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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

CHAPTER V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

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

1. JUDGEMENT NO. 759 (26 JULY 1996): SHEHABI V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST[3]

Complaint against termination of employment while Applicant was in prison without charge or trial–Exceptional circumstances warranted the waiver of time-limits for an appeal Judgement No. 759, Tarjouman Policy regarding detention of a staff member

The Applicant, who had entered the service of UNRWA in October 1977, was serving on a temporary indefinite appointment as a Teacher at the grade 8 level in the Syrian Arab Republic, when he was arrested, while teaching class, on 31 March 1982, and was detained in prison without charges for almost 10 years. His appointment was terminated on 29 September 1982, on the ground of "non-availability".

UNRWA informed the Ministry of Foreign Affairs of the Syrian Arab Republic, on 8 May 1982, that the Applicant had been arrested on the Agency's premises while he was performing his duties as a Teacher, making reference to the 1946 Convention on the Privileges and Immunities of the United Nations, and requested the reason for the detention of its staff member. UNRWA sent a further communication to the Ministry of Foreign Affairs on behalf of the Applicant, on 18 January 1983. No response was received from the Syrian authorities.

In the meantime, on 2 November 1982, UNRWA informed the Applicant that as six months had passed and he had failed to report to work, he was being terminated on the ground of non-availability of service, effective 29 September 1982, pursuant to staff regulations 9.1 and 9.3(b). In a statement dated 21 My 1983, the Applicant authorized his wife to receive all his UNRWA salary and compensation, and on 20 July 1983, UNRWA paid the Applicant's separation benefits to his wife.

On 14 August 1991, UNRWA again inquired as to the reason for the Applicant's detention, and also requested that the Director of UNRWA Affairs visit him, together with two other detained staff members. The Applicant was released from prison on 15 December 1991, and on 25 January 1992, applied to UNRWA for reinstatement. He was reappointed as a Teacher at the grade 8 level. At the same time, the Applicant requested that he be considered as having been employed during his detention, and that he paid his salary and granted the seniority he would have accrued during those years. This was denied, and the Applicant appealed.

The Applicant had not sought an administrative review of the decision to terminate his service for some 10 months after his release and he had not appealed to the Joint Appeals Board until 16 March 1994, 16 months later; and the Respondent had contended that the Applicant's appeal was thus time-barred. The Tribunal noted that under normal circumstances those delays would be regarded as unusually long periods of time in which to fail to comply with the relevant rules; however, the present case cannot be regarded as normal. The Tribunal considered that since the Applicant had been incarcerated without charge or trial for 10 years and that, therefore, a long period of readjustment to the outside world would be required before the released person would begin to come to terms with the ordinary requirements of everyday life, these were indeed exceptional circumstances justifying the waiving of specified time limits pursuant of area staff rule 111.3.

In reviewing the substance of the Applicant's case, the Tribunal recalled its Judgement No. 579, Tarjouman (1992), wherein it was stated that the detention of a staff member was so serious a matter that the Organization had a duty, at the very least, to persist in efforts to obtain pertinent information. It was important that the Organization insisted on respect for its staff's functional immunity under the 1946 Convention on the Privileges and Immunities of the United Nations, and that staff must be able to rely on efforts by the Organization to assure their protection against arbitrary arrest and detention and on assistance to staff members subjected to it. The case emphasized the ongoing need for vigilance and aggressive action to protect and defend staff rights in this area.

In the light of Tarjouman, the Tribunal noted that in the span of 10 years, UNRWA only had sent three communications to the Syrian Government, and in the opinion of the Tribunal those efforts were utterly inadequate. The Agency should have pressed the authorities with inquiries and personal visits in an effort to obtain information as to the Applicant's whereabouts and the reason for his detention.

The Tribunal further noted that in 1984, a more detached policy had been adopted by the Respondent in respect of staff members who were detained, which provided that the staff member shall be placed on special leave with full pay for a year, and if within the period of one year the Agency could obtain adequate information as to the reasons for the staff member's detention the Agency might continue the staff member's pay protection. The policy stated that, unless there is at least some prima facie evidence of wrongdoing on the part of the staff member, such pay protection should continue. In the Applicant's case, the Respondent had acted in accordance with the policy in force, i.e. six-month pay protection.

However, in the view of the Tribunal, the Respondent had failed to act in accordance with the policy with regard to attempting to obtain information as to the reasons for the Applicant's detention without charge, and there was no prima facie evidence of wrongdoing. For the foregoing reasons, the Tribunal ordered the Respondent to pay the Applicant, as compensation, the amount of $7,500, and all other pleas were rejected.

2. Judgement No. 765 (26 July 1996): Anderson Bieler v. the Secretary-General of the United Nations[4]

Non-promotion—Secretary-General's Bulletin ST/SGB/237—Judgement No. 671, Grimblat-Delay in recruitment process–Promotion of staff member approaching retirement

The Applicant entered the service of the United Nations in March 1960, as a Guide-Trainee, and eventually reached the P-4 level on 1 April 1985.
From 18 October 1990 to 17 February 1991, the Applicant was temporarily assigned to the Security Council and Political Committees Division, Department of Political and Security Council Affairs against a P-5 post. The Applicant was paid a special post allowance at the P-5 level, with effect from 18 January 1991 until 31 January 193, when she retired, having been retained in service beyond the retirement age, which she had reached on 31 May 1992.

On 20 May 1991, the Applicant applied for the post of Senior Political Affairs Officer, under the vacancy management system then in force. The post was to become vacant in September 1991, when the incumbent would reach the statutory retirement age, but upon his reaching retirement age, his appointment was extended to 31 October 1991, thus delaying selection of his replacement. The Applicant was short listed for the post, along with two male staff members, one of whom was selected for the post.

The Applicant appealed, contending that the Respondent's failure to select her for the post was not in accordance with the provisions of Secretary-General's Bulletin ST/SGB/237, which provides that:

> "...following policy shall apply in the area of assignment and promotion:
>
> "In departments and offices with less than 35 per cent women at levels P-5 and above, vacancies overall and in the latter group, respectively, shall be filled, when there are one or more female candidates whose qualifications match all the requirements for a vacant post, by one of these females candidatures."

The Department of Political and Security Council Affairs had not met the percentages required by the Secretary-General's bulletin. The Joint Appeals Board had concluded that had thee Administration acted efficiently and taken action, the vacancy would have been filled by the Applicant, as she was the most deserving candidate, and her selection would have achieved all the objectives set out in ST/SGB/237.

The Respondent had cited Judgement No. 671, Grinblat (1995), as disavowing any automatic right on the part of the Applicant to be promoted as a result of ST/SGB/237. The Tribunal noted that that judgement involved the application of ST/SGB/237 by the Appointment and Promotion Board in compiling the short list for a post prior to departmental consideration of the list to determine who should fill the post. The Tribunal had concluded that it was inappropriate for the APB to exclude equally qualified male applicants from the short list and ST/SGB/237 should have been applied by the Department concerned. The Tribunal also had found in Grinblat that the Board's application of ST/SGB/237 in compiling the short list had not conformed with United Nations

resolutions and Article 101 paragraph 3, of the Charter of the United Nations which provides that "the paramount consideration in the employment of staff...shall be the necessity of securing the highest standards of efficiency, competence and integrity."

However, the Tribunal's finding only affected ST/SGB/237; "to the extent that the bulletin was interpreted as purporting to authorize the promotion of candidates solely on the basis of gender if they merely met the requirements of the vacant post without regard to whether there were better qualified candidates for the post." (para. XV, emphasis added)

The Tribunal noted that the above finding did not preclude the application of ST/SGB/237 to mandate the selection of women candidates when they were found to be equally qualified. Indeed, in Grinblat the Tribunal had held that, although it would be impermissible to view Article 8 of the Charter of the United Nations, which provides for equal opportunity in United Nations employment, as overriding Article 101, paragraph 3, at the same time Article 8 "must be regarded as a source of authority for reasonable efforts to improve the status of women." The judgement further noted "when affirmative action measures taken towards ameliorating the effects of the past history, they will, without doubt, be perpetuated for many years. This is incompatible with the objectives of Article 8."

Unlike Grinblat, the present case involved the application of ST/SGB/237 by the department filling the post. The Tribunal reaffirmed that the affirmative action measure established a right to preferential treatment for women whose qualifications "are substantially equal to the qualifications of competing male candidates" "Judgement No. 671, Grinblat XIX) when the other requirements of ST/SGB/237 are met. The Applicant's qualifications were at least equal to those of the other candidates.

The Tribunal, therefore, found that, as the Applicant was the only woman short listed for the post, and as she was equally, if not more, qualified for the post, she had a right to promotion, in the light of ST/SGB/237.

The Applicant had further contended that the delay in selection of a replacement for the vacant post for eight months after the applications for the post had been received denied her the possibility of promotion. The Tribunal noted that the vacancy management rules provided that a promotion should be implemented as of the beginning of the seventh month after the staff member had assumed the full functions of the higher-level post, and, by that time, the Applicant would have reached retirement age. But for the Administration's delay in the recruitment process, resulting in significant part from the extension of the incumbent of the post beyond the retirement age, the Applicant's promotion could have been implemented. The Respondent had argued that eight months was not unreasonable in all the circumstances, yet, as the Tribunal noted, he had not delineated the particular circumstances warranting the delay in the appointment. The Tribunal further noted the comment by the former Director of the Political and Security Council Committees Division that the extension of the incumbent in the post beyond retirement age was not justified by exceptional circumstances and had not served the interests of the Organization.

The Tribunal has held that denying promotion of a staff member because he or she was approaching retirement age violates principles of equity and fairness (Judgement No. 483, Kleckner, (1990); Judgement No. 690, Chileshe

(1995)). Similarly, in the present case, the Tribunal found that a delay in the recruitment process, resulting in the selection of a staff member other than Applicant, was inequitable and unfair, and deprived her of a promotion to which she was entitled. For the foregoing reasons, the Tribunal awarded the Applicant compensation in the amount of $10,000.

3. JUDGEMENT NO. 767 (26 JULY 1996): NAWABI V. THE SECRETARY GENERAL OF THE UNITED NATIONS[5])

Non-renewal of a fixed-term appointment — Issue of expectancy of renewal of fixed term appointment — Active recruitment of Applicant when post and career opportunities had been virtually eliminated – Egregious circumstances require greater damages award — Issue of a promise of a possibility of a career with the Organization

The Applicant had given up his position with the United States Army Corps of Engineers in Frankfurt, Germany, in order to take up his United Nations posting with UNDP in Damascus. The Applicant had accepted the Respondent's offer of one-year fixed-term appointment, as a Civil Engineer at the P-3 level, on 4 February 1992.

On 28 February 1992, the question arose of the abolition of the Applicant's post, for budgetary reasons. Despite this, at the Organization's request, the termination date of the Applicant's service with the United States Army Corps of Engineers was advanced to 31 March 1992, and it was only on his arrival in Damascus, on 16 April 1992, that the Applicant was told that his post had been abolished, by a decision of 17 March 1992.

The Applicant was appointed to another post, which also was abolished, on 15 September 1992. He was then appointed to another post, in the Procurement Section, which the Applicant had described as being that of a trainee. The Applicant separated from service, on 15 October 1993, following a six-month extension of his appointment. The Applicant appealed.

The Tribunal noted that, while the Respondent had correctly argued that, pursuant to United Nations staff rule 104.12(6), fixed-term appointments did not carry any expectancy of renewal or conversion to any other type of appointment, the Applicant had left a career position to join the Organization, having being told on more than one occasion that the prospect existed of continuation of his service, and that subject to satisfactory performance he might have the opportunity of a career with the United Nations.

The Tribunal further noted that after the post had been abolished, the Respondent had persisted in active recruitment of the Applicant, leading him to believe that there were career opportunities, as well as a post, in his field of expertise, when the Respondent knew, at the time of recruitment, that career opportunities for the Applicant had been virtually eliminated.

In the opinion of the Tribunal, it was impossible to avoid a finding of falsehood and great injustice, and because of the egregious circumstances in the present case, including the entire manner in which the Applicant had been treated from the outset, as well as the extent of the loss suffered by the Applicant as a consequence, he should be awarded greater damages.

The non-renewal of the Applicant's appointment was not a violation of his right of expectancy of such renewal. Rather, in the view of the Tribunal, it was a denial to the Applicant, during the short tenure with the Organization, of any opportunity to demonstrate his abilities in a post relevant to the skills and experience for which he had been recruited on the promise that there was a possibility of a career with the Organization. That promise, which had induced the Applicant into service, had been entirely without foundation, and furthermore there had been on explanation offered as to why it had been made, or of the motivation of those who had made it.

For the foregoing reasons, the Tribunal rescinded the decision of the Respondent and ordered that the Applicant be reinstated to a post comparable to that for which he had been recruited, with full payment of salary and emoluments from the date of his separation, less his earnings from other employment in the interim. Should the Secretary-General decide, in the interest of the United Nations, the Applicant should be compensated without further action taken, the Tribunal on the recommendation of the Joint Appeals Board, fixed the amount at two years of his next base salary at the rate in effect on the date of his separation from service, in addition to the sum already paid to the Applicant.

4. JUDGEMENT NO. 770 (2 AUGUST 1996): SIDIBEH V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[6])

Complaint against separation from service on the ground of abandonment of post — Scope of the appeal submitted directly to the Tribunal — Abandonment of post or disciplinary matter — Question of discriminatory treatment.

The Applicant was a staff member of UNHCR from 1 April 1980 to 6 October 1993, when he was separated from service for abandonment of post. During the course of the Applicant's career, he had served in several hardship duty stations, against which he had protested, suggesting that he was being subjected to discrimination. Finally, for medical reasons, he refused to accept an assignment, first, to the post of Senior Repatriation Officer and, then, to the post of Deputy Regional Representative in Kinshasa, the refusal of which led to his termination.

On 4 May 1992, prior to the Applicant's termination, he filed an appeal with the Joint Appeals Board, alleging discrimination in the pattern of his assignments and following his separation, the Applicant amended his appeal to include the issue of his separation for abandonment of post. In the light of the long delay in consideration of his JAB appeal, the Applicant had requested that the Respondent allow him to submit the appeal directly to the Tribunal, which a request was eventually granted.

In that connection, the Respondent had argued that the appeal should be limited to the issue of abandonment of post. However, the Tribunal found that because the Respondent had given his consent, without limitation, to the Applicant submitting his appeal directly to the Tribunal, no limitation could subsequently be imposed by the Respondent.

Regarding the issue of the Applicant's separation on the ground of abandonment of post, the Applicant's argument that he had not abandoned his post because he had never assumed the post was accepted by the Tribunal. In the

opinion of the Tribunal, the Respondent should have submitted the Applicant's refusal to assume the functions of the post he had been assigned to disciplinary proceedings. Such proceedings would have given the Applicant due process protection and an opportunity to defend his conduct by raising the medical issues in his case.

Regarding the Applicant's complaint of discriminatory treatment, the Tribunal noted that, while he did appear to have been posted to many hardship duty stations, he had not adduced evidence of discrimination. The Tribunal found that, pursuant to staff regulation 1.2, it was within the discretion of the Respondent to assign the Applicant to Kinshasa. Moreover, the Applicant had provided evidence of his medical condition, but he had not produced evidence that his submissions to the United Nations Medical Office, which had concluded that the Applicant could undertake service in Zaire, had been reviewed in a manner which lacked impartiality or was tainted by extraneous factors. Furthermore, it was not for the Tribunal to substitute its judgement for that of the Medical Service in this respect in the absence of a showing of improper or procedural irregularity.

The Tribunal concluded that, although the Applicant had been given ample notice of his impending separation, having been warned in writing in four occasions that his refusal to report to duty would result in his separation, proceedings to separate the Applicant from service in those circumstances should have been conducted under staff regulation 10.2 (Disciplinary measures). In this manner, a more appropriate review could then have been conducted of the medical issues raised by the Applicant in explanation of his refusal.

For the foregoing reasons, the Tribunal concluded that the Applicant should not have been separated from service on the ground of abandonment of post. Accordingly, the Tribunal rescinded the decision to do so and ordered that the Applicant be reinstated to a post comparable to that to which he had been assigned with full payment of salary an emoluments from the date of his separation, less his earnings from other employment in the interim. Should the Secretary-General, within 30 days of the notification of that judgement decide, in the interest of the United Nations, that the Applicant should be compensated without further action being taken in his case, the Tribunal fixed the compensation to be paid to the Applicant as one year of his net base salary.

Finally, regarding the Applicant's claim for compensation for a job-related illness, the Tribunal stated that that issue should be submitted to the appropriate instance under appendix D to the United Nations Staff Regulations and Rules.

5. Judgement No. 791 (21 November 1996): Karmoul v. the Secretary-General of the United Nations[7]

Non-renewal of fixed-term appointment — Non-renewal must be in the interest of the Organization — Judgement No. 142, Bhattacharyya

The Applicant, a Jordanian national, entered the service of the United Nations Economic and Social Commission for Western Asia on 19 October 1989, at the D-1 level. He served on a series of fixed-term contracts until 12 September 1993, when he was informed that the Executive Secretary had decided not to renew his appointment after 18 October 1993, the final date of expiration of

his final appointment. During a meeting, which was reflected in a note dated 17 October 1993, the Executive Secretary referred to a study prepared on Jordan which was regarded as technically unsatisfactory by the Government of Jordan, and he also reiterated the allegation related to the Applicant's use of the Division secretaries for personal work, related to his private water company. The Applicant disputed the contents of the note, and lodged an appeal.

In consideration of the case, the Tribunal recalled staff rule 104.12(b), which states that fixed-term contracts carry no expectancy of renewal, and pursuant to the Tribunal's jurisprudence, good performance does not create a legitimate expectancy of renewal. And, although the Administration has the discretion not to renew a fixed-term contract, such discretion must be exercised exclusively in the interest of the Organization. Furthermore, following Judgement No. 142, *Bhattacharyya* (1971), the Tribunal in making such a determination looks at all the circumstances surrounding the non-renewal.

In that connection, the Tribunal examined the first reason given for the Applicant's non-renewal, which concerned the intended recycling of human resources of ESCWA, which was allegedly decided upon the Executive Secretary in consultation with the Secretary-General. In that regard, the Tribunal noted that no evidence had been submitted either to show that a plan of comprehensive recycling had been approved or that it had followed consultations with the Secretary-General. On the contrary, the Tribunal reviewed a report, dated 16 November 1993, on the Programme and Administrative Practices of the Regional Commission for Africa and Western Asia submitted by a team from the Office of Inspections, which remarked on ESCWA's initiation of a process of staff replacements, but with no correspondence to any defined project of quality improvement or any other discernible pattern.

Two further reasons were conveyed to the Applicant on 17 October. The Applicant denied having been involved in the study on Jordan which was regarded as unsatisfactory by the Jordanian Government, and even contested its existence. No evidence to the contrary was submitted by the Respondent. Concerning the alleged use by the Applicant of using the office's secretaries for work related to the Applicant's private business, part of the document which the Respondent retrieved from the Applicant's former division's PC directory which was purported to be related to the Applicant's private business was actually a paper written by his daughter for the University of Jordan.

The Tribunal concluded that those circumstances pointed to the existence of animosity against the Applicant, and that such animosity constituted an extraneous factor sufficient to suggest an inference that the decision not to renew the Applicant's fixed-term contract had been based on personal motives and was not in the best interests of the Organizations.

For the foregoing reasons, the Tribunal ordered the Respondent to pay the Applicant $5,000.

6. JUDGEMENT NO. 795 (21 NOVEMBER 1996): EL-SHARKAWI V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[8])

Non-renewal of fixed-term appointment — Question of legitimate expectation of continued employed — Question of non-renewal decision motivated by prejudice or abuse of power Applicant's fixed-term contract had been based on personal motives and was not in the best interests of the Organization.

The Applicant served on a series successive fixed-term appointments as the P-2 level for an uninterrupted period of 18 months, until 29 January 1993, the Applicant was informed that his appointment would not be extended.

The Tribunal noted that it had been its consistent jurisprudence to hold that a series of successive fixed-term appointments was not sufficient to create a legitimate expectation of continued employment (Judgements No. 305, Jabbour (1983) and No. 427, Raj (1988)); that employment with the Organization ceased on the expiration date of a fixed-term appointment and that a legal expectancy of renewal would not be created by efficient or even by outstanding performances (Judgements No. 173, Papaleontiou (1973); No. 440, Shankar (1989); No. 496, B. (1990) and No. 506, Bhandari (1991)). The Tribunal also had held that any factor might have misled the staff member to believe that his or her contract of employment might be extended or converted into more permanent employment must be weighed to determine whether it was the Respondent who was responsible for causing the misapprehension (cf. Judgements No. 142, Bhattacharyya (1971) and No. 242, Klee (1979).

In the case before it, the Tribunal found several actions by the Respondent that might have misled the Applicant to believe that his contract would be renewed. Firstly, the Applicant had been hired to work on an undertaking which was considered a long-term project of the United Nations. Secondly, the Applicant had received repeated assurances from his supervisor that his presence was essential to success of the project. Thirdly, there had been repeated interventions by the substantive department, insisting on the Applicant's continued employment in order to finalize the project on which he was working. Those factors together might have created the reasonable impression that the Applicant's employment would be continued. Therefore, based on those circumstances, the Tribunal agreed with the Joint Appeals Board's recommendation that the Applicant should be compensated.

The Applicant also claimed that the non-renewal of his appointment constituted abuse of power, and was motivated by prejudice or other extraneous factors. The Tribunal had consistently held that an Applicant, when alleging prejudice or abuse of power, had the burden of proving those grounds by compelling evidence (Judgements No. 312, Roberts (1983) and No. 470, Kumar (1989)). Therefore, it was clearly incumbent upon the Applicant to prove those allegations. Having reviewed the material before it, the Tribunal concluded that the Applicant had failed so to prove.

For the foregoing reasons, the Tribunal ordered the Respondent to pay the Applicant compensation equal to six months' net base salary at the rate in effect at the time of his separation from service, in addition to the compensation previously awarded by the Secretary-General. The Tribunal also ordered that the Applicant should be considered for vacancies for his qualifications and experience.

7. JUDGEMENT NO. 803 (21 NOVEMBER 1996): ASAMOAH V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[9])

Complaint against correcting status from non-local to local—Determination of local status—Question of equity

The Applicant entered the service of the United Nations Office at Geneva on 4 August 1980, as a Finance Clerk, on a fixed-term appointment at the G-3 level. Neither his initial Letter of Appointment nor his initial Personnel Action Form had made any mention of his status as a local or a non-local recruit. His Personnel Action Form had stated that his country of nationality was Ghana and that he was recruited from Annecy, France. During his service with the Office, the Applicant received successive promotions to the G-4 and G-5 levels, with effect from 1 April 1982 and 1 January 1993, respectively.

On 7 December 1983, the Applicant was informed by the Chief of the Personnel Administrative Section that a mistake had been made by the Recruitment Section at the time of the Applicant's appointment and that his status would be corrected from non-local to local recruit. Although the Applicant had requested an administrative review of that decision, and upon review the decision to change his status was upheld on 25 May 1984, no action was taken until 14 January 1994, almost 10 years later, when the Applicant was again informed that the correction would be made, for the reasons set out in the memorandum dated 7 December 1983. The Applicant appealed, contending that the criterion for determination of entitlement to non-local recruitment status was the place of the Applicant's residence at the time of recruitment, rather than the nature of the post, and also claiming that the granting of international benefits to the Applicants at the time of recruitment was in accordance with the relevant United Nations Staff Regulations and Rules.

The Applicant had contended that, as appendix B of the United Nations Staff Rules defined a locally recruited staff member as one at the time of the appointment was either a Swiss national or resident within a 25 kilometre radius of the Palais des Nations, and because he was not a Swiss national and had lived outside the 25 kilometre radius when recruited, he had been properly appointed with a non-local status. The Applicant also referred to Judgement No. 508, Rosetti (1991), which, in referring to conditions for international recruitment of a General Service staff member, stated that the relevant condition was that they should be recruited from outside the duty station, and that whether a staff member was entitled to the allowances or benefits of an internationally recruit was determined by the staff member's place of recruitment and not by the post occupied.

In contrast, the Respondent had argued that it would have been unreasonable, simply because the Staff Rules provided that a locally recruited official was one resided within 25 kilometres of the Palais des Nations, to interpret the Rules as requiring that the Respondent should pay international benefits to a staff member not so residing. Furthermore, the Respondent argued, referring to

annex 1 paragraph 6, of the United Nations Staff Regulations, which provided that the salary scales of General Service staff were fixed by reference to best prevailing local rates, that the provisions of the United Nations Staff Regulations governing General Service staff focused on the type of skills needed for a post rather than on the address of the successful Applicant at the time of his recruitment. The Respondent, pointing out that Finance Clerks were among the category of staff who might be recruited on non-local basis, had explained that the Applicant had initially been given non-local status owing to a simple administrative error in an internal document known as a check list.

Moreover, the Respondent stated that the practice of the United Nations Office at Geneva when filing General Service positions, such as the Applicant's, was not to bar candidates simply because they resided more than 25 kilometres from the Palais des Nations. The Respondent also pointed out that the employment contract of any General Service candidate not recruited locally would explicitly describe the new employee's recruitment status, since non-local status was an exception to the General Service category's normal recruitment procedures. The Respondent referred to the Joint Appeals Board's finding that the observance of any reference to the Applicant's local/non-local status in the offer of employment made to the Applicant should be interpreted to include him in the good category of General Service staff, who were normally recruited on a local basis in accordance with appendix B of the United Nations Staff Rules.

The Tribunal, while noting that the words of appendix B of the United Nations Staff Rules were perfectly clear, and taken on their own supported the Applicant's argument, believed, however, that the United Nations Staff Regulations and the recruitment practices referred to above also must be taken into consideration. In addition, it was clear that the Applicant's current situation resulted from the error made in the relevant employment documentation at the time of his recruitment, and that the Organization had never intended that he be recruited internationally. Moreover, the Tribunal distinguished Rosetti from the present case. In Rosetti, the Applicant had been properly recruited to a position reserved for international recruitment, since that position had required special skills, and had later, been transferred to a post that was not so reserved. On these facts, the Tribunal indicated that Ms. Rosetti could not be deprived of her properly acquired status as an international recruit, and in the present case, it was clear that the Applicant's non-local status had been acquired in error.

However, the Tribunal noted that owing to an error on the part of the Administration, the Applicant had been treated as an international recruit since 1980. The Administration had discovered its error as early as 1983, and yet it had allowed the situation to continue until 1994. The Tribunal, noting that the Respondent had provided no explanation for the almost 10 year delay, believed that it would have been unjust and inequitable if the benefits accruing to the Applicant as a result of the error had now been terminated. Therefore, to terminate the Applicant's benefits at that point would have resulted in a severe and unacceptable penalty for the Applicant, since the benefits at issue had arisen from an error that through negligence had not been addressed by the Administration and, further, was not the Applicant's making.

In view of the foregoing, the Tribunal ordered that the Applicant should continue to be treated as heaving international status with respect to the benefits accruing therefrom.

B. Decisions of the Administration Tribunal of the International Labour Organization[10]

1. JUDGEMENT NO. 1477 (1 FEBRUARY 1996): IN RE NACER-CHERIF V. INTERNATIONAL TRAINING CENTRE FOR THE INTERNATIONAL LABOUR ORGANIZATION[11]

Non-promotion to P-5 — Question of breach of due process—Issue of special safeguards for staff—Redress for flawed selection process.

The complainant joined the International Labour Organization's office in Algeria in 1970, and in 1975 he was transferred to its International Training Centre at Turin. In 1992, serving as chief of the recently created Finance and Budget Service. After two attempts that eventually were abandoned, the competition was held at last in March 1994. It drew 134 outside candidates and 3 internal ones, including the complaint. On the strength of a report by an ad hoc panel, the Selection Committee concluded that three of the outside candidates that the panel had picked were the best, one of whom was appointed to the post. The complaint filed an appeal, complaining, inter alia, of breach of due process.

The Tribunal noted that, pursuant to article 1.2 of the International Labour Organization Staff Regulations and annex H to which 1.2 refers, the Selection Committee provided for in article 10.4 must examine the candidates by a process that is spelt out in great detail. In the present case, the Committee had set up an ad hoc body to make a preliminary assessment of the candidates. The ad hoc body, the "selection" panel, which was distinct from the Selection Committee, had examined the records of the 134 external candidates and reduced the number to 29 and, finally to 3. After the panel interviewed them, together with the 3 internal candidates – the interview with the complainant lasted but 12 minutes – who were not covered by the preliminary assessment, it ranked the three external candidates as "the best". The Selection Committee unanimously accepted the conclusion of the panel, without having seen any of the candidates or looked at the application forms and personal records of the internal candidates.

In the view of the Tribunal, though it was not unthinkable for a selection committee to set up a panel of people whom it believed to be better fitted to assess the technical qualifications of candidates, especially external ones, it could not altogether delegate its authority under the Staff Regulations. It must exercise its own authority and not delegate unless the rules say it may. This was even more important in view pf the fact in the present case, the membership of the body that purports to delegate affords the staff special safeguards. Since the panel's members come mostly from the management side it was not an offshoot of the Selection Committee, even though the Director had consulted the Committee about its membership and two of its six members were also members of the Committee.

In addressing the issue of redress, the Tribunal recalled in its Judgement No. 1359 (in re Cassignau No. 4), an organization must be careful to abide by the rules on selection and appointment, and when the process proves flawed the Tribunal will quash any decision it engendered and order resumption with due need to the rules, albeit on the understanding that the organization must shield

the successful candidate from any injury that otherwise must flow from the quashing of an appointment accepted in good faith. The defendant had suggested an award of damages, instead of rescission, but the Tribunal had held such award to be inadvisable in the circumstance.

The Tribunal, therefore, ordered that the decision by the International Training Centre rejecting the complainant and appointment the external candidate should be set aside, and the case sent back to the Centre. The Centre also was ordered to pay the complainant US$ 2,000 in costs.

2. Judgement No. 1525 (11 July 1996): in re Bardi Cevallos v. United Nations Educational, Scientific and Cultural Organization[12]

Non-renewal of fixed-term appointment-Decision must be made on recommendation of advisory body pursuant to Staff Rules — Issue of redress for breach of due process

The complainant had joined UNESCO in January 1981 as Deputy Chief of the Buildings Division in the Bureau of General Services, at the P-4 level. In January 1986, as part of an exercise of staff retrenchment, his post was put "in reserve", and on 1 May 1986 the complainant was transferred to a temporary post financed from the Headquarters Utilization Fund, and, on 1 March 1988, to a post financed from the same Fund and created for the purpose of redeploying him. In April 1990, the complainant appealed.

The complainant's first plea was that the abolition of the post which he had held in December 1990 was unlawful. However, as that decision had not been challenged at the time, the Tribunal noted that the decision had become final and was not receivable; however, the facts forming the background to the decision to abolish his post still could be relied upon for his other pleas.

The complainant had contented that the Organization's decision not to renew his appointment was a misuse of authority and a grave breach of due process. The Tribunal concluded that since the latter plea had succeeded there was no need to take up the former.

The Tribunal, citing the relevant UNEESCO staff rules and rules of procedure of Personnel Advisory Boards, noted that the Advisory Board had not refused to make a recommendation on the non-renewal of the complainant's appointment, but had suspended proceedings until it could obtain further information from the Administration rather than report without it. The Organization's contention, therefore, that the Director-General was free to take a decision in the absence of a recommendation because the advisory body have failed to make one was incorrect. In the view of the Tribunal, citing its judgements Nos. 232 (in re Diaz), No. 352 (in re Peeters No. 2) and No. 1298 (in re Ahmad No. 2), consulting such a board was no idle formality; it was a means of working out a fair solution. In the present case, it offered the hope of redeploying someone with a long record of service.

The Tribunal concluded that because of the breach of due process the impugned decision could not stand, and that therefore the complainant was entitled to payment of salary and allowances as from the purported date of termination. Furthermore, in deciding whether or not to renew his contract UNESCO must comply with any procedural and substantive rules that were material. The

moral injury to the complainant was sufficiently redressed in the award of full pay from the date of departure without having had to provide any services in return. The complainant also was awarded costs.

3. JUDGEMENT NO. 1547 (11 JULY 1996): IN RE BAILLET, CERVANTES AND COOK (NO. 3) V. EUROPEAN PATENT ORGANISATION[13]

Non-deliverance of invitations to a staff union meeting — Question of receivability — Issue of partiality of member of Appeals Committee — Question of a legally binding practice — Issue of freedom of association — Claim of award of damages

On 15 October 1997, Mr. Cervantes, as Chairman of the Staff Union of the European Patent Organization (EPO), sent out invitations to all members to attend a general meeting on 20 October 1992 at 11 a.m. in a room in EPO premises at The Hague. The messenger service delivered the invitations in the main building but not elsewhere. Mr. Baillet and Mr. Cook did not receive an invitation. By letter of 19 October 1992, the head of the Internal Services, who was in charge of the distribution of mail, informed Mr. Cervantes that the office would not be delivering the invitations. The complainants appealed.

EPO had objected that the complaints had disclosed no cause of action and were, therefore irreceivable. The Organization observed that Mr. Cervantes, who purported to be acting for the union, could not claim damages on its behalf; he could act only in his own name; and his interest in obtaining a promise of delivery of union mail was academic.

In bringing the appeal, Mr. Cervantes complained that the Organization had violated his freedom of speech and breached his freedom of association. Therefore, in the view of the Tribunal, he had brought his complaint in his own name, and he had a direct and rightful interest in the observance of freedom of association that required under article 30 of the Service Regulations.

Regarding EPO's contention that there was no cause of action, the Tribunal considered that there was precedent that an organization had some latitude in affording facilities to a staff union and that its decision were not subject to judicial review. However, that was not the case when it was charged with breach of freedom of association, and the Tribunal would interfere if the effect of the impugned decision was to hamper the freedom of speech that any union must enjoy. Refusal to deliver invitations to a union meeting was unquestionably a breach of the privacy of mail and of the freedom of speech that was part and parcel of freedom of association. EPO's pleas that the union had no right to delivery and that no injury had been caused had to do with merits rather than receivability. The conclusion was that because the complainants had sought a ruling on the lawfulness of refusal to deliver union mail and because such refusal was actionable, the objection to receivability must fail.

Another preliminary issue raised in the case was the complainants' objections to one member of the Appeals Committee. Citing article 11 of the Service Regulations, which provided that the impartiality of any member might be challenged, they contended that one of the members who sat on the Appeals Committee was in charge of the distribution unit; the President's decision was one of direct concern to that unit; and while the case was pending that member was requested to

draft guidelines on the use of the messenger service. The Tribunal rejected the plea, stating that it was plain from the text of the guidelines that the member had drawn up were general in purport and were not particular to the case of union mail. Furthermore, the Committee members, including the staff representatives, had been of one mind in rejecting the charges of partiality against the member.

As to the merits of the case, the Tribunal, while noting that although EPO had not formal agreement with the union about the distribution of the union meeting invitations, it had admitted to the Appeals Committee that its consistent practice since 1992 had been to distribute any unsealed, unofficial internal mail, whether private or not, save any text containing personal attack on someone. And, as the Tribunal had stated in its Judgement No. 421 (in re Haghgou), a usage would be binding if staff had come to rely on it, which they had in the present case.

While the Organization had not denied the practice, it had argued that the union's invitations contravened the rule that a general meeting must be held outside core working hours. However, the Tribunal considered that EPO had not treated the holding of the meeting, as scheduled during core working hours, as an offence serious enough to constitute an abuse, e.g., had authorized the meeting at the time announced and had not imposed any penalty on those who had attended. By thwarting the delivery of the union notices to staff outside the main building, EPO had denied some, and not others, the freedom of association they were guaranteed by article 30, and, in the opinion of the Tribunal, had thereby discriminated against them.

The Tribunal concluded that the claim by Mr. Cervantes to an award of damages to the union was irreceivable because his complaint was in his own name. And though the individual claims by the three complainants were formally sound, the amounts they claimed could not be awarded: the meeting had taken place and there was no evidence of any particular injury. Each was awarded 500 Deutsche marks in damages for moral injury, and costs of 500 marks each.

4. Judgement No. 1549 (11 July 1996): In re Lopez-Cotarelo v. International Atomic Energy Agency[14]

Non-appointment to post — Question of receivability — Limited review of discretionary decision — Issue of accepting application after the established deadline

The complainant had joined the staff of IAEA as a nuclear power plant engineer at grade P-4, on 19 June 1988, and was promoted to P-5 as head of the Middle East and Europe Section of the Division of Technical Cooperation Programmes (TCPM), on 15 January 1990. His appointment was extended to November 1993, when he reached the age of retirement.

On 16 October 1990, IAEA issued a notice of vacancy for the post of director of TCPM, with a closing date for applications of 15 February 1991, and the complainant applied on 7 December 1990. The appointment of the incumbent was to expire on 1 June 1991, but for exceptional reasons, the Agency extended it to 31 December 1992. On 6 September 1991, the Director of Personnel informed all the candidates that the process of selection would not be over before February 1992 and asked whether they were still interested. The complainant stated that he was. Then, on 8 May 1992, another internal candidate, Mr. Barretto, the then Director

of the Division of Technical Cooperation Implementation, appears to have applied for the post, and was assigned to the vacant post effective 1 January 1993. The complainant appeals Mr. Barretto's appointment to the post.

IAEA had objected to the receivablity of the complaint on the ground that the complainant had no cause of action, i.e., he had not shown that he was fit for the advertised post, and even if he were, he had to retire by 30 November 1995 anyway. However, as the Tribunal was held in the past, an official of an international organization who applies for a vacancy is entitled to have his application considered and assessed according to the set procedure once the organization admits it under the terms of the vacancy notice. It may not deny that an Applicant has a cause of action after it has appointed someone else, especially if the Applicant is challenging the appointment on the ground of breach of his rights in failure to apply the proper procedure (Judgements No. 1316 (in re van der Peet No. 17) and No. 1359 (in re Cassagnau No. 4). Nor will the Tribunal uphold the plea that because the complainant was not qualified for the post his complaint was irreceivable, as that touches upon the merits.

The Agency's other objection to receivability was that the complainant had already retired and thus was not eligible for appointment. He explained that it was because he had retired on 30 November 1993 that he was claiming only moral damages. The Agency pointed out that he would in any event have had to retire at the age of 62, by 30 November 1995, and that he might nevertheless have had the exceptional benefit of extension past that age. Whether he still had any interest in the quashing of someone else's appointment was moot; but he still had an interest in exposing a breach of due process which might warrant an award of damage (see Judgement No. 729 (in re Ilomechina)).

Turning to the merits of the case, the Tribunal recalled that its review of the discretionary decision involved in the process of the selection and appointment of a candidate to a post was a limited one. It might aside such a decision it showed a fatal flaw, and a breach of a rule of form or of procedure would amount to such a flaw. As the Tribunal explained, it would be especially wary in such cases: it could not replace the Organization's rating of the candidates with its own, but any Applicant must be considered in good faith and in line with the basic rules of fair competition.

In the present case, the complainant had argued that the successful candidate for the post had applied after the deadline. The Agency had argued that the practice of the Personnel Department was to continue accepting applications until the whole process of selection was over. However, in the view of the Tribunal, such practice could not make good the lack of a rule or explanation in the announcement of the competition. An undeclared practiced failed to provide the openness that competition required. And when the notice demanded timely application, the practice offended against the rule, affirmed in the case law, that after the process of selection had begun the terms of competition might not be changed (Judgement No. 1158 (in re Vianney)). The purpose of competition was to let everyone who wanted the post compete for it equally and precedent demanded scrupulous compliance with the rules announced beforehand: patere legem quam ipse fecisti. See Judgements No. No. 107 (in re Passacantando), No. 729 (in re Ilomechina), No. 1071 (in re Castillo), No. 1077 (in re Barahona), No. 1158 (in re Vianney), No. 1223 (in re Kirstetter No. 2) and No. 1359 (in re Cassaignau No. 4).

As the Tribunal pointed out, if the Organization considered a late application it gave the impression of preferential treatment. Someone who had applied in time might see therein a bending of the rules and might feel that the late Applicant had had inside information about the earlier Applicants and might therefore have acted accordingly, perhaps even at the prompting of the Administration. And to those who might have wanted to apply after the deadline the acceptance of a late application would appear as favouritism: for want of an announcement they might not have realized that application would appear as favouritism: for want of an announcement they might not have realized that application was still allowable and might succeed. Moreover, even though the Organization might have believed that it had acted in its own best interests in accepting the late application, it was not entitled to achieve that purpose by a process of selection that cancelled one stage of the procedure it had already announced. The only proper way of doing so would have been to withdraw the notice altogether and open a new competition on terms that better matched actual requirements.

The Tribunal, therefore, concluded that there was breach of the material provisions.

Regarding the issue of redress, the Tribunal noted that the complainant implicitly acknowledged that, having retired on 30 November 1993, he himself did not stand to gain form resumption of the competition. No other complainant had challenged Mr. Barretto's appointment or questioned his qualifications. As in similar cases (Judgements No. 729, No. 1071 and No. 1077), the Tribunal found it inadvisable to set aside the appointment. Instead it awarded the complainant damages under article VIII of its statute. All he had claimed was moral damages, and the amount was set ex aequo et bono at US $3,000. Having succeeded in the main, he was entitled to 10,000 French francs in costs.

5. Judgement No. 1553 (11 July 1996): in re Moreno de Gomez v. United Nations Educational, Scientific and Cultural Organization[15]

Abolition of post — Limited power of review in such matters — Question of bias — Issue of reassignment after abolition of post — Question of award for material and moral injury

After serving at UNESCO under short-term contracts from 1976 to 1981, the complainant was granted a fixed-term appointment as from 1 November 1981 on a post, No. ED-598, of Spanish editor in the Publications Unit of the Education Sector, at the grade of P.3. Her post became that of Senior Editor in Spanish and was upgraded to P-4, and she promoted accordingly as from 1 July 1987. Her fixed-term appointment was extended several times. The last extension was to expire at 30 June 1993.

On 30 March 1992, the head of the Publications Unit told her orally that her post was to be abolished, and she appealed.

In its report dated 16 June 1994 the Appeals Board observed that of the 12 posts that were being abolished in the Education Sector 6 were vacant at the time and were encumbered. Of the six incumbents, three were due to retire. One of the remaining three had agreed to a termination and another was being redeployed. The complainant was the only one to have to leave the Organization.

The Board held that in filling post ED-634 account had not been taken the complainant's of academic qualifications, her experience in education, her very good record of performance and the priority she should have received as a result of the abolition of her post. The Board believed that, with her consistently good record for over 10 years, she should have proved suitable for redevelopment. If recommended reappointing her as from the date of termination, on a temporary post if necessary, until a suitable established one was found.

However, a 10 November 1994, the Director of the Office of the Director-General informed the complainant that despite many inquiries and consultations the Bureau had been unable to find a post for her, but that the Director-General was willing to treat the termination of her appointment as an agreed separation under regulations 9.1.2 and rule 109.7(*e*) and, in accordance with that rule, to raise her indemnity by half.

The complainant impugned the Director-General's decision of 25 July 1994 as well as the final decision conveyed in the Director's letter of 10 November 1994.

The complainant argued that the abolition of her post, ED-598, had been subterfuge calculated to get rid of her for want of any legitimate grievance. In her submission the decision was characterized as irrational in that insufficient consideration had been given to the importance of publications in Spanish. Since the post was "intersectoral" the workload did not depend merely on the needs of the Education Sector. Yet that sector had recommended doing away with the only post of Spanish editor in the entire secretariat while creating two posts of English editor. She contended that the reasons given for the restructuring – the need to reduce costs and the "decentralization" of editorial services – were unsound. She requested the Tribunal to declare the abolition of her post an abuse of authority.

Many judgements for example No. 1131 (in re Louis) have declared that the Tribunal will not review an organization's policy but only an individual decision taken to give effect thereto and the actual application of substantive rules. Its power of review is limited. It may not supplant an organization's view with its own on such matters as policies of restructuring or redeployment of staff intended to make savings or improve efficiency. It will interfere only when a decision has been taken without authority or in breach of a formal or procedural rule, or has been based on a mistake of fact or of law, or neglected some essential fact, or constituted an abuse of authority, or drawn a mistaken conclusions from the factual evidence.

The Tribunal, citing a memorandum dated 31 July 1992 addressed to senior officers, both at headquarters and in the field, from the Director-General containing information on the restructuring of the Education Sector and on the consequent recommendation to abolish post ED-598 and reassign the complainant, was satisfied that the restructuring and the abolition of the complainant's post had not been not aimed at the complainant herself, had rather been but were

based on objective goals that the Organization was seeking to attain, and the Tribunal would not review the reasons of policy underlying the decision to restructure the sector.

The complainant alleged that the bias which the Administration had shown towards her had originated in 1984, when she had cooperated in an inquiry carried out by the Inspectorate General. One finding of the inquiry, according to the complainant, "nearly created difficulties" for the head of the division in which she was working. That official was later promoted to high office in the Organization and she alleged that countless disguised sanctions were imposed on her after the inquiry.

In the Tribunal's view, however, as there was no direct evidence for the above, the incidents were deemed to be too remote and the evidence she offered too tenuous for the Tribunal to be satisfied that her charge of bias against the Administration was sound.

The complainant also contended that, pursuant to regulation 4.4, she should have been given priority for reassignment to a vacant post after her post was abolished. The Tribunal, recalling Judgement No. 133 (in re Hermann), was satisfied on the evidence that despite the unanimous recommendations by the senior personnel advisory boards and by the Appeals Board, the Organization had failed to give the complainant priority for vacant posts. It had put the wrong question to the units and to its Bureau of Personnel. The right question was not whether there was a post the duties of which she was capable of fulfilling competently. Even after the Director-General had written her the letter of 25 July 1994 no instruction had been issued that she should be given priority for any vacant posts. The decision to terminate her services thus rested on a misinterpretation of regulation 4.4 and therefore on a mistake of law. The Tribunal determined that the decision must therefore be set aside, there being no need to entertain the complainant's other pleas.

The termination had had disastrous results for the complainant and her family. Because of loss of income she had had to put her flat in Paris for sale by public auction and it had fetched a fraction of its market value. She was unable to meet her obligations to the Savings and Loans Service of UNESCO, she had found no other employment and her right of residence in France had been put in doubt. She had accordingly claimed damages for both material and moral injury.

The Tribunal was of the view that the Organization must adopt one of two options: One was to reinstate her and pay her full entitlements as from 1 February 1993 plus interest but less any sums she had received by reason of termination, and to grant her an appointment for two years, again at grade P.4, from the date of the present judgement. If the Organization were not to adopt that option, it must pay her the equivalent of her salary and allowances for four years and six months at the rates prevailing at 31 January 1993, plus interest. She was also entitled to an award of 0.5 million French francs in damages for the grave material and moral injury she had suffered, plus an award of 50,000 francs in cost.

C. Decisions of the World Bank Administrative Tribunal[16]

JUDGEMENT NO. 147 (14 MAY 1996): JOSEPH LOPEZ VS. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT17

Termination on the ground of unsatisfactory performance — Evaluation of staff performance is discretionary decision of Bank — Staff rule 7.01 — Importance of procedural guarantees surrounding discretionary decisions — Relocation of staff in discretionary decision — Question of a supplemental review — Procedural flaws relating to the administrative review process, confidential records and unusual security measures — Confidentiality of the appeals proceedings

The Applicant, who had joined the service of the Respondent on 14 February 1984, was a Senior Personnel Officer, at level 24, on the Personnel Team for Latin America and the Caribbean Region of the Personnel Management Department, having been transferred from the Institutional Personnel Tem of the Department effective 1 October 1992, where he had acted briefly as Chief Personnel Officer from I March 1992 to mid-April 1992. The Applicant had received good performance reviews during his career with the Bank, but problems had begun to emerge as from 1991-1992, particularly with regard to his negative interaction with other members of his team.

Ultimately, by memorandum to the Applicant dated 9 September 1993, the Chief Personnel Officer advised him that unless by 11 February 1994, there was sharp and sustained improvement of his interpersonal relationships with his team members, he would be terminated, pursuant to staff rule 7.01, section 11.02, for unsatisfactory performance. A subsequent extension of this review period to accommodate the Applicant's home leave brought the end of the period to 31 March 1994. After the review period, the Applicant's performance was evaluated as satisfactory; however, the conclusion also was reached that the Applicant was unable to function as a Senior Personnel Officer on the Latin American and Caribbean Region Team and that his presence on the team seriously undercut the effectiveness of the team. Inquiries about reassignment were made extensively, and it was further concluded there were no good prospects of the Applicant's performing satisfactorily anywhere in the Bank Group, and the Applicant was notified that his employment with the Bank would be terminated, effective 3 June 1994. He was placed on administrative leave (with full pay) through 30 June, on the ground that his continued presence in the office was seriously disrupting the work of the team. The Applicant appealed.

In considering the merits of the case, the Tribunal recalled that it would not substitute its judgement for the discretionary decisions of the Bank's management, particularly in terms of the evaluation of staff performance, and that the "Administration's appraisal in this respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure" (Saberi, Decision No. 5 (1982);

Suntharalingam, Decision No. 6 (1982); Buranavanichkit, Decision No. 7 (1982); Durrant-Bell, Decision No. 24 (1985).

In the Applicant's view, the requirement for such termination that there be serious and substantive performance problems had not been met, nor had any allegation of such problems been adequately substantiated. However, the Tribunal noted that serious problems regarding the Applicant's interaction with various personnel teams involved in different stages of his career had emerged long before the decision was taken to terminate his employment, and those problems had been adequately documented in the relevant performance reports. And while the Applicant had good working relationships with other groups from different departments, the Tribunal further noted that this positive aspect did not warrant overlooking negative team interactions, particularly to the extent that tense discussions and hostile attitudes had emerged as a result.

The Applicant also raised the issue of the meaning of staff rule 7.01, section 11.01, as then in effect, that "if performance remains unsatisfactory" it could result in termination of employment. In the Applicant's view, termination of service could be decided upon only if performance had remained unsatisfactory during the probationary period since the intention of the provision was not to bring about the termination of service of a staff member but to offer him a chance to improve his performance with the object precisely of avoiding termination. The Tribunal noted that the Respondent had shared this understanding because, in a memorandum dated 9 September 1993, invoking the staff rule, it was explained that termination could follow in the "absence of a sharp and sustained improvement", an improvement which obviously had to take place during the probationary period.

Subsequently, a difference of opinion had arisen between the Respondent and the Applicant as to whether the necessary improvement had occurred. However, the determination of that question was within the Bank's discretion, and the Tribunal could find nothing in the circumstances of the case to support the view that the Bank had exercised this discretion improperly. The Tribunal noted that the favourable feedback given to the Applicant in respect of his performance during the two months of his probation had not fettered the Bank's freedom to make a discretionary appreciation of the period of probation as a whole.

Turning to the procedural aspects of the case, the Tribunal had stated on other occasions that "the very discretion granted the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected (Salle, Decision No. 10 (1982)). Two basic guarantees have been defined by the Tribunal in connection with due process: "First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself" (Samule-Thambiah, Decision No. 133 (1993)).

In the present case, the Tribunal noted that problems with collegial interaction had been present for some time and warning had been given to the Applicant by the Respondent on various occasions, and it was not necessary for such warnings to have taken a specific form such as advance notice of termination. The Tribunal further noted that because of prior warnings the Applicant had agreed on more than one occasion to improve his performance short comings, and that the granting of a low salary increase had clearly indicated to the Appli-

cant that his performance was not entirely satisfactory. Under those circumstances, the Applicant had certainly not been deprived of the opportunity to improve or rebut the criticism that had been made.

The Applicant had also made the argument that few areas of required competence (in the Bank's usage called "competencies") had identified in the notice of probation, and that in any event such criteria as been included were still being debated and had not been formally adopted by the Bank. However, Tribunal considered that those criteria were applied throughout the Bank, that those chosen had been pertinent to the area of deficient performance covered by the probation and, most importantly, that the Applicant had been informed in great detail of the criteria that would be used to evaluate his performance. Furthermore, these criteria had been discussed with the Applicant and changes had been made to accommodate some of his concerns. Therefore, in those circumstances the Tribunal did not find any evidence of discrimination against the Applicant.

The Applicant had also raised the issue related to the Respondent's determination that there was no other place for him at the Bank. In response, the Tribunal recalled that the Bank's decision in that regard had again been a discriminatory one and, in any case, all necessary efforts to secure him another position had been made by the Respondent.

Another point raised by the Applicant concerned the supplemental review which had been prepared by his previous Chief Personnel Officer of the Institutional Personnel Team of the Personnel Management Department and incorporated in the 1993 performance review report.

The Tribunal pointed out, however, that supplementary reviews were expressly authorized under staff rule 5.03, section 2.03, in order to complete a performance record, particularly if several persons had been supervising the staff member during a given year. There could be no doubt that the supplemental review might be appealed after the supervisor had written his own evaluation, since the purpose of such review was to make available material for consideration by the Management Review Team, which, was the final authority under the performance review procedure. It would, of course have been inappropriate if the supplemental reviews had been added after the Management Review Team review was completed, but here, the procedure relating to the supplemental review was not contrary to the requirements and guarantees of due process.

The Tribunal, however, did point several procedural flaws. One related to the fact that the first administrative review requested by the Applicant objecting to the decision to put him on probation had been concluded not within the 30-day period mandated by staff rule 9.01, but only after 73 days. Another failure of due process was related to the handling of confidential information and records. A copy of a confidential document concerning the Applicant had not been destroyed as it should have been, nor had it later been placed in the Applicant's career file. A second breach of confidentiality had arisen when confidential medical records of the Applicant had been given to the investigator, who was investigating a claim of harassment against the Applicant, under staff rule 2.02, section 2.01.

Finally, when the Applicant was placed on administrative leave in connection with the decision to terminate is employment, unusual security measures had been taken, including his being forbidden to return to his office; and when he did, security guards, had accompanied him. The Tribunal noted that if there had been any serious risk of violence or disruption, the Respondent was under a duty to take appropriate security precautions, but in the present case, however tense and unpleasant the working environment surrounding the Applicant might have been, there was no evidence of him being violent or threatening any form of physical disruption. The Tribunal concluded that the security measures had been excessive and caused the Applicant moral injury.

The Tribunal ordered the Respondent to pay US $20,000 to the Applicant for the danger caused by the above-mentioned procedural flaws.

Before the Tribunal dismissed the other pleas of the Applicant, it addressed the issue of whether testimony before the Appeals Committee should be kept confidential in all circumstances.

The Respondent had objected to the use of such testimony by the Applicant before the Tribunal on the ground that under the Rules of Procedure of the Appeals Committee "all Hearings of the Panel shall be in camera" (staff rule 9.03, annex B, rule 1 and 15 (*a*)). The Tribunal found that the requirement that hearings should be held in camera referred to the privacy of the meetings of the Appeals Committee and to the general confidentiality of the proceedings before it, but did not forbid the invocation of such testimony before it, but did not forbid the invocation of such testimony before the Tribunal, if relevant, particularly having in mind that proceedings before the Tribunal also were not made public. The objection by the Respondent was accordingly overruled.

D. Judgement of the Administrative Tribunal of the International Monetary Fund[18]

JUDGEMENT NO. 1996-1 (2 APRIL 1996): MR. M. D'AOUST V. IMF19

Complaint against initial grade and salary — Matter of jurisdictive ratione personae — Tribunal's competence in request of the Grievance Committee. Acceptance of grade and salary does not bar challenge of the legality of its determination — Laws of procedural irregularities and facual error in appointment process — Assignment of grades to posts in an exercise of discretionary authority — Question of a "regulatory decision" issue of notice of an administrative practice

In 1992, the Fund interviewed several candidates, including the Applicant, for the position of "compensation officer" which had been advertised internally at grade A13/A14. Because of certain reallocations of the responsibilities of that position as formerly held, the position as regarded was offered to, and accepted by Mr. "X" at grade A12, at a starting salary of $63,000. After the completion of his initial two-year fixed term, Mr. X. was promoted to grade A13. In 1993, it was decided to recruit an additional, less senior staff member. That search was advertised internally at grade A10/A11, and when no suitable inter-

nal candidates applied from within the Fund, Mr. D'Aoust was asked by the recruitment officer if he would still be interested in the Fund, without mentioning the grade of the post. The Applicant was then interviewed by the official who would be his supervisor who, although the position had been advertised internally at grade A10/A11, concluded that because of a need for a more experienced officer, the new position should be set at the A12 level. The Fund thereupon offered the Applicant a post at grade A12 with a salary of $64,000, and when the Applicant responded that that salary was insufficient, the Fund offered, and the Applicant accepted, the salary of $65,800.

The Applicant commenced work on 6 December 1993, and on 28 February 1994, he requested that his salary be increased, pursuing his claim through various stages up to the Director of Administration. On 3 February 1995, the Director informed him that he had denied the request but nevertheless authorized a $1,000 annual salary increase effective 20 January 1995, the reason being that the outside consultant whom he had engaged to perform an independent review of the matter had observed that there seemed to have been some misunderstanding between the Applicant and the Fund as to the exact status of the job offered which might justify an equitable adjustment. On 31 January 1995, the Applicant submitted his grievance to the Grievance Committee, which on 13 June 1995 recommended to the Managing Director that the grievance be denied. On 21 July 1995, the Managing Director confirmed to the Applicant that he had accepted that recommendation. The Applicant appealed.

Before considering the merits of the case, the Tribunal decided the issue of jurisdiction ratione personae. At the time when the Fund had decided on the grade and salary of the position offered to the Applicant, he was not yet a staff member, nor did he meet the other criterion, as set out in article II, section I, of the Statute of the Tribunal, for the Tribunal to consider an individual's application.

However, the Tribunal concluded that since the offer and acceptance of a particular grade and salary affected him or a staff member, the Tribunal was competent to adjudge his case.

Another issue related to the competence of the Tribunal respecting the Grievance Committee's procedures and recommendations. The Applicant had requested the Tribunal to review the Grievance Committee's "decision" because he had alleged that substantive and procedural irregularities had been committed in those proceedings.

The Tribunal pointed out that the Grievance Committee was not competent to take final decisions, but rather recommendations. Moreover, the Tribunal was not limited as it would be if it were a court of appeal; e.g., it made findings of fact or needs, or holdings of law. The Tribunal might take into account the treatment of an Applicant before, during and after recourse to the Grievance Committee. The Tribunal was authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it.

The Applicant contended that he had been considered for the same job twice, once in 1992, and the second time in 1993, a contention disputed by the Fund. The position open in 1992 had been filled by Mr. X. The Applicant maintained that when in 1993 put to him was in terms of "performing the same as the one for which I had been interviewed, obviously not the same position, but the same job". Therefore, he argued, the two jobs should have carried an identical grade of A13. (The Tribunal noted that the position initially advertised at the level of A13 had been offered to and accepted by Mr. X at the A12 grade.)

The Applicant also averred that he had understood that the salary was to have been set on the basis of the total years of his relevant previous experience and in comparison with a number of other similarly situated staff members. Instead, in the calculation of his salary, only 10 years of his relevant prior experience had been taken into account in accordance with the Fund's practice in respect of non-economists (the methodology of truncating the value attributed to prior experience at 10 years), and only the grade and salary of a single comparator (Mr. X) had been weighed. He further alleged that "factual errors" had been made in the calculation of his salary by the mistaken use of the economist matrix and that "procedural anomalies" had taken place in that certain requirements, i.e., the formulation of a new job description and the internal advertisement of the vacancy, had not been met. He accordingly concluded that his grade and salary had been inappropriately set.

The Respondent argued that terms and conditions in a letter of appointment, such as grade and salary, were explicitly accepted by the staff member; that initial terms did not involve the exercise of unilateral authority by the Fund; and that therefore, those terms and conditions were presumptively binding upon the staff member who accepted them, absent a showing that they were blatantly mistaken (e.g., arithmetical or typographical error) or contrary to a mandatory rule of the Fund (e.g., a salary below the range associated with the grade of the position, or that their acceptance had been induced by fraud or misrepresentation.

The Tribunal sustained the Fund's position on the above question as a matter of presumption; the fact that a staff member accepted an offer that he or she was free to decline did weigh against challenge to the terms of the contract so accepted. But it was a question only of presumption. The Fund and an applicant for a position in the Fund were not in an equal negotiating position; e.g., as the present case showed the Fund was in possession of relevant information not within the knowledge of an applicant. Accordingly, while the presumption held the staff member nonetheless could be heard to argue contrary claims, as the present case, of misrepresentation of facts or irregularity in the process of appointment. The Tribunal concluded that the fact that Mr. D'Aoust had accepted his initial grade and salary did not bar him from challenging the legality of the Fund's determination of grade and salary.

Moreover, precisely what Mr. D'Aoust had accepted might be open to question. When the then Director of Administration considered Mr. D'Aoust's request for a revision of his grade and salary, he had found that events had occurred in the process of Mr. D'Aoust's appointment that had possibly created a certain degree of misunderstanding and confusion in his mind concerning "the exact status of the job". It was for that reason that the Director of Administration had decided to adjust the initial terms of Mr. D'Aoust's service by increasing his salary to $1,000 per annum as of 20 January 1995 and promoting him to grade A13 as of May 1995 under an unusual acceleration of the normal procedure, under which, as the Tribunal had been given to understand, promotions were not given to fixed-term staff before their conversion to regular staff. From those facts the Tribunal deduced that there was room for doubt as to whether there had been a true meeting of the minds regarding the nature of the job at the time Mr. D'Aoust had accepted his position. If there had not been such a meeting of minds, Mr. D'Aoust could be treated to his detriment as if there were, The Tribunal accordingly concluded on this ground as well that the fact that Mr. D'Aoust had accepted his initial grade and salary did not bar him from challenging the legality of their determination.

Regarding the issue of the Applicant's grade, the Tribunal considered that while the fund's perception was that the Applicant had been recruited to fill a position clearly junior to that discussed with him in 1992, the Applicant did not appear to share their perception. Nevertheless, on the basis of the evidence available to it, the Tribunal concluded that the 1993 position offered to and accepted by the Applicant differed from the 1992 position discussed with him but offered to Mr. X, as did the qualifications to be fulfilled by the holders of those positions. Thus, there was no legal obligation of the Fund to confer the same grade in both positions on the ground of an identity which did not exist.

The Applicant also had alleged that procedural irregularities and factual error in the process of his appointment had caused the Fund wrongly to offer him the grade and salary that he had accepted. That classification and grading was an exercise of discretionary authority, subject to judicial review only for irregularity, was settled jurisprudence (Lyra Pinto versus IBRD, Decision No. 56 (WBAT Report 1988, part I). International administrative tribunals have emphasized the importance of observance by an organization of its procedural rules, for instance, on the internal publication of vacancies so as to enable the staff members of the organization to apply for the vacant position (in re Diotallevi and Tedjini, Judgement No. 1272, ILOAT, 75th session). At the same time, they have held procedural irregularities and error to be irrelevant where actions or missions did not affect the decision of the complainant or his financial interests.

Before Mr. D'Aoust accepted a position with the Fund, he could not have been acquainted with its procedures. Any procedural failures by the Fund of which he was then unaware, e.g., in not re-advertising the position, or any errors in the computation of the salary that the Fund offered him, accordingly could not have influenced his decision to accept the position. Moreover, the salary that the Fund initially offered him was renegotiated at the time to his advantage. Consequently, the Tribunal did not accept Mr. D'Aoust's contentions concerning the effect of the procedural irregularities and factual errors in the process of his appointment which he cited.

The Applicant asserted that the Fund had abused its administrative discretionary authority in its assignment of grade and salary to his position.

International administrative tribunals have regularly held that the assignment of grades to posts is an exercise of discretionary authority. Tribunals have been reluctant to interfere in the grading of posts, holding that the evaluation of the work to be done and the degree of responsibility involved, factors on which the grading depends, should be performed by persons trained to apply the relevant technical criteria. (in re Dunand and Jacquemod, Judgement No. 929 (ILOAT, 65th session)). They have substituted their own assessment or required that a new assessment be made only where the evaluation of a post was tainted by irregularity (in re Garcia, Judgement No. 591 (ILOAT, 51st session)).

Mr. D'Aoust indeed asserted that he had been misled as to the nature of the job offered to him; and he maintained that the fact that he had been given a starting grade of A12 for a position that had been internally advertised as A10/A11 demonstrated the invalidity of the process by which the grade had been determined; for those reasons, he had been inappropriately graded. The Respondent denied that Mr. D'Aoust had been misled and maintained that since the job content of the position initially set at grade A10/A11 had been redefined, the assertion that the job had finally been graded at A10/A11 was incorrect because the duties and responsibilities of the position had been augmented.

The Tribunal found no evidence of Mr. D'Aoust having been deliberately misled. The Tribunal noted that the Fund had recognized that, despite the findings by the independent consultant that the system used in the Fund for determining starting grades and salaries had been correctly applied in the case of Mr. D'Aoust, in the discussions between him and personnel of the Recruitment Division leading up to his decision to accept the position there seemed to have been some difference in understanding as to the exact status of the job being offered relative to others in the personnel area. It was for that reason that the Fund had made what it considered an equitable adjustment of Mr. D'Aoust's situation. The adjustment consisted of a $1,000 per annum increase in salary and an accelerated promotion. The Tribunal did not equate any such misunderstanding with a deliberate misleading of Mr. D'Aoust by the Fund. Nor did that adjustment demonstrate that the initial determination of Mr. D'Aoust's grade and salary had been flawed.

It remained to be considered whether the Fund's practice of truncating the weight to be attached to the previous experience of non-economist applicants at 10 years when deciding upon their grade and salary had, in its application to Mr. D'Aoust, been wrongfully employed to adversely affect his initial salary. Whether that practice constituted a rule concerning the terms and conditions of staff employment is dealt with below. As to the merits or demerits of the practice as applied to Mr. D'Aoust, the Tribunal found that the Fund might not unreasonably favour economists in deciding upon the terms of staff employment since economics was at the heart of the Fund's mission. Thus when the Fund had applied the so-called non-economist matrix to the determination of the salary of Mr. D'Aoust, cutting off the credit given to his prior experience to 10 years, that of itself had not given rise to a cause of action against the Fund on the ground of inequality of treatment.

In light of the above considerations, the Tribunal concluded that the exercise of administrative discretion by the Fund in setting Mr. D'Aoust's grade and salary had not been invalidated by the procedures followed, including the 10 year truncation of his previous experience and the use of a single comparator. Nor had it been invalidated by irregularities alleged in those procedures which in any event had not been shown to have influenced that exercise. It might well be that, in the singular circumstances of the case, the Applicant and the Fund officials immediately concerned did not have a meeting of minds on the status of the position offered in 1993 to Mr. D'Aoust or on its relationship to the position not offered to him in 1992, but if so, that had not given rise to a sustainable complaint on the part of the Applicant.

The Applicant challenged the legality of what he construed as the regulatory decision on the basis of which his grade and salary had been determined, alleging that it had violated the Fund's internal law as well as general principles of law and had no basis in the Fund's policies or general administrative orders. In particular, he asserted that the methodology by which prior experience was treated differently in respect of economists or compared with non-economists (being taken into account only for a maximum of 10 years) constituted unlawful irregularity of treatment; that the system was rooted in systemic and gender discrimination; and that the system of determining grades was arbitrary. The Respondent's arguments concerned: (*a*) the Tribunal's jurisdiction over the challenge to the long-standing practice that truncated recognition of previous experience 10 years; and (*b*) the legality of that practice.

The Tribunal noted that, pursuant the article II, section 2, of its statue, it could have jurisdiction to review regulatory decision. However, the Tribunal further noted that in order to consider the lawfulness of the practice in question or "a regulatory decision" it must as a threshold matter widen the question of jurisdiction ratione materiae, that is to say, it must decide whether the practice was a regulatory decision.

The evidence in these proceedings showed that the practice of truncating the weight given to the previous experience of non-economists at 10 years had never been decided upon by the Executive Board, the Managing Director or the most senior officials of the Fund. The practice had been distilled in no rule, general administrative order, handbook or handout, statement on conditions of employment, contract or other published official paper of the Fund. Rather, at the time that that practice had been applied to Mr. D'Aoust, it was an unpublished practice known to and employed by a small number of officials of the Administration Department of the Fund. In view of those uncontested facts, the Tribunal was unable to regard the practice in question as flowing from or constituting a regulatory decision. That being its conclusion, it followed that the Tribunal laced jurisdiction to pass upon the practice as a regulatory decision, though it had found itself competent to consider the validity of the application of that practice to Mr. D'Aoust as an "individual rather than a "regulatory" decision.

At the same time, the Tribunal found it appropriate to observe that for the Fund to generate and apply a practice that affected the determination of the salary level of a substantial proportion of its staff, but which had been and was largely unknown, might require the consideration of the Managing Director. It was clear that neither the members of the staff of the Fund nor the Tribunal could adequately react to a practice which was at once real in its effects but so elusive in its origin, adoption, recording, articulation and transparency.

In the Tribunal's view, it might be added that notice by which rights and obligations were clearly conveyed was a requirement not only of due process. Such notice was an element of the structure of the Statute of the Administrative Tribunal of the Fund, and as a general proposition, it was held to be required by ample judicial authority.

In respect of the individual decision determining the grade and salary of the Applicant, the Tribunal decided that the application was rejected, and in respect of the alleged regulatory decision, pursuant to which such determination had been made, the Tribunal found no regulatory decision within the meaning of its statute on which to rule.

NOTES

[1] In view of the large number of judgements which were rendered in 1995 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest and/or set out a significant point of United Nations administrative law have been summarized in the present edition of the Yearbook. For the integral text of the complete series of judgements rendered by the four Tribunals, namely, judgements Nos. 747 to 807 of the United Nations Administrative Tribunal, judgements Nos. 1464 to 7560 of the Administrative Tribunal of the International Labour Organization and decisions Nos. 147 to 155 of the World Bank Administrative Tribunal and

judgements No. 1996-1 of the Administrative Tribunal of the International Monetary Fund, see, respectively: documents AT/DEC/747 to 807; Judgements of the Administrative Tribunal of the International Labour Organization: 80th and 81st Ordinary Sessions; World Bank Administrative Tribunal Reports, 1996; and Administrative Tribunal of the International Monetary Fund, Judgement No. 1996-1.

[2] Under article 2 of its statute, the United Nations Administrative Tribunal 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: International Civil Aviation Organization and 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] Hubert Thierry, Vice-President, presiding; and Francis Spain and Deborah Taylor Ashford, Members.

[4] Luis de Posadas, Vice-President, presiding; and Mayer Gabay and Deborah Taylor Ashford, Members.

[5] Hubert Thierry, Vice-President, presiding; and Francis Spain and Deborah Taylor Ashford, Members.

[6] Hubert Thierry, Vice-President, presiding; and Miknin Leliel Balanda and Mayer Gabay, Members.

[7] Luis de Posadas Montero, Vice-President, presiding; and Francis Spain and Deborah Taylor Ashford, Members.

[8] Luis de Posadas Montero, Vice-President, presiding; and Francis Spain and Mayer Gabay, Members.

[9] Hubert Thierry, Vice-President, presiding; and Francis Spain and Mayer Gabay, Members.

[10] The Administrative Tribunal of the International Labour Organization 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 Organization and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1996, 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 International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization 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 Organization 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 Interpol, the International Fund for Agricultural Development, the International Union for the Protection of New Varieties of Plants, the Customs Cooperation Council, the Court of Justice of the European Free Trade Association and the Surveillance Authority of the European Free Trade Association. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization.

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] Sir William Douglas, President; Micheal Gentot, Vice-President; and Jean-François Egli, Judge.

[12] Sir William Douglas, President; and Micheal Gentot, Vice-President; and Jean-François *Egli, Judge.*

[13] Sir William Douglas, President; and Edilbert Razafindralambo and Jean-François Egli, Judges.

[14] Ibid.

[15] Sir William Douglas, President; and Edilbert Razafindralambo and Jean-François Egli, Judges.

[16] 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 Development 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.

[17] Elihu Lauterpacht, President; Robert A. Gorman and Francisco Orrego Vicuna, Vice-Presidents; and Prosper Weil, A. Kamal Abul-Magd, Thio Su Mien, and Bola A. Ajibola, Judges.

[18] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is empowered to review employment-related decisions taken by the Fund on or after 15 December 1992.

[19] Stephen M. Schwebel, President; and Michel Gentot and Agustin Gordillo, Associate judges.