconsistency between the amended staff rule and Judgement No. 451, *Young* (1989). On the contrary, the Tribunal observed that the Secretary-General of IMO had accepted the Tribunal's decision in the case, when he amended staff rule 103.5 by adding paragraph (iii), which provided for a clarification of the word "salary" found in paragraph 3 (*b*) of annex 1 to the Staff Regulations. It was the Tribunal's opinion that there was no ground to challenge the authority of the Secretary-General of IMO to develop and clarify the provisions of a staff regulation, as long as such an exercise was consistent with that regulation.

The Applicants had also challenged the validity of the amended staff rule 103.5 by claiming that IMO's motive in amending the staff rule was to avoid the consequence of extending to other staff members the system used in *Young*. However, the Tribunal found no fault with IMO's desire to avoid extending to other staff members the calculation system used in *Young*. In the Tribunal's view, the Secretary-General of IMO "should always be free to correct, through normal legal channels, any existing situation calling for correction."

For the foregoing reasons, all the Applicants' pleas were rejected.

3. Judgement No. 526 (31 May 1991): Dewey v. the Secretary-General of the United Nations[5]

Revocation by the Secretary-General of the decision of the High Commissioner for Refugees extending the fixed-term appointment of his Deputy—Authority of the High Commissioner regarding the appointment of a Deputy under paragraphs 14 and 17 of the statute of the Office of the High Commissioner for Refugees—The Applicant cannot bear the consequences of any lack of actual authority on the part of a high administrative official—Confirmation of the Tribunal's jurisprudence in Judgement No. 444, Tortel (1989)—Exceptional character of the case justifying payment of higher compensation

The Applicant, a former Deputy High Commissioner of the Office of the United Nations High Commissioner for Refugees (UNHCR), had claimed that the letter of appointment he was offered and signed on 25 September 1989, covering the period from 1 January 1990 to 31 December 1991, was a valid and binding contract and that because it was withdrawn, upon the resignation of the High Commissioner, he should be reinstated and awarded damages.

The Tribunal noted that there was nothing in the language of paragraphs 14 and 17 of the UNHCR statute which imposed any requirement on the High Commissioner to consult with the Secretary-General before the appointment of his Deputy High Commissioner. Indeed, paragraph 14 reserves to the High Commissioner alone the power to appoint his Deputy and the language of paragraph 17, which simply instructs the High Commissioner and the Secretary-General to make "appropriate arrangements" for consultation on matters of "mutual interest" cannot be interpreted as empowering the Secretary-General to invalidate the appointment of a

Deputy High Commissioner solely because of a lack of consultation on the matter.

The Tribunal also noted that although there was an apparent agreement, dated 16 March 1989, between the High Commissioner and the Assistant Secretary-General of the Office of Human Resources Management (OHRM) to consult in the future before appointments were made by the High Commissioner, the Tribunal was of the view that such an agreement fell far short of establishing that the Secretary-General of the United Nations had the power to compel an agreement and, furthermore, that such an understanding between the High Commissioner and the Assistant Secretary-General of OHRM would necessarily invalidate a subsequent appointment by the High Commissioner contrary to the understanding.

The Tribunal found that there was no evidence that the Applicant had received notice of any limitation on the authority of the High Commissioner. Rejecting the arguments of the Respondent, the Tribunal determined that the Applicant, while occupying the institutional post of the Deputy High Commissioner, could not be deemed to have been aware of the scope of the authority of the High Commissioner, nor would knowledge of any limitation relating specifically to the appointment of a Deputy have been brought to the Applicant during the normal course of business.

The Tribunal recalled its jurisprudence in Judgement No. 444, *Tortel* (1989), in which, dealing with a somewhat analogous situation, it had indicated that it was entirely reasonable for the applicant to have relied on a high administrative official's apparent authority to make a commitment and concluded that the same principle would apply in the case in question, even if the Tribunal had found a lack of actual authority.

For the foregoing reasons, the Tribunal held that the Applicant's appointment from 1 January 1990 to 31 December 1991 was valid and binding and that he had been unlawfully separated from service on 31 December 1989 and ordered that the Applicant be reinstated or be awarded compensation. The Tribunal fixed the compensation to be paid as two years of the Applicant's gross salary plus payment of an amount equivalent to the Organization's contribution to the Pension Fund had the Applicant continued without any break in service. The Tribunal considered that that was an "exceptional case" justifying the payment of compensation higher than the usual two years of net salary owing to the extent of the injury to the Applicant when, in disregard of his proposal that his contract be honoured by placing him in another post following the resignation of the High Commissioner, he was abruptly separated from the Organization despite the existence of a valid appointment through 31 December 1991. Taking into account the apparent good faith of the Respondent, the Tribunal denied the Applicant's other pleas.

4. JUDGEMENT NO. 533 (28 OCTOBER 1991): ARAIM V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[6]

Claim by a United Nations staff member for rescission of decision to fill the D-1 post under the replacement procedure established in General Assembly resolution 35/210 instead of under the Vacancy Management

System—Article 101 of the Charter of the United Nations—The Applicant's claim falls within the jurisprudence established in Judgement No. 492, Dauchy (1990)

The Applicant, a staff member of the Centre against Apartheid at the P-5 level, had claimed that the D-1 post of Chief of the Committee Services and Research Branch in the Centre be filled under the Vacancy Management System, instead of under the replacement procedure of General Assembly resolution 35/210 of 17 December 1980, and that he be considered for the post.

The Tribunal noted that resolution 35/210 allowed the replacement by candidates of the same nationality as the previous incumbents in respect of posts held by staff members on fixed-term contracts, whenever it was necessary to ensure that the representation of Member States whose nationals served, primarily on fixed-term contracts was not adversely affected. The Tribunal further noted that when the Assistant Secretary-General of the Centre against Apartheid wrote to the Applicant explaining that particular attention had been given to his possible candidature but that it had been decided that the post would be filled on a fixed-term basis, "in view of . . . the need to retain flexibility in staffing in the light of the changing constraints under which the Centre has to operate [and] the need to maintain a geographic balance in the composition of the senior staff of the Centre," that neither of these reasons had cited resolution 35/210. The post had been filled by replacing the incumbent with another individual of the same nationality (Ukrainian).

The Tribunal, recalling Judgement No. 492, *Dauchy* (1990), observed that if the Respondent "reasonably considered it necessary to employ the replacement procedure in order to avoid the adverse effect described in resolution 35/210, he was justified in designating a Ukrainian to fill the D-1 post in question, though he was not obliged to do so". However, as the Tribunal pointed out, in the circumstances of the present case, the Respondent was obliged to comply with "the paramount consideration in the employment of the staff", as set forth in Article 101 of the United Nations Charter, by giving fair and full consideration to any eligible candidate who aspired to the vacant post and was reasonably capable of fulfulling its needs. While not doubting the truth of the Assistant Secretary-General's statement that the Applicant was given "serious and full consideration" for the post, the Tribunal took into account the fact that consideration was necessarily given against the background of resolution 35/210: only if no satisfactory Ukrainian candidate had been found could the Applicant have been selected.

While the Tribunal was aware that even if the post had been filled by the Vacancy Management System the Applicant might not have been selected, it concluded that his "chance of success was necessarily precluded once the Respondent had decided to fill the post by replacement."

For the above reasons, the Tribunal awarded $5,000 as compensation for the injury suffered by the Applicant, and rejected all other pleas.

5. JUDGEMENT NO. 535 (29 OCTOBER 1991): SHATILOVA V. THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[7]

Non-renewal of a fixed-term contract solely because the consent of the Government of the staff member concerned was not obtained—Resolution A14/6 of the ICAO Assembly—No evidence in the file that the Applicant was in government service—The Respondent's error of law vitiates the non-renewal decision—The judgement does not weaken articles 58 and 59 of the Chicago Convention

The Applicant, a national of the USSR, entered the service of ICAO in June 1989 with a two-year fixed-term contract. Her request that the contract be renewed was not granted. The Respondent based his decision mainly on legal grounds. According to resolution A14/6 of the ICAO Assembly, "in cases where it is desired to recruit a person from the Government service of a Contracting State, the Secretary-General shall take all practical steps to obtain the consent and cooperation of that State." The consent was not obtained.

In view of all the information in the file, the Tribunal considered that at the time when the Applicant had requested the renewal of her contract she was not in the "Government service of a Contracting State" in the sense of paragraph 3 of resolution A14/6 of the ICAO Assembly. The Respondent was therefore not obliged to request the consent of the USSR Government in order to proceed with the renewal of the contract.

The Tribunal further stressed that the application of paragraph 3 of resolution A14/6 was not affected by the judgement, provided that the candidate for recruitment to the international civil service was in the government service of a Contracting State and had not left the service of his Government.

The Tribunal concluded that the Respondent, by requesting such consent and basing his decision on the USSR's refusal to give its approval, had committed an error of law. Under the circumstances, the Tribunal considered that the error vitiated the decision taken by the Secretary-General of ICAO.

However, the Tribunal added that by its decision in the present case, it did not wish to weaken the provisions in the Chicago Convention, namely, articles 58 and 59, which speak to ICAO's authority to determine terms and conditions of service of its staff members. The Tribunal further stressed that the application of paragraph 3 of resolution A14/6 was not affected by the judgement, provided that the candidate for recruitment to the international civil service was in the government service of a Contracting State and had not left the service of his Government.

For the foregoing reasons, the Tribunal awarded monetary compensation and requested the Secretary-General to re-examine the Applicant's request for renewal of her contract, and rejected all other pleas.

6. JUDGEMENT NO. 537 (1 NOVEMBER 1991): UPADHYA v. THE SECRETARY-GENERAL OF THE UNITED NATIONS[8]

Non-selection for a D-1 post—Interpretation of Judgement No. 401, Upadhya (1987)—Question of the validity of the Vacancy Management System—Ending of the emergency which gave rise to the Vacancy Management System requires the Secretary-General either to end the temporary suspension of staff rule 104.14 or comply with article XII of the Staff Regulations

The Applicant appealed his non-selection to a D-1 post pursuant to the Vacancy Management System. He also questioned the validity of the Vacancy Management System and asserted that the system had resulted in ongoing damage to the development of his career, because of the concomitant suspension of staff rule 104.14. Finally, the Applicant complained that the decision appealed from in the present case represented a failure of the Secretary-General to abide by an earlier judgement of the Tribunal (No. 401, *Upadhya* (1987)).

At the outset, the Tribunal rejected the Applicant's argument that his non-selection for the D-1 post represented a lack of implementation of Judgement No. 401. The Tribunal observed that that judgement had not called for more than future monitoring of the Applicant's career to avoid it being prejudiced by the events which had given rise to the judgement, nor for special consideration for any particular D-1 post. The Tribunal further observed that it had not been established that the Applicant's non-selection for the post in question was related to the events surrounding Judgement No. 401.

As to the validity of the Vacancy Management System, the Tribunal was of the opinion that, though the system was accompanied by some degree of confusion in its initial implementation, no "formal" suspension or amendment of the relevant staff rules governing promotion was required in order for the Vacancy Management System to become effective and that the introduction of the system could not reasonably have been understood as anything other than a temporary suspension of staff rule 104.14 as an emergency measure. Moreover, explanations on the proposed new system provided to the staff representatives, and Secretary-General's bulletin ST/SGB/221 and administrative instruction ST/AI/338, in the absence of a revocation of staff rule 104.14, described a temporary system. Furthermore, the reports of the Secretary-General, setting out the essential features of the Vacancy Management System, informed the General Assembly with sufficient clarity that staff rule 104.14 was being suspended temporarily as part of the Secretary-General's emergency efforts to deal with the Organization's financial crisis.

The Tribunal observed that none of the resolutions adopted by the General Assembly in response to each of the 1987, 1988 and 1989 reports of the Secretary-General on the matter reflected a decision with respect to the applicability or effect of article XII of the Staff Regulations on the Vacancy Management System, but, since the financial emergency which had precipitated the Vacancy Management System was continuing, the authority of the Respondent to maintain the system also continued. If the

General Assembly had regarded the actions of the Respondent during the emergency period as not being within his authority as Chief Administrative Officer or as necessitating the submission of new staff rules, it would presumably have made that known in one or more of those resolutions. Yet, there was no such indication on the part of the General Assembly. Accordingly, the Tribunal did not find either the adoption of the Vacancy Management System by the Secretary-General as a temporary emergency measure and its continuation for the duration of the emergency, or the accompanying implicit suspension of staff rule 104.14, as being outside the Secretary-General's discretionary authority as chief administrative officer.

Consequently, the Tribunal stated that the Applicant's claims, based on his contention that he had been improperly deprived of consideration for promotion under the annual promotion register procedure provided for by staff rule 104.14, must fail.

After reviewing the facts the Tribunal also concluded that the Applicant had failed to establish discrimination against him in the selection process under the Vacancy Management System procedures.

Having noted the Respondent's statement that the emergency which had given rise to the Vacancy Management System had ended at the close of 1989, the Tribunal observed that, upon the ending of the emergency and to avoid conflicting with the Staff Regulations and the rights of staff members, particularly the right to be reviewed for promotion under staff rule 104.14, "a rule of major importance to the career of staff members", the Respondent had to end the temporary suspension of staff rule 104.14 or comply with article XII of the Staff Regulations within a reasonable period. The Tribunal considered that such a reasonable period would end three months after the date of notification of the judgement.

For the foregoing reasons, subject to the above paragraph, the Tribunal rejected the Applicant's plea that the Vacancy Management System was invalid at the time of the contested decision as well as other pleas of the Applicant.

7. Judgement No. 546 (14 November 1991): Christy, Thorstensen and White v. United Nations Joint Staff Pension Board[9]

The Applicants' claims challenge complex changes to pensionable remuneration—General Assembly resolution 44/199 amending article 54 (b) of the Joint Staff Pension Fund Regulations—The required conditions for the modification of the pension system—It is not within the competence of the Tribunal to substitute its judgement for that of the General Assembly in respect of the matters in question

The Applicants, participants in the Pension Fund, claimed that in the application by the Fund of the new methodology for the adjustment of pensionable remuneration introduced by the General Assembly, there was a retroactive reduction of their pensionable remuneration. In particular, the Applicants contested the validity of a decision by the Standing Committee of the United Nations Joint Staff Pension Board affirming the

action by the Secretary of the Board in adhering to the revised scale of pensionable remuneration for Fund participants in the Professional and higher categories which had been established by the General Assembly in its resolution 44/199 of 21 December 1989, effective as of 1 January 1990. That resolution amended article 54 (*b*) of the Joint Staff Pension Fund Regulations, and the revised scale had been made effective by the Board on 1 February 1990. The amendment of the Fund Regulations relevant to the applications in question dealt with the adjustment procedure used in determining pensionable remuneration.

The Applicants asserted that the changes made by the General Assembly which they challenged were in violation of the Applicants' right to the maintenance of an effective and just pension system.

The Tribunal observed that it had previously held and reiterated that the Fund was under an obligation to maintain an effective and just pension system. But that did not mean that the system might not be modified so long as the modifications were not arbitrary, were in conformity with the objectives of the pension system and promoted the implementation of the principles laid down in Article 101 of the Charter of the United Nations.

The Tribunal stated that it was unable to find on the facts of the case any violation of those principles. It was within the province of the General Assembly, following the advice of the International Civil Service Commission, the Board and others, to make reasoned judgements with regard to the pension adjustment system as in the present case, which it viewed as correcting a feature introduced in 1987 that had become erroneous by the time it was applied in 1988 and 1989. It was not for the Tribunal to attempt to evaluate the complex considerations involved in making determinations as to comparable income replacement ratios, or the effect on comparable pensions of changes in the United States tax laws, or similar matters. Those were properly matters for the General Assembly's judgement. And it was surely not within the competence of the Tribunal to substitute its judgement for that of the General Assembly with respect to matters of that nature.

Once it was clear, as it was in the present case, that modifications were not arbitrary or abusive, but instead had a reasonable basis and were in conformity with the objectives of the pension system, there was no occasion for the Tribunal to intervene. Increases in pensionable remuneration resulting from unjustified adjustments were not among the objectives of the system. It could not be said, therefore, that the modifications made were in conflict with any principles laid down in the Charter of the United Nations, much less that they could reasonably be regarded as improperly unfavourable to staff members, or destructive of staff members' rights to a pension system. On the contrary, nothing in the Charter or in common sense suggested that prospective correction of flawed past procedures or reasonable changes which resulted from unforeseen developments were necessarily prohibited.

For the foregoing reasons, the Tribunal rejected the applications in their entirety.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[10]

1. JUDGEMENT NO. 1064 (29 JANUARY 1991): IN RE UNNINAYAR (NO. 2) V. WORLD METEOROLOGICAL ORGANIZATION[11]

Application for the interpretation of point 2 of the Tribunal's decision in Judgement No. 972—Question of receivability of application—In absence of anything to the contrary the meaning of the term "rates" should be interpreted in accordance with the clear intent of point 2 of the decision

The complainant, a former staff member of the World Meteorological Organization, had requested interpretation of point 2 in the Tribunal's decision in Judgement No. 972, which reads: "The Organization shall pay the complainant the equivalent of two years' salary and allowances at the rates that obtained at the date of his separation as damages for material injury." The complainant claimed that the term "rates" in the passage referred to rates of salary and allowances, whereas WMO contended that the term referred to the rate of exchange between the United States dollar and the Swiss franc.

The Organization also contended that the application was not submitted in time (Judgement No. 972 delivered on 27 June 1989 and application filed on 3 April 1990) and that it should have been filed within a reasonable time, namely, 90 days. The Tribunal noted that WMO had paid into the complainant's account on 24 July 1989 what it considered to be the principal sum due, and sent a reckoning of that sum to the complainant's counsel on 20 September 1989. On 13 December 1989 the counsel protested that the amount was incorrect, and on 14 February 1990 WMO informed the counsel that it maintained its position. The complainant filed his application on 3 April 1990. The Tribunal looked at the circumstances in which the claim was made in order to determine what constituted "a reasonable time". The Tribunal, noting that there was no time-limit in the statute of the Tribunal or in its rules of Court for the filing of such an application and that in its Judgement No. 538, *in re* Djoehana (No. 2), the Tribunal had granted an application filed on 2 April 1982 for interpretation of a judgement it had delivered on 13 November 1978, declared the complainant's application receivable.

The Organization further contended that, in accordance with the Tribunal's decision in Judgement No. 802, *in re* van der Peet (No. 10), an application for interpretation was receivable only if the operative part of the judgement was "ambiguous or otherwise unclear". The Tribunal concluded that the present application concerned the meaning of the term "rates" and therefore qualified under the rule as stated in that judgement.

As to the merits of the case, the Tribunal noted that the counsel had instructed WMO to pay the amounts (for both material and moral injuries) due the complainant under Judgement No. 972 into the complainant's Swiss bank account. It was the view of the Tribunal that in the absence of any stipulation that the amount due under point 2 should be paid in United States dollars and of any indication that the complainant's account was or

had become a dollar account, the only reasonable interpretation of counsel's instructions was that the amount should be paid in Swiss francs (which was the denomination indicated in damages for moral damages in point 3 of the Tribunal's decision).

The Tribunal, noting that nowhere in the judgement was there any allusion to a "rate of exchange", concluded that the only meaning the term "rates" in point 2 could bear was "rate of salary" and "rate of allowance," and that the clear intent was that the complainant should receive a lump sum totaling two years' salary and allowances for material injury in the currency in which his salary and allowances were denominated (United States dollars), converted on his instructions into Swiss francs.

The Tribunal held that the Organization should reckon the amount due to the complainant in accordance with the above decision and pay him interest on the amount not yet paid. The complainant was awarded 5,000 Swiss francs in costs.

2. JUDGEMENT NO. 1077 (29 JANUARY 1991): IN RE BARAHONA (JANICE) V. PAN AMERICAN HEALTH ORGANIZATION (WORLD HEALTH ORGANIZATION)[12]

Complainant submits that by refusing to appoint her to a post the Director abused his discretionary authority—An international organization's appointment decisions subject only to limited review by the Tribunal—Procedural defects of the selection process—Provision 344 of the PAHO/WHO Manual requires that the process of evaluation must not only be fair but also be seen to be fair

The complainant, a staff member of the Pan American Health Organization (PAHO) at the P-2 level, had claimed that the Director had abused his discretionary authority when he did not appoint her to the P-3 post of English editor. The complainant alleged that there were a number of procedural defects in the selection process. In June 1986, a Selection Committee had recommended her for the post, but the Personnel Department had failed to pass the recommendation on to the Director. In September 1986, the post was "frozen" due to a suspension of recruitment. Nevertheless, a temporary employee was improperly recruited in October 1986 to perform the duties of the post. On 16 June 1988, the post was again advertised as vacant, and the complainant and others applied for and took a test of editing skills, but PAHO failed to "quantify" the results in contravention of the PAHO/WHO Manual. The second Selection Committee, however, recommended the temporary employee, who had been one of the candidates, to fill the post and the recommendation was accepted by the Director on 22 September 1988. The complainant requested that this decision be quashed and that the first Selection Committee's recommendation be implemented, namely, that she be appointed to the post.

As the Tribunal had often declared, a decision by an international organization to make an appointment was a discretionary one and could only be quashed if it "was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some essential fact has been overlooked, or if there was abuse of author-

ity, or if a clearly mistaken conclusion has been drawn from the evidence." Further, the Tribunal explained that in cases like the present one it would exercise its power of review "with special caution, its function being not to judge the candidates on merit but to allow the Selection Committee and the executive head full responsibility for their choice".

Having considered the complainant's pleas, the Tribunal determined that there was no abuse of the Director's discretionary authority, "since the first process of selection never reached the stage where the Director had to decide whether or not to appoint the complainant". Moreover, there was no breach of the PAHO/WHO Manual provisions in not submitting the 1986 recommendation to the Director, or to appoint her within the three-month period before the post was frozen. Furthermore, the Tribunal determined that since urgent work had to be done, the recruitment of the temporary employee was not improper and that when the freeze ended in 1988 the lapse of nearly two years warranted starting a second selection process.

However, the Tribunal determined that the failure to quantify the results of the 1988 test still deprived the Selection Committee of the means of "evaluating and making meaningful distinctions among candidates", as provided for in the PAHO/WHO Manual, and that this represented a "fatal flaw" in the selection process. The Tribunal also observed that there was a further potential flaw in the process, arising from the fact that the candidates were required to write their names on the test, and if the papers had been marked there was always the risk of bias tainting the process. The Tribunal stated that the process of evaluation must not only be fair, as provided in provision 344 of the Manual, but also be seen to be fair.

Finally, the Tribunal considered the fact that the Organization had recruited two temporary editors after the implementation of the recruitment freeze, against funds earmarked for two posts, one of which was the post in question, and subsequently recruited them for the posts after the freeze was lifted in 1988. In this regard, the Tribunal was of the opinion, in view of regulation 4.4 of the PAHO Staff Regulations which gives preference to inside candidates for promotion, all other things being equal, that this sort of action was bound, whether rightly or wrongly, to give inside candidates the impression of subterfuge. The Tribunal stated that "it is in the Organization's interests to avoid arousing suspicion that outside people are recruited under temporary appointments and, after some months' or even a few years' service, may get the opportunity of overtaking those who have served the PAHO well for much longer".

Stating that though the serious flaw in the 1988 process was to the complainant's detriment, the Tribunal did not think it fitting in the circumstances to quash the temporary employee's appointment. Instead it ordered the Organization to pay the complainant 12,000 United States dollars in damages for the injury she sustained and 1,000 dollars in costs. Her other claims were dismissed.

3. JUDGEMENT NO. 1095 (29 JANUARY 1991): IN RE GILLES V. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)[13]

Complainant requests refund of all of the medical costs of her difficult confinement—Question of receivability of application—Article VII (3) of the statute of the Tribunal—Setting of maximum limits under sickness insurance scheme—Reliance of Eurocontrol on rules borrowed from other organizations

The complainant, a staff member of the European Organisation for the Safety of Air Navigation (Eurocontrol), had disputed the refund she received under the Sickness Insurance Scheme for the costs of her difficult confinement, asserting that she was entitled to a refund of her confinement expenses at the rate of 100 per cent, pursuant to article 72 of the Staff Regulations. She also argued that no maximum limits should be applied to her refund.

The Organisation contended that the application was irreceivable, alleging that the complaint had been filed before she had exhausted the internal remedies. The Tribunal noted that the complaint had been filed after the 60-day deadline for the Organisation to submit its answer under article VII (3) of the Tribunal's statute, but within the 4 months prescribed in articles 92 and 93 of the Staff Regulations. The Tribunal, rejecting the Organisation's argument, stated that once an organization has accepted the Tribunal's statute it may not derogate from it by citing internal rules of its own. The Tribunal added that the only difference Eurocontrol's own Staff Regulations might make was that it was estopped from objecting to receivability when, in reliance on its own time-limit, a staff member had filed a complaint that would be receivable under its Staff Regulations but out of time under article VII of the Tribunal's statute.

Eurocontrol had claimed that article 72 of the Staff Regulations empowered the Director General to make the rules for sickness insurance and that a stay in the hospital for the purpose of confinement was brought under the broader head of hospitalization for a surgical operation under rule No. 10. Under rule No. 10 (17), refunds were allowed for a difficult confinement requiring special obstetrical treatment or a surgical operation or prolonged stay in hospital for post-partum costs up to 100 per cent subject to the maximum amounts. Eurocontrol had assimilated the complainant's difficult confinement to a surgical operation, in category B of rule No. 10 (11), of which the costs were subject to maximum limits. Eurocontrol conceded that the rule did not liken a difficult confinement to a surgical operation, but said that it drew on rules in the European Communities which expressly treated a Caesarean section and a difficult confinement as surgical operations under category B.

The Tribunal, while in agreement with the complainant that she should be refunded at the full rate for her stay in the hospital and for the costs of her difficult confinement, stated that there was nothing wrong in principle with setting maximum limits, even when the 100 per cent rate reimbursement applied. However, there was doubt as to the way Eurocontrol had applied them in this case. The position of Eurocontrol remained unclear in

that the Tribunal could not determine what principles had governed the Organisation's determination of the refund. In the statements of account submitted to the complainant, Eurocontrol had produced no aggregate figure of the costs of the confinement and no proper breakdown giving the figure taken under each head of costs, the rate of refund, any maximum limit and references to the rules applying to each item.

While acknowledging that the reason the situation was unclear was that the rule did not spell out properly what was meant by applying the 100 per cent rate of reimbursement to the costs of a difficult confinement, the Tribunal concluded that at the material time there was no valid maximum limit on refund of the costs of medical treatment for a difficult confinement.

As for Eurocontrol's reliance on what was done in the European Communities, the Tribunal observed that it must put on its own Staff Regulations and rule No. 10 the construction they were designed and intended to bear and it could not borrow rules from other organizations.

The Tribunal held that the complainant must receive full reimbursement of the costs of her confinement and that the case should be sent back to Eurocontrol for a new decision in accordance with the principles set forth in the present judgement and in Judgement No. 1094, *in re* Gérard and others. She was also awarded 50,000 Belgian francs in costs.

4. JUDGEMENT NO. 1109 (3 JULY 1991): IN RE OULDAMAR (NOS. 1 AND 2) V. INTERNATIONAL LABOUR ORGANISATION[14]

Non-promotion pursuant to staff circular No. 334—Director-General's discretionary decision in promoting staff members may not ordinarily be set aside by the Tribunal unless there is some particular fatal flaw—Grounds on which an advisory body may rethink its recommendation

The complainant, a staff member with the International Labour Organisation at the P-4 level, had filed two complaints putting forward the same claims and resting on the same facts and, therefore, the Tribunal joined them. However, as the first complaint was found irreceivable because the complainant had not exhausted the internal means of redress as article VII (1) of the Tribunal's statute requires, the Tribunal considered only the second complaint, which was found receivable.

The complainant had claimed a personal promotion under staff circular 334, which applied to officials whose grade was not above that of the post occupied and who met a specified long-service requirement of at least 13 years' service in the grade from which he was promoted. Also required was "a clear demonstration that the official regularly performed at a level above the normal requirements of the job."

The Tribunal noted that as promotion was at the Director-General's discretion, the Tribunal could not set aside his decision unless there was some particular "fatal flaw"; breach of a procedural rule was such a flaw. The complainant contended that the Selection Board had acted in breach of paragraph 14 of circular 334 by failing to let him have a statement of the

reasons for the Director-General's refusal. Paragraph 14 said that if the Director-General's decision went against him the official "shall be furnished by the Selection Board with a brief statement of the reasons". That the explanation came directly from the Director-General himself in this case was not a procedural flaw. In the opinion of the Tribunal, paragraph 14 was unenforceable because the Board could explain only its own recommendation and because the text might require it to explain even a decision that ran counter to that recommendation.

The complainant also objected to the Selection Board meeting a second time—after a majority of its members had recommended granting him a personal promotion at the first meeting (issued report of 10 May 1989)—at the request of the Deputy Director-General in charge of General Administration, where two members of the Selection Board recommended promotion and two recommended against (supplementary report of 13 July 1989). It was the view of the Tribunal that the responsible officer could not ask an advisory body to think again on the pretext that its recommendation was unclear. Only in two cases could an internal body be asked to think again: one was where something unforeseeable and of decisive moment occured after it had reported, and the other was where there came to light some fact of evidence, again of cardinal importance, that it did not know of or could not have known of before it reported. The Selection Board itself asserted that its reconsideration of the complainant's promotion was based on what it termed a new item of evidence, namely, the Property Survey Committee's report, which reported on a misappropriation of funds during the period the complainant was Director of the ILO office in Yaoundé. However, the Tribunal observed that the report, which went back to 21 July 1986, was not an unforeseeable new fact, and could not have been unknown to the Board members, since their first report actually spoke of the complainant's troubled directorship in Yaoundé. The Tribunal concluded that because there was no sound reason in law for the Board to have met again, the Tribunal concluded that the impugned decision was tainted and could not stand.

The Tribunal held that the Director-General's decision should be set aside and that the case should be sent back to ILO for review. The Tribunal also ordered the Organisation to pay the complainant 2,500 Swiss francs in costs.

5. JUDGEMENT NO. 1118 (3 JULY 1991): IN RE NIESING (NO. 2), PEETERS (NO. 2) AND ROUSSOT (NO. 2) V. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)[15]

Adjustments of sums refunded against educational expenses—Question of receivability of application regarding the adjustments in pay—The law of the international civil service—The Tribunal is fully competent when the relationship between the Organisation and its staff is at issue—Judgement No. 986, in re *Ayoub (No. 2) and others—The Tribunal may neither review the reasons of policy underlying the general decision nor say what rates of pay ought to be—Question of acquired rights—Conditions for breach of* res judicata*—Educational expenses are part of staff member's pay*

The complainants, staff members of the European Organisation for the Safety of Air Navigation (Eurocontrol), had disputed the effects of the adjustments on the sums refunded against educational expenses for the period from 1 July 1988 to 30 June 1989.

The present appeal is the result of the interlocutory order in Judgement No. 1096 of 29 January 1991, which requested from the Organisation fuller information on the process of adjustment and the reasons underlying it.

The Organisation reiterated its objection to the Tribunal's competence, stating that the Tribunal could not review the adjustments in pay because in approving them the Eurocontrol's Permanent Commission was wielding legislative authority vested in it by sovereign States. The Tribunal stated that though its main task was to enforce the written rules in disputes between the Organisation and its staff members, clear and consistent precedent made dealings between the two sides subject, not just to the material provisions of the Staff Regulations and the contract of employment, but also to a set of general principles that formed part of the law of the international civil service. Furthermore, in accordance with its Judgement No. 986, *in re* Ayoub (No. 2) and others, the Tribunal was "fully competent when the relationship between the Organisation and its staff is at issue, subject only to article XII of its statute."

Eurocontrol had begun to adjust the pay of its staff beginning on 1 January 1986, when the Protocol amending the Eurocontrol Convention came into force. The system of periodic adjustment in pay was used to bring in the differential between the European Communities and Eurocontrol salaries. The complainants objected to the salary adjustments made under article 65 of the Staff Regulations, which empowered the Permanent Commission, on proposals from the Director General and after discussion by the Committee of Management, to make the adjustments it deemed necessary. The adjustments were made by amending the basic salary scales in annex III, and they also affected the incidental items of pay set out in article 62, including education expenses.

The Tribunal, addressing the individual pleas of the complainants, did not agree with the complainants' contention that the Organisation had violated the principle of non-retroactivity. It noted that Eurocontrol had applied the 1.25 per cent adjustment to pay, which was finally approved on 30 March 1988, to entitlements for the period from 1 July 1988 to 30 June 1989.

As to the complainants' plea that the Organisation had failed to provide the reasons for the adjustments, the Tribunal noted that the individual decisions impugned were based on decisions by the only competent authority, the Permanent Commission, and that because the staff had known all along the reasons for the adjustments there was no need to state reasons for the individual decisions. As regards the reasons themselves, the Tribunal stated that while it could neither review the reasons of policy underlying the general decision nor say what rates of pay ought to be, it noted that the decision had been taken under article 65, which merely cited examples of circumstances warranting adjustment in pay and was not

exhaustive, and that the reasons cited by the Organisation for the adjustments were not factually incorrect and fell within the ambit of article 65.

Regarding the plea that the staff had an acquired right to alignment of pay with the scales of the European Communities, the Tribunal was in agreement with the Organisation's contention that there had never been anything but *de facto* alignment and the Organisation had made no express or implied commitment to continue it. The Tribunal noted that with the introduction of the differential, pay had actually risen.

As the Tribunal had stated in Judgement No. 986, it had "only a limited power of review in such matters and will declare whether the impugned decisions square with general principles, with the Staff Regulations and with the terms of the complainants' appointment". In this regard, the Tribunal concluded that Eurocontrol had abided by those principles, including the rule against breach of trust.

The Tribunal, dismissing the complainants' plea of breach of *res judicata*, stated that there would be no breach unless the cause of action and the claims—among other things—were the same, which they were not in the present case.

As to the complainants' contention that educational expenses could not be considered an item of pay because such expenses were paid on the strength of supporting evidence, the Tribunal, rejecting the argument, noted that in articles 62 and 67 of the Staff Regulations one item of pay was family allowances, which included the education allowance, of which educational expenses formed a part.

The complainants' argument concerning a breach of equal treatment, based on the ground that the reduction fell more heavily on staff members who incurred higher educational expenses, was also rejected because, as explained by the Tribunal, the same maximum limit on refund applied to everyone.

For the above reasons, the claims were dismissed.

6. Judgement No. 1125 (3 July 1991): In re Lehmann-Schurter v. Intergovernmental Organisation for International Carriage by Rail[16]

Continuation of the Organisation's contribution to a survivors' insurance fund—Competence of the Tribunal to review a case where outcome will affect only complainant's heirs—When the text of a rule is clear there is no need for any interpretation or consideration of the drafter's original purpose—The Tribunal's competence to review the competent authority's discretionary decision to set the amount of contribution—A construction which an international organization wilfully and consistently puts on a rule for years may become a binding element of personnel policy

The complainant, a retired staff member of the Intergovernmental Organisation for International Carriage by Rail, had claimed that the Organisation should continue to contribute after her retirement, at the rate of 15 per cent of her final yearly basic pay, to the survivors' insurance fund, the proceeds from which would go to her heirs upon her death.

The Tribunal stated that although the complainant herself would not derive the benefit, which ordinarily goes only to heirs, her own lack of financial entitlement did not bar her from requesting the Tribunal to enforce a provision of the Staff Regulations concerning insurance protection. Otherwise, there would be no remedy in law since beneficiaries would have only such entitlements as she would have secured for them.

The complainant was relying on article 25 (1) of the 1956 Rules, which by virtue of appendix I to the 1980 Staff Regulations was still in force, and reads:

> "Each year the Office shall enter in its budget a sum equivalent to 15 per cent of the basic salary of its serving permanent employees and the amounts of the insurance contributions set by the competent authority at the date of retirement of permanent employees. Those sums shall constitute and add to the insurance funds available for each employee . . ."

In the Tribunal's view, the requirement that the Organisation's budget included the amount of insurance contributions as determined by the competent authority at the date of the permanent employee's retirement meant that even after the employee retired the Organisation must continue paying into the fund. The Tribunal, in denying the Organisation's view that the literal construction of the rule could be disregarded on the grounds that the drafter's original purpose no longer was relevant, stated that when the text was clear there was no call for any interpretation or to take account of the drafter's purpose. Only where two provisions of the same text or two parallel texts were at variance would any attempt be made to reconcile them.

Furthermore, the Staff Regulations provided that, whereas for serving officials the contribution should be the equivalent of 15 per cent of gross salary, the Administrative Committee should set the amount for retired officials. However, the Tribunal, noting that the rules said nothing about the criteria the Committee should apply in doing so, stated that where the rule was silent the competent authority—here the Administrative Committee—did have discretion to set the amount of the contribution to be paid from the date of retirement, or to stop contributing upon her retirement. But its decision would not be immune from review by the Tribunal, which would interfere if it found "some mistake of fact or of law, or abuse of authority, or if an essential fact was overlooked, or if a patently wrong conclusion was drawn from the facts."

The Tribunal, after looking at the evidence concerning seven other individuals who were also able to claim under the insurance scheme, determined that it was "at least doubtful" whether the Organisation had put on a par employees in the same position in law and in fact. In this regard, the Tribunal noted that a construction which an international organization wilfully and consistently had put on a rule for years could become a binding element of personnel policy to be applied to everyone who was in the same position in law and in fact.

The Tribunal, noting that article 25 of the 1956 Rules empowered the Committee to set the amount of contributions after the date of the employee's retirement and that it must apply the rule reasonably, concluded that the decision it had taken in the present case was in breach of the rule and was therefore arbitrary.

For the above reasons, the Tribunal decided to set aside the impugned decision and requested the Organisation to review the complainant's claim and pay her 2,500 Swiss francs in costs.

C. Decisions of the World Bank Administrative Tribunal[17]

1. Decision No. 100 (20 June 1991): Jassal v. International Bank for Reconstruction and Development[18]

Non-selection to a post during 1987 Bank-wide reorganization—Discretionary authority of the Bank in the selection process—A decision of the Bank in this process may be overturned by the Tribunal only when this discretionary authority is abused—Standard of scrutiny established by the Tribunal applied to other reorganization cases of separation because of redundancy—Unsatisfactory performance prior to the reorganization not alone a basis for termination on the ground of redundancy—Question of the Applicant's qualifications for the redefined post left vacant after the reorganization

The Applicant, a former staff member of the International Bank for Reconstruction and Development (the Bank), who was at the time of the 1987 reorganization a Principal Audit Analyst at level 20 in the Internal Auditing Department (IAD), had claimed that he should have been selected for one of the audit analyst positions (levels 18, 19 and 20) which remained vacant after the reorganization. Not to have done so, he asserted, was an abuse of the Bank's discretionary authority.

The Tribunal observed that while a decision by the Bank to select a staff member for a particular post was within the discretionary authority of the Bank, the decision could be overturned by the Tribunal when that discretion had been abused: if the decision was "arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure" (*Suntharalingam*, Decision No. 5 (1981)). Moreover, pursuant to *de Raet* (Decision No. 85 (1989)), the Tribunal would not set aside a decision of the Bank unless it had been "reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case, or other departures from established procedures, bias, prejudice, the taking into consideration of irrelevant factors or manifest unreasonableness." The Tribunal noted that that standard of scrutiny had been applied to other cases arising from the reorganization in which staff members had been displaced from their former posts, on the ground of redundancy as a result of the redefinition of job duties or the reduction in the number of departmental posts.

In the present case, the Tribunal was of the view that because after the reorganization there was a post available for which the Applicant claimed to be qualified, but for which he was not selected, a finding of

redundancy "must turn upon a conclusion that the content of the position was so defined as to render its previous occupant no longer qualified to discharge its responsibilities", which was the contention of the Respondent. Moreover, in the Tribunal's opinion, unsatisfactory performance by a staff member prior to the reorganization could not alone furnish a basis for terminating service with the Bank on the ground of redundancy, because that would be "an improper use of the reorganization procedures in order to avoid the protections otherwise afforded by the Bank's governing documents—staff rule 7.01 in particular—for termination of employment and would therefore constitute *détournement de pouvoir*, subject to reversal by the Tribunal".

The Tribunal found that the Respondent had not provided any specific information that the audit analyst position had been redefined in so substantial a manner from the Applicant's pre-reorganization post of Principal Audit Analyst that he was no longer qualified for the new post. Moreover, it was concluded by the Tribunal that the only negative comments that could have been placed before the Selection Committee would have necessarily come orally from the Acting Director, who had been the Applicant's supervisor before appointment to the Selection Committee, and that those comments were contrary to the documentary evidence, including the recent performance evaluations of the Applicant's three immediate supervisors. The Tribunal noted that the Acting Director's negative views had been put in written form and had been backdated to show a date before the selection process, but were not made a formal part of the Applicant's personnel records until after the selection process.

The Tribunal, considering that the Acting Director of IAD had a considerable voice on the Selection Committee because of his technical expertise in the field, concluded that the Bank's decision that the Applicant was unfit for a level 20, or even a level 19, audit analyst position was found to be lacking in any evidentiary support and, therefore, constituted an abuse of discretion. The Tribunal also concluded that the Selection Committee's assertion that any shortfall in the Applicant's qualifications for those positions could not have been addressed by additional counselling and training was also "arbitrary and manifestly without rational basis."

The Tribunal held that the decision not to select the Applicant for the level 20 post should be rescinded and that the Applicant should be reinstated, and that the amounts already paid to him upon his separation from the Bank under the Enhanced Separation Package should be retained by the Applicant as compensation for injuries sustained by him for his non-selection. Furthermore, should the Respondent decide that the Applicant should be compensated in lieu of reinstatement, the Tribunal set this compensation in an amount equal to two years' net salary. A payment of $10,000 for costs was also awarded. All other pleas were dismissed.

2. DECISION NO. 105 (6 DECEMBER 1991): SINGH V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT[19]

Applicant's request for rescission of the 10-year employment ban imposed by the Bank—No sufficient evidence to support the Respondent's finding that the Applicant acted in bad faith and made wilful

misrepresentations—Procedural irregularities on the part of the Bank—The Applicant as a consultant has no right of contractual employment by the Bank after the term of his appointment has expired—Substantial compensation for the Bank's wrongful action not justified because of the Applicant's failure to inform himself about the fate of his divorce petition

The Applicant, a former staff member of the International Bank for Reconstruction and Development (the Bank) on short-term appointment, had claimed that when he filed medical insurance claims, amounting to approximately $16,000, on behalf of his former wife, who had received treatment between August and October 1988, he believed in good faith that they were still married. While divorce proceedings had been initiated by the Applicant on 2 June 1986, the couple had become reconciled, of which the Applicant had notified the Court by letter dated 12 August 1986. Apparently this letter was not brought to the attention of the judge who signed the divorce decree on 23 August 1986. The Applicant was not notified that his divorce was final, because he had failed to provide a stamped, self-addressed envelope for that purpose. After the Respondent learned that the Applicant was in fact divorced and had claimed medical benefits for his former wife, a disciplinary inquiry was initiated and it was subsequently determined that he should be banned from further employment with the Bank for a period of 10 years.

The Tribunal concluded that there was insufficient evidence to support the Respondent's finding that the Applicant had acted in bad faith and had made wilful misrepresentations. Not only had the Applicant ordered his affairs in a number of ways which made sense only if he believed that his marriage was continuing, but the nature of his former wife's medical treatment (treatment to cure her infertility problem) provided positive support of the Applicant's claim that he believed he was married. The Tribunal also concluded that no conclusive evidence was produced to support the other charges that the Applicant had made misrepresentations on his personal history form and had made personal telephone calls and sent telegrams and charged them to the Bank.

The Tribunal also commented on the procedural irregularities it had found during its consideration of the case. The charges involving misrepresentations made by the Applicant on his personal history form and unauthorized communications made and charged to the Bank by the Applicant were introduced by persons representing the Bank before the Appeals Committee that was seized with review of the charge of the alleged fraudulent medical claim. In the Tribunal's view, the Bank's procedures for administrative review contemplated that the Appeals Committee would review a decision already made by a supervisor who acted on the basis of a full and fair consideration of the pertinent facts, which was not the case in respect of the new charges. In addition, the Bank refused to consider the possibility of the Appeals Committee reopening its proceeding in the light of "significant newly discovered evidence", and instead insisted that the Applicant submit that evidence to the Tribunal. It was the Tribunal's opinion that the better course would have been for the Bank to reserve the discretion, in appropriate cases, to urge such reopening, rather

than in all cases insist on the much more formal procedures of the Administrative Tribunal.

The Tribunal allowed the Applicant's first plea, namely, to rescind the contested decision, thus lifting the employment ban against the Applicant. However, the Tribunal pointed out that as the Applicant had worked with the Bank as a consultant on short-term contracts he had no right to further employment after his last contract expired, but rather could be considered for further employment. The Tribunal also held that the Applicant was largely to blame for his own failure to inform himself on the fate of his divorce petition; hence it did not award substantial compensation for the Bank's wrongful action. The Tribunal awarded $6,000 in compensation and $22,063.17 in costs. All other pleas were rejected.

NOTES

[1] In view of the large number of judgements which were rendered in 1991 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the three tribunals, namely, Judgements Nos. 502 to 546 of the United Nations Administrative Tribunal, Judgements Nos. 1097 to 1164 of the International Labour Organisation and Decisions Nos. 100 to 105 of the World Bank Administrative Tribunal, see, respectively: documents AT/DEC/502 to 546; *Judgements of the Administrative Tribunal of the International Labour Organisation*: 71st and 72nd Ordinary Sessions; and *World Bank Administrative Tribunal Reports*, 1991.

[2] Under article 2 of its statute, the Administrative Tribunal of the United Nations is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (*a*) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (*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.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: the International Civil Aviation Organization and the International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

[3] Mr. Roger Pinto, President; Mr. Jerome Ackerman, Vice-President; and Mr. Ioan Voicu, Member.

[4] Mr. Jerome Ackerman, First Vice-President; Mr. Ahmed Osman, Second Vice-President; and Mr. Luis de Posadas Montero, Member.

[5] Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[6] Mr. Roger Pinto, President; Mr. Jerome Ackerman, Vice-President; and Mr. Arnold Kean, Member.

[7] Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[8] Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[9] Mr. Roger Pinto, President (dissenting opinion); Mr. Jerome Ackerman, Vice-President; and Mr. Arnold Kean, Member.

[10] The Administrative Tribunal of the International Labour Organisation is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organisation and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1991, the World Health Organization (including the Pan American Health Organization), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organisation for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organization, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organisation for International Carriage by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization, the International Fund for Agricultural Development and the International Union for the Protection of New Varieties of Plants. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organisation.

The Tribunal is open to any official of the above-mentioned organizations, even if his employment has ceased, to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the staff regulations upon which the official could rely.

[11] Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and the Right Honourable Sir William Douglas, Deputy Judge.

[12] Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and Miss Mella Carroll, Judge.

[13] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge; and Mr. Pierre Pescatore, Deputy Judge.

[14] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge; and Mr. Edilbert Razafindralambo, Deputy Judge.

[15] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge; and Mr. Pierre Pescatore, Deputy Judge (dissenting opinion).

[16] Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and Mr. Edilbert Razafindralambo, Deputy Judge.

[17] The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Devel-

opment Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[18] Mr. Prosper Weil, President; Mr. A. Kamal Abul-Magd and Mr. Elihu Lauterpacht, Vice-Presidents; and Mr. Fred K. Apaloo, Mr. Robert A. Gorman, Mr. Eduardo Jiménez de Aréchaga and Tun Mohamed Suffian, Judges.

[19] Mr. Prosper Weil, President; Mr. A. Kamal Abul-Magd and Mr. Elihu Lauterpacht, Vice-Presidents; and Mr. Fred K. Apaloo, Mr. Robert A. Gorman, Mr. Eduardo Jiménez de Aréchaga and Tun Mohamed Suffian, Judges.