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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[1]

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

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

1. JUDGEMENT NO. 587 (15 JUNE 1993): DAVIDSON V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[3]

Claim for compensation for the death of a staff member submitted by his widow under appendix D to the Staff Rules—Tribunal's competence in the matter—Medical Board's competence does not extend to addressing legal questions—Question of whether the death of the staff member was attributable to the performance of official duties because of "special hazards" under article 2(b) (ii) of appendix D—A staff member does not assume the risks when consenting to an assignment in an area of special hazards

The Applicant, the widow of a United Nations staff member, submitted a claim under appendix D to the Staff Rules for compensation in the death of her husband. She asserted that her husband's death was attributable to the performance of official duties on behalf of the Organization as it resulted from "chronic and acute stress . . . from the cumulative effect of documented excessive professional work and worry and unusual exertion preceding the death". She also invoked article 2(*b*)(ii) of appendix D of the Staff Rules on the grounds that her husband's duty station lacked the most elementary medical facilities and an adequate infrastructure and personnel for serious emergencies, such as heart attacks, thus constituting a "special health hazard". The relevant provision under appendix D provides:

"Article 2, Principles of award

"The following principles and definitions shall govern the operation of these rules:

. . .

(*b*) . . . death . . . of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the United Nations . . . when:

(i) The death . . . resulted as a natural incident of performing official duties on behalf of the United Nations; or

(ii) The death . . . was directly due to the presence of the staff member, in accordance with an assignment by the United Nations,

in an area involving special hazards to the staff member's health or security, and occurred as the result of such hazards; . . . "

A medical board was convened, and based upon its findings the Applicant's claim was denied. The Tribunal, having no medical competence, stated that it had consistently held that it would not rescind decisions denying compensation which were based on Medical Board reports where there was no showing of procedural irregularity, mistake of fact or law, or of arbitrary or extraneous factors flawing the decision.

The Tribunal, noting that the Medical Board lacked competence in addressing legal questions, was of the view that, in the present case, reliance on the Medical Board report by the Respondent was impermissible because of the Medical Board's preoccupation with legal issues. For example, the Medical Board had determined that the decedent's excessive workload might have constituted an additional factor to his alleged "pre-existing coronary atherosclerosis", but was not of sufficient weight for the "death to be deemed to have resulted as a natural incident of performing official duties within the meaning of article 2(*b*)(i) of appendix D . . . " However, as the Tribunal pointed out, the Board's interpretation of article 2 constituted a legal, rather than a medical opinion.

It was also the Tribunal's opinion that the Medical Board report was further flawed in that its finding lacked any medical evidentiary support that a pre-existing condition of atherosclerosis existed outweighing the effect of the possible additional factor of an excessive workload combined with the work-related behavioural characteristics of the decedent.

With respect to whether under article 2(*b*)(ii) of appendix D the death of the Applicant's husband could be deemed attributable to the performance of official duties, the Tribunal found that Bangui, Central African Republic, was an area involving special health hazards. The Tribunal, while noting that the Respondent evidently relied on the Medical Board's finding that the special hazard was not the "sole cause" of death, but an aggravating factor, was of the opinion that in cases of heart attack deaths it would be extremely difficult to establish with absolute certainty that a special hazard of the type involved in the present case, i.e., the unavailability of adequate facilities and personnel for dealing with cardiac emergencies, was the sole cause of death.

Furthermore, the consent of the staff member to assignment to an area of special hazards provided no basis for a contention by the Respondent that the staff member thereby assumed the risks involved, nor should the risks be shifted to the staff member by establishing unreasonably restrictive standards for the application of article 2(*b*)(ii). It was the Tribunal's view that if, as in the present case, a Medical Board found the existence of a special hazard, constituting an aggravating factor, which decreased the chances of survival, that was tantamount to a finding that the special hazard played enough of a role in the chain of causation to determine that death occurred as a result.

Accordingly, the Tribunal concluded that the Respondent's decision must be rescinded and that compensation was to be paid in accordance with rule 106.4 and article 10 of appendix D to the Staff Rules.

2. JUDGEMENT NO. 595 (28 JUNE 1993): SAMPAIO V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[4]

Claim of a member of the United Nations Staff Mutual Insurance Society Against Sickness and Accident for reimbursement of medical expenses at the rate of exchange on the date of expenditure instead of on the date of refund—Question of whether the existence of an internal recourse procedure established by the Society precludes the member from resorting to the appeals procedure under the United Nations Staff Regulations and Rules—The Society, which was established to protect the rights to health protection of its members, cannot take a decision or adopt a rule that has the effect of thwarting the fundamental purpose for which it was created

During the Applicant's assignment in Geneva, she was a member of the Geneva United Nations Staff Mutual Insurance Society against Sickness and Accident, which was established under staff regulation 6.2 "to reimburse, within the limits laid down in the Society's Internal Rules, the expenses incurred by its members arising from sickness, accident or maternity". While on home leave in Brazil in 1989, the Applicant incurred medical expenses in the amount of Brazilian cruzados 35046.47, and on 21 February 1990 she was reimbursed by the Society, which converted Brazilian cruzados into Swiss francs, using the official United Nations rate of exchange prevailing on that date, as provided in annex II, article 2(*a*)(vii) of the Society's statute and Internal Rules. Notwithstanding this provision, the Applicant claimed that she should be reimbursed at the rate of exchange prevailing on the date of expenditure instead of on the date of reimbursement, and that failure to use the former date had resulted in a loss to her of approximately 9,012 Swiss francs, because of an extremely sharp devaluation of the Brazilian cruzado from the time when the medical expenses were paid in Brazil until the time when the Society reimbursed her.

The Society refused to accept her view, and the Applicant filed an appeal. Subsequently, the Joint Appeals Board found that the proper procedure had not been observed and recommended that an exception be made to the Society's rules. However, the Secretary-General remanded the question to the Society for consideration by its Executive Committee in accordance with its Internal Rules, whereupon the Society refused to grant an exception in the Applicant's favour. On receipt of this refusal, the Respondent decided to reject the Joint Appeals Board report on the ground that it had no jurisdiction in the case, since the Society had its own appeals procedure.

Even though the Respondent did not raise the issue of the JAB's competence before the Tribunal, the Tribunal considered that the Society, in spite of being a *sui generis* organization, could not be regarded as being independent of the United Nations, inasmuch as it had been established by the Secretary-General in accordance with article 6.2 of the United Nations Staff Regulations; its statute and Internal Rules were subject to the approval of United Nations officials; and its head, the Executive Secretary, was appointed by the Director-General of the United Nations Office at Geneva. Therefore, the Tribunal concluded that the United Nations Staff Rules and Regulations were applicable to the Society and that the establishment by the Society of an internal recourse procedure did not abrogate the right of any of its members to resort to the appeals procedure provided by the United Nations Staff Rules and Regulations.

As to the merits of the case, the Tribunal, while noting that the Society had been established, in accordance with staff regulation 6.2, to protect the rights to health protection of its members, concluded that, consequently, the Society could not adopt a decision or introduce a rule that had the effect of thwarting the fundamental purpose for which it had been created. Additionally, the Tribunal considered that paragraph 2(*a*)(vii) of annex II to the Society's Internal Rules was somewhat arbitrary in that the Society had fixed the date of conversion at the date of payment by the Society, rather than at a proven date of payment of the medical expenses by the staff member. The Tribunal recognized that this may have been administratively convenient for the Society, but did not justify imposing on the member the risk of fluctuating currency rates under a health protection system. The Tribunal, therefore, held that the application of paragraph 2(*a*)(vii) of annex II had prevented the Applicant from recovering expenses incurred for health protection to which she was entitled.

The Tribunal considered it legitimate to conclude that the meteoric fall (between 400 and 500 per cent) in the exchange rate of the Brazilian cruzado, in relation to the Swiss franc, in a very short period, could not have been foreseen when the Society established its statute and Rules, and that because of these remarkably unusual developments a request for making an exception was made. While not commenting on the grounds for the Respondent's refusal to make an exception, the Tribunal found that the Applicant's rights to health coverage as recognized in staff regulation 6.2 had been denied.

The Tribunal ordered the Respondent to pay to the Applicant the amount, in Swiss francs, which the Applicant should have received from the Society, at the rate of exchange prevailing at the time she paid her medical expenses, less the amount she had already received from the Society.

3. Judgement No. 610 (1 July 1993): Ortega, Hernandez, Canales and Garcia v. the Secretary-General of the United Nations[5]

Non-renewal of fixed-term appointments—Issue of expectancy of continued employment—Non-renewal of the Applicants' contracts instead of resorting to disciplinary procedures was detrimental to the Applicants because it precluded the possibility of any form of sanction other than separation—Question of bias in the implementation of the administrative action taken

The Applicants, while employed at the Latin American Demographic Centre (CELADE) on fixed-term appointments, had organized a "cooperative" to purchase equipment, consisting of three micro-computers and two printers, which were used on a regular basis, without compensation, for everyday activities in the office of CELADE between 1986 and 1989. However, the cooperative also rented the equipment to the United Nations, at the CELADE office, for use in seminars, workshops, training courses and other activities, using fictitious third parties in order to collect payment for the rentals. The operation of the cooperative was in breach of the United Nations Financial Rules on contracting for services and certification for payment, and following an audit investigation of the CELADE office by the Economic Commission for Latin America and the Caribbean the scheme was discovered. Subsequently, the Applicant's contracts were not renewed.

The Applicants contended that they had an expectancy of renewal of their fixed-term appointments. One Applicant had 22 years of continuous outstand-

ing service, with only two years left to retirement. The Tribunal, after consideration of all the elements involved, including the fact that the scheme had not precluded the computing equipment being used for the greater part of the time in an honest way and that there was no actual financial loss to CELADE, concluded that in the case of the staff member with 22 years' service he was entitled at the very least to every reasonable consideration for further employment, though he had no legal expectancy of continued employment.

The Applicants also argued that CELADE should have resorted to the applicable disciplinary procedures where they could have properly defended themselves against stated charges. The Tribunal was of the view that administrative action should only be resorted to when it does not prejudice or damage the position of staff, and was not detrimental to staff. In the present case, the Tribunal concluded that the non-renewal of their appointments was detrimental to the Applicants, mainly for the reason that it excluded the possibility of any form of sanction other than separation. In other words, disciplinary action may have resulted in a lesser penalty.

Moreover, the Tribunal found that the scheme was widely known and tolerated by the Administration and that the investigation had been carried out in such a manner as to show selectivity and bias. For example, one staff member was not properly investigated as to the state of her knowledge of the cooperative. The Tribunal also found bias in the manner in which the other members of the cooperative were treated, in that they were retained in service based on the argument that they had to remain in the interests of continuity.

In view of the foregoing, and while noting that there were financial irregularities but no intention to defraud the United Nations, the Tribunal awarded the Applicants compensation in the amount of two years of their net base salary.

4. Judgement No. 626 (12 November 1993): Selvadurai v. the Secretary-General of the United Nations[6]

Non-renewal of fixed-term contract—Fixed-term appointments carry no expectancy of renewal but under the circumstances of the case the staff member should have been considered for other posts

The Applicant, who had worked successfully with the United Nations since 1967 on a series of fixed-term contracts, was transferred in 1985 to a new job (Fund Management Officer) for which he had no experience or training. Thereafter, his First Reporting Officer, with whom the Applicant claimed he previously had problems, prepared two performance evaluation reports which were rebutted by the Applicant. On the basis of these reports, after they were rebutted by the Applicant and some of the ratings upgraded, the Applicant's fixed-term contract was not renewed, under the guidelines established by the UNEP Executive Director.

The Tribunal considered the Applicant's performance evaluation reports and the related documents and noted the adverse criticism of the Applicant by the First Reporting Officer, but found no evidence of bias on the Reporting Officer's part against the Applicant. The Tribunal further noted that, in general, the reports indicated that the Applicant had substantial ability in many areas.

Nevertheless, the performance evaluation reports had provided the Administration with the grounds not to renew the Applicant's appointment, based on UNEP guidelines concerning renewal:

> "Staff in the Professional and above categories and General Service category of the G-6 and above levels who, although rated 'very good', need to improve their performances. If there is a 'C' or 'D' in the area which is marked 'specially important' in the performance evaluation report form, the extension may not be granted."

The Applicant was awarded "C" in at least one area marked "specially important", and on the basis of the strict application of the above guidelines his contract was not renewed.

While the Tribunal noted that a fixed-term contract does not, in itself, carry an expectancy of renewal, the Applicant, who had worked for the Organization for 20 years, was entitled to every reasonable consideration for further employment. In this regard, the Tribunal further noted that consideration was accorded to the Applicant in relation to certain other posts, but did not view these efforts as sufficient under the circumstances of the case. In the Tribunal's view, further consideration was more significant in this case, because the Administration had brought about the situation which gave rise to the Applicant's difficulties by appointing him to the post in question and then failing to support him.

The Tribunal concluded that the Administration could have ameliorated the situation to the point where the Applicant probably would have successfully adapted to the work; and, therefore, based on the losses accruing to the Applicant as a result of the non-renewal of his appointment, awarded him an amount equivalent to one year's net base salary at the rate in effect on the date of his separation from service.

B. Decisions of the Administrative Tribunal of the International Labour Organization[7]

1. Judgement No. 1204 (10 February 1993): Andersson, de Donato, Dubail and Guillet v. European Organization for Nuclear Research[8]

"Out-of-career" promotions—Parameters of discretionary authority in granting promotions—Requirement that binding rules must be published—Reason(s) for rejection of promotion must be based on facts

The staff of the European Organization for Nuclear Research (CERN) were informed on 4 March 1991 of the general guidelines on promotion and advancement for 1990-1991. The guidelines distinguished between normal promotion, double-step advancement and "out-of-career" promotions which were to be granted to officials of outstanding merit at the top step in their grade who could not ordinarily progress any further. The material paragraph of the guidelines stated that such promotions were to be allotted by division and "according to the number of those who satisfy the following conditions: staff members must be at least 50 years old in categories 3 and 5b, or 45 in categories 4 and 5c, and have reached the last step in the grade of their post".

Each of the complainants' divisions proposed them for out-of-career promotion and, thereafter, each of them applied for and were granted early retire-

ment on negotiated terms. Subsequently, CERN announced, on 22 July 1991, that the 1991 out-of-career promotions exercise was discontinued. The complainants' promotions were not granted because, as they were informed, they had received early retirement. Subsequently, the Director-General, responding to a joint letter of the complainants, stated that though there was no actual rule for the disqualification of out-of-career promotion for someone who had been granted early retirement, such promotion was due only to officials "of outstanding merit", and that there was no evidence of outstanding merit in their case. Their services with CERN had been characterized as good, sometimes very good.

The Organization had argued that in disqualifying some members of the staff for out-of-career promotion it was merely exercising the discretion inherent in managerial prerogative; the Director-General had not altered his original decisions but merely gave the fuller explanation that they would have not qualified for out-of-career promotion anyway because their performance had not been outstanding. However, the Tribunal, while noting that the competent authority has discretion to grant or refuse the promotion of staff who qualified under the material rules, it must abide by the rules, and whatever decisions it took would be subject to judicial review. Its decisions must rest on materially correct facts and show no mistake of law or any abuse of authority. Furthermore, the rules must be known to everyone and an organization might not go beyond the duly published texts and resort to secret provisions that changed the thrust of the ones it intended to treat as binding. Before it took its discretionary decision it must compare the merits of all staff who qualified under the rules, and, provided it made no obvious mistake in that comparison, only then might it properly exercise its discretion.

The Tribunal, while considering that CERN had given different reasons at different times for refusing the complainants' out-of-career promotion, concluded that the Organization had committed two mistakes of law. One was to apply to the complainants rules that had never been published and that the Organization regarded as binding. The other was to defend its position *ex post facto* by saying that its reasons for rejecting the complainants' claims were connected with their performance, though there was no evidence of any comparative and analytical assessment of the kind to which international officials are entitled. The Tribunal noted that the Director-General had not given the Applicant a "fuller explanation", but after informing them that their promotions had been rejected because of their early retirement, he had upheld the rejection of their claims on the grounds that their services had not been outstanding.

For the above reasons, the Tribunal set aside the impugned decisions and ordered that the complainants be properly considered for promotion.

2. JUDGEMENT NO. 1212 (10 FEBRUARY 1993): SCHICKEL-ZUBER v. EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH[9]

Dismissal while on probation—Limits to discretionary decision in such matters—Requirement of prior hearing before dismissal

The complainant had been granted a fixed-term appointment, effective 1 March 1991, for three years with the first six months as a probationary period,

to serve on the staff of the Director-General's office of the European Organization for Nuclear Research (CERN). On 26 April 1991, she collapsed at the office and was taken to hospital. Thereafter, she was put on sick leave *sine die*. By letter of 2 July, the complainant received her probation report and was informed that upon her return to the office she would be given new duties and that her probation was extended to 31 January 1992, when a decision would be taken about her future with CERN. However, on 15 November 1991, while still on sick leave, she received a notice, dated 12 November, of her dismissal to be effective 31 January 1992 because of the stated reasons of professional incompetence and shortcomings and of a decision to put her on special leave up to that date.

The Tribunal considered that since the Director-General had discretion in such matters his decision must stand, unless it was taken without authority or in breach of a procedural or formal rule, or if there was a mistake of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority or if some clearly mistaken conclusion was drawn from the evidence, and the mistake or other flaw must have been especially serious or glaring in the case of termination of a probationary appointment.

The Tribunal, while noting that the notice of 12 November 1991 dismissing the complainant did not give an explanation of why CERN had changed its mind since 2 July 1991, when she was informed of her new duties, considered that the complainant's right to be given a prior hearing before dismissal—of which there was a long line of precedents—was violated. In the view of the Tribunal, there was no evident reason for the change in decision, thereby failing to show good faith and due regard for her rights.

For the foregoing reason, the Tribunal ordered that the complainant be reinstated to complete the probation period in some new assignment, and if unable to return to work then the procedure must be followed to determine whether her illness was service-incurred and whether she might be dismissed for certified medical reasons. Furthermore, she was awarded 10,000 Swiss francs in damages for moral injury and 4,000 francs in costs.

3. Judgement No. 1223 (10 February 1993): Kirstetter (No. 2) v. European Organisation for Safety of Air Navigation[10]

Non-selection to post—Question of receivability—Article 30 of the Staff Regulations providing for the requirement of an independent promotion body—an organization is bound by the wording of its vacancy notices as long as they remain valid—Duty to inform applicant of reason(s) for refusal of promotion under article 25 of the Staff Regulations

The complainant, a grade A4 official serving with the European Organisation for the Safety of Air Navigation (Eurocontrol Agency), applied on 23 August 1990 for a grade A3 post as Head of Division 2, in response to a "vacancy notice/notice of competition" for appointment to the post by promotion under article 30 of the Staff Regulations. He was notified on 6 February 1991 that he had been unsuccessful, and on 2 April 1991 Eurocontrol appointed an outside candidate to the post. The complainant sought the quashing of both the decision to reject his application and of the decision to appoint the outside candidate.

At the outset, the Tribunal rejected the Organisation's objections to the receivability of both the complainant's internal appeal and the complaint. The Tribunal considered that while a staff member might not assert any right to promotion and the choice of the successful applicant was at the discretion of the Administration, the exercise of discretion was subject to restrictions in law. Therefore, the staff member had the right to file an internal appeal or a complaint with the Tribunal if he believed that the appointment to a vacancy he had applied for was improper.

As to the merits of the case, the Tribunal observed that the vacancy notice was at odds with article 30 of the Staff Regulations which required that a "promotion board" be set up for the transfer-and-selection stage of the process. The Tribunal further observed in this regard that the Director General had taken his decision on his own after consultation with some senior officials, without any participation of an independent body.

The Tribunal also upheld the complainant's objection to Eurocontrol changing the terms of recruitment for the post after the notice had already gone out, so that the internal candidates, including the complainant, did not have any real chance of success. In the Tribunal's view, so long as the notice remained valid the Organisation was bound by the wording of it and was not free to amend it secretly, even though it might have believed that it was acting in its own best interests. The only proper way of doing so, in the Tribunal's view, would have been to withdraw the notice altogether and open a new competition on terms that better matched the actual requirements of the post.

The Organisation had argued that preferring one applicant to another was not a "decision" at all and that, therefore, no explanation of the reasons for such a choice was necessary. However, the Tribunal, citing article 25 of the Staff Regulations which required that "any decision adversely affecting an official shall state the reasons on which it is based", agreed with the complainant that an official who had duly applied for a post in answer to a notice of vacancy and was rejected amounted to a "decision adversely affecting" him within the meaning of article 25. The Tribunal further noted that the obligation in article 25 depended on the sort of decision that had been taken, and that a decision notifying refusal of promotion was especially delicate. The Tribunal, however, affirmed that the Organisation had a duty to state the reasons for the decision, that being an essential condition for proper defence of the official's rights. Furthermore, the Tribunal, noting both the Organisation's delay in notifying the decision to the complainant and because the information it had given him was scant, concluded that the Organisation had failed to discharge its duty to inform him of the decision and of the reasons for it.

In view of the foregoing, the Tribunal concluded that the administrative process for filling the vacancy for Head of the Division was flawed and that both the decision not to appoint the complainant and the appointment of someone else must be set aside. Therefore, the Tribunal ordered that the Organisation proceed to fill the vacant post properly, and that steps be taken to ensure that the candidate who was appointed to the post suffered no injury.

4. JUDGEMENT NO. 1230 (10 FEBRUARY 1993): FILATKIN v. INTERNATIONAL ATOMIC ENERGY AGENCY[11]

Non-renewal of fixed-term appointment to the age of retirement—Question of receivability—Discretionary decision to grant extension of appointment must be based on correct findings of fact

The complainant, a citizen of the former Soviet Union, held a fixed-term appointment with the International Atomic Energy Agency, and, on 20 June 1990, he was granted a six-month extension to 30 June 1991. On 31 May 1991, he requested a review and extension of his contract up to the age of retirement, 31 January 1994, which was denied.

IAEA's contention was that the complaint was irreceivable in that the complainant had notice of the decision of 20 June 1990 and did not make his request for review until 31 May 1991, long after the time limit of two months as provided in the provisional staff regulations and rules, and that he had failed to exhaust the internal means of redress. However, the Tribunal noted that the Joint Appeals Committee had decided to waive the time limit and that this decision was binding on the Agency. As was pointed out, only in cases where the Committee's appraisal of the circumstances was flagrantly wrong or based on plainly mistaken facts might the Director General disregard it, and even then his decision would be subject to review by the Tribunal. Here, the Committee had correctly held that the complainant had delayed because it was not until May 1991 that he had discovered the reason for the non-extension of his contract to 1994 to be a mistake about his wishes.

Regarding the merits of the case, the Tribunal, while noting that a decision by an international organization to grant only a short extension of appointment or none at all was discretionary, the decision must still be based on correct findings of fact. In this connection, the Tribunal considered that the evidence showed that the decision to grant the complainant only a short extension rested on the assumption that the complainant had said that he would be free "only until the end of June 1991". However, a memorandum of 28 May 1990 had informed the Director of the Division of Personnel that he had said he would stay on as long as the Agency wanted. The Tribunal, therefore, concluded that the impugned decision was based on a mistake of fact. Furthermore, in the Tribunal's view, the Agency should have paid special heed to finding out exactly what the wishes of the complainant were in this case—for the sake of the independence of the international civil service—as the Agency must have known that the Government of the USSR, with which its officers had been in touch, wanted the complainant to return home.

The Tribunal held that the decision could not stand, but since the complainant was not entitled to the extension of his appointment, ordered that the Agency must reconsider whether to grant him extension up to 31 January 1994, in the light of the judgement. The payment of 20,000 French francs in moral damages and 20,000 French francs for costs was also ordered by the Tribunal.

5. Judgement No. 1231 (10 February 1993): Richard v. International Criminal Police Organization[12]

Dismissal because of abolition of post—Question of flawed administrative process—Requirement for objective grounds for abolition of a post—Post cannot be abolished on personal grounds—Question of misuse of authority

The complainant had joined the International Criminal Police Organization (Interpol) in 1975, and in 1986 he was appointed head of group in the subdivision responsible for matters relating to economic and financial crimes and put in charge of the writing and publication of a review issued by Interpol

under the title "Counterfeits and forgeries", and known as the "C and F Review". Early in 1989, he found mistakes in a list of counterfeit United States dollar banknotes that was brought up to date every month in the C and F Review, which he blamed on another staff member who was none other than the wife of the Secretary General of Interpol. He proposed administrative reform and contacted the publisher of the Review to correct the mistakes. The head of the subdivision and the head of the Division took the view that he had acted unwisely and especially deplored his involving third parties outside the Organization without telling his supervisors. Subsequently, by a decision conveyed to him on 6 November 1989, the Secretary General abolished his post and created a post at the same grade as head of an administrative group in the subdivision, which the complainant was offered to take or be terminated under article 36(3)(*e*) of the Staff Regulations. Despite some misgivings the complainant accepted the transfer.

No one, including the complainant, seemed to have been happy with the new unit. In fact, on 10 June 1991, he applied for another post, and his application was turned down. On 19 June 1991, the complainant wrote to the Secretary General objecting to delay in granting him a "training allowance" to encourage him to learn English; complaining of emotional stress at work; and speaking of possible termination by agreement under article 50 of the Staff Regulations. On 15 July 1991, he wrote a letter to the Secretary General going over and enlarging on his grievances. On 17 July, the complainant had an interview with a personnel officer where it appeared that he expressed a desire to be transferred, and, on 19 August 1991, the Secretary General stated that he could not grant to the complainant claims to compensation for the moral and professional injury he alleged that he had suffered in the last three years, and abolished the complainant's post. He was offered a post as a data-processing operator and given one month to respond or face termination. On 11 September 1991, the complainant objected, *inter alia*, to being downgraded, and by a decision dated 13 September 1991, he was terminated, effective 31 March 1992.

The complainant appealed the decision. Subsequently, the Joint Appeals Committee reported to the Secretary General unanimously recommending rejection of his claims. On 19 March 1992, the Secretary General confirmed this recommendation.

In the Tribunal's view, there was more than one flaw in the procedure the Secretary General followed to secure the complainant's removal. The main one was that the Secretary General had treated his own warning of 19 August 1991 and his decisions of 13 September 1991 and 19 March 1992 as answers to the complainant's claims of an allowance for studying English and a demand for better working conditions, which were irrelevant to the purpose eventually attained—the abolition of the complainant's post. Other breaches of due administrative process, which also have a bearing on the plea concerning abuse of authority, included one that the Secretary General couched one decision after another in the language of a threat. At the same time, the Tribunal noted that, apart from a few mild strictures in periodic assessment reports, the complainant was not at the time alleged to have shown any professional shortcomings and had not been given his say on any such allegation, but that the blatant purpose of the tactics taken by the Administration was not to settle the matters he had raised but to terminate him as soon as could be.

The Tribunal further noted that the grounds for the abolition of the complainant's post and his dismissal were lacking in the present case. A reference to an organization's general interests was not to serve as an all-purpose catch-phrase to make any sort of administrative action pass muster, particularly in a case involving such drastic measures of abolition of post and dismissal. The Tribunal, recalling Judgement No. 269 (in re Garcia de Muñiz), stated that while the abolition of a post was at an organization's discretion, it would exercise its usual power of review so as to ascertain whether the staff's rightful interests had been safeguarded. In this regard, the Tribunal further stated that there must be objective grounds for abolition, which must not be used as a pretext for dislodging undesirable staff. Furthermore, citing Judgment No. 1207 (in re Boungou), the Tribunal stated that a distinction must be drawn between the post, the content of which depended on the organization's structure and requirements, and the staff member's position as holder of the post, and that the organization cannot abolish a post on personal grounds. Moreover, the Tribunal noted that these principles were embodied in Interpol's own Staff Regulations and Rules.

In the view of the Tribunal, the evidence indicated that the complainant's post as head of the administrative subsection had been created and abolished for no objective reason, the sole purpose being to sort out the case of someone the Organization had found it harder and harder to keep on because his presence had made for trouble. The Tribunal further noted that the Organization itself acknowledged the sterility of the post.

The Tribunal concluded that if Interpol had wanted to dismiss the complainant for professional reasons or give him, possibly humbler, duties he was fitter for, it ought to have resorted to article 23 of the Staff Regulations on transfer, or article 36 which provided for termination on various grounds. Instead, in this case the Secretary General had misused the authority vested in him under article 36(3)(*d*) and (*e*) of the Staff Regulations.

The Tribunal, therefore, held that the challenged decisions must be set aside because the due administrative process had not been followed and because there was misuse of authority, and awarded the complainant, in the event that he was not reinstated, two years' gross pay, as well as 30,000 French francs in costs.

6. Judgement No. 1232 (10 February 1993): Stulz v. United Nations Educational, Scientific and Cultural Organization[13]

Revocation of a request for early retirement—Question of receivability—Question of a request for early retirement made under duress

The complainant, a citizen of what was then the German Democratic Republic, was a staff member of UNESCO, when, on 8 March 1980, he was put under arrest while visiting East Berlin at the invitation of the chairman of the National Committee of the Republic for UNESCO and, subsequently, tried in secret by a military tribunal and sentenced, on 20 August 1980, to three years' imprisonment. While imprisoned, the complainant had on several occasions informed the Director-General that he wished to resign from the Organization, but the offer was rejected as the Director-General had serious reason to doubt whether the offer was genuine. He was released from prison on 17 November 1981, but was not allowed to leave the country and so was unable to return to

work. On 20 June 1984, he applied for early retirement from East Berlin which was granted, effective 31 November 1984. When he was allowed to leave the country in July 1989, he contacted UNESCO and was offered a fixed-term appointment for six months. In a letter of 29 April 1990 to the Director-General, which was not answered, he raised several matters arising out of the acceptance of his application for early retirement and inquired how his salary came to be paid to his former wife until August 1982. The complainant wrote again on 28 August and 6 November, and filed an appeal with the Appeals Board on 27 December 1990.

On the issue of receivability, the Organization had argued that the complainant's correspondence had not requested the Director-General to decide on any particular issue and that the complainant could not infer rejection of any claim from failure to answer it. Moreover, the decision UNESCO made to pay his wife his salary that was taken in 1980 and the decision it took in 1985 to grant him early retirement were no longer challengeable; and, even if he were not free to act in time to safeguard his interests, that had ceased to be so in July 1989 when he left the German Democratic Republic. However, the Tribunal considered that even though his April letter was somewhat vague about just what sort of action he wanted, the letter made it quite clear that he was expecting redress for injury he blamed on the Organization, and therefore UNESCO's failure to answer the complainant's letter implied rejection of his various grievances. Furthermore, the Tribunal was of the view that the complainant's delay in putting his grievances forward upon leaving the German Democratic Republic was understandable in the unusual circumstances of his case. The Tribunal concluded that the complainant was not out of time.

Concerning the merits of the case, the Tribunal was satisfied that the complainant's application for early retirement had been written and signed under duress, noting that the German Democratic Republic had forwarded it to the Organization in breach of the rule that the staff member must submit such an application at his duty station and through his own supervisor. As soon as the complainant was able to show that he had acted under duress, UNESCO had the duty, according to the general principles that guaranteed the independence of international civil servants, to grant relief, i.e., to reinstate the complainant or grant him compensation. Here, there was specific corroborative evidence of duress. Even after release from prison, he was kept under close scrutiny by the then Government and was forbidden to leave the country. Furthermore, early retirement was to his serious detriment, especially since the East German authorities forced him to opt for lump-sum withdrawal of his pension entitlements and hand over the proceeds to them. As mentioned above, his application for early retirement was not submitted through his supervisors, but through the Government. Moreover, the Organization itself had expressed grave doubts about the genuineness of the complainant's application, and explained that in its own interests it had granted him early retirement.

The Tribunal, considering that since there was evidence that the complainant was a good employee and that he had his appointment consistently renewed from the start of his imprisonment until the date of consent to his early retirement, he might have reasonably expected renewal of appointment up to the age of retirement, ordered the Organization to reinstate him as from 1 November 1984 up to 22 July 1988 and restore pension and sickness insurance entitlements for himself and his dependants. The Tribunal also awarded, owing to the par-

ticular circumstances of the case, an award of damages for moral injury in the amount of 50,000 French francs, as well as 20,000 French francs in costs.

In view of the foregoing, the Tribunal did not entertain the claims to redress for the Organization's payment of his salary and allowances to his former wife.

7. Judgement No. 1245 (10 February 1993): Mueller v. International Atomic Energy Agency[14]

Restoration of participation in the Pension Fund—Question of receivability—Duty of Agency to ensure that a staff member who qualifies be made a participant of the Pension Fund

The complainant, an Austrian citizen, who was a full-time staff member of IAEA and who participated in the United Nations Joint Staff Pension Fund since May 1958, had her appointment converted as from 1 January 1967 to part-time by way of an exception to the Agency's Staff Regulations and Rules. As a result, she was not eligible for continued participation in the Fund and was enrolled in the Austrian Pension Insurance Scheme. Subsequently, the Agency's Fund Regulations were amended as from 1 January 1975 to allow participation by staff members who were employed at least half-time. Part-time employment prior to that date could not be validated, but prior full-time employment might be validated within one year of re-entry. After a review of the social security coverage of its staff in 1978 and 1979, upon which it was decided that the complainant would remain in the Austrian Pension Insurance Scheme, the complainant was notified on 28 August 1978 and on 20 September 1979 that she was excluded from the Agency's Pension Fund. No explanation was provided to her for those decisions, and as far as she was aware she had ceased to be a member of the Fund in 1967.

Not until late 1988 or 1989 did she discover that part-time staff might participate in the Fund, whereupon she wrote a memorandum on 25 April 1991 to the Director of the Division of Personnel requesting that she be entitled to a pension from the Fund. The Director responded by informing her that the decision to enrol her in the Austrian scheme had been taken in December 1967 and the decision to maintain her participation in it in September 1979 and that both these decisions had been notified to her, and that her appeal was now time-barred.

However, the Tribunal considered that these communications to the complainant were wholly inadequate to have alerted her to the purpose and substance of the administrative decision that had been taken. Since she might not have been deemed to have received proper "notification" as prescribed in rule 12.01.1(D)(1), the time limit could not have then run, and her appeal, therefore, was receivable.

As to the merits of the case, the Tribunal concluded that a duty did lie with the Agency to ensure that a staff member who qualified should be made a participant in the Fund, and the decision the Agency took in 1979 to exclude the complainant from participation in the Fund was based on several mistakes of fact and law, concerning her eligibility for readmission to the Fund, and therefore the Agency had failed in its duty to have her readmitted to the Fund as soon as she had qualified. The Tribunal held that the Agency must have her readmitted to the Fund, or if her readmission was not possible then to pay her the difference between her benefits under the Austrian scheme and the benefits to which she would have been entitled from the Fund had she been readmitted to it at the earliest available opportunity.

8. JUDGEMENT NO. 1249 (10 FEBRUARY 1993): REZNIKOV v. WORLD HEALTH ORGANIZATION[15]

Non-renewal of appointment—In exercising his discretion in the non-renewal of appointment the Director-General must observe the general principles that govern the international civil service and safeguard the independence of the Organization and its officials—Question whether the complainant was on secondment—A staff member should not be made to suffer for the Organization's failure to follow its own rules

The complainant, a Russian citizen, had obtained a two-year appointment as a translator with the World Health Organization as from November 1984, thereafter receiving two additional two-year extensions of his appointment to 30 November 1990. After consultations with the Soviet Mission, WHO extended the complainant for an additional six months, to 31 May 1991, when he would be separated from service and replaced by another translator selected by the Soviet Ministry of Health. The complainant objected to only a six-month extension and appealed the decision, citing article 37 of the WHO Constitution which forbade the Director-General and staff from seeking instructions from any Government. Regulations 1.10 and 1.11 of the Staff Regulations also so provided. In reply, the Director of the Personnel Division explained to the complainant that the reason his appointment would end at 31 May was that the Government of the Soviet Union regarded all Soviet citizens in WHO's employ as seconded from Government service and that they would not release him beyond that date. However, the complainant argued that he was not on secondment from his Government, and further objected to a remark by the Chief of the Russian translation section in his last performance appraisal report that "lately his efficiency has reduced".

In consideration of the case, the Tribunal concluded that WHO had committed a mistake of law when the Director-General mistook the limits of his own discretion in the matter, in believing himself bound by the wishes of the Government of the Soviet Union. The Tribunal, recalling Judgement No. 15 (in re *Leff*), stated that the Director-General in exercising discretion should observe the general principles that governed the international civil service and safeguarded the independence of the Organization and officials alike. Furthermore, the Tribunal observed that the Director-General had also committed a mistake of fact by wrongly taking the complainant to be on secondment from the Soviet Union, which, as the Tribunal noted, WHO itself had admitted when it described the complainant as not on a "true secondment".

The Organization had argued that because the complainant had derived from his status as a "seconded" official the privilege of being relieved of going through the usual competitive process upon recruitment, he could not, according to the doctrine of estoppel, later refute the manner in which he had been recruited in order to obtain some further advantage. However, it was the view of the Tribunal that the Organization had bypassed the usual procedure because of an understanding it had with the Soviet Government and that it could not, therefore, expect the complainant to suffer for its own failure to follow its own rules.

In view of the foregoing, the Tribunal held that the decision could not stand. But, as the Tribunal would not replace the Director-General's discretion with its own in determining whether the complainant was to be granted a renewal

of his appointment, it ordered WHO to make a proper decision on his claim for renewal. The complainant was awarded 10,000 Swiss francs in costs, and his other claims were dismissed.

9. JUDGEMENT NO. 1250 (10 FEBRUARY 1993): PEÑA-MONTENEGRO v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS[16]

Dismissal because of staff member's refusal to transfer—Regulation 301.012 of the Staff Regulations—Question of a staff member's family circumstances upon consideration of transfer—Refusal to transfer amounted to misconduct—Principle of proportionality in disciplinary measure taken

The complainant had worked with FAO from 1974 to 1989, when the unit of which he was head was scheduled for reorganization, necessitating his transfer. He was offered the post of FAO's representative in the Dominican Republic and, subsequently, in Benin or El Salvador, but declined, preferring to remain at headquarters in Rome for family reasons. There were unsuccessful attempts by FAO to place the complainant against a post at headquarters, and after the complainant refused to accept FAO's requests to transfer to El Salvador, he was informed by a memorandum dated 26 July 1990 that he would be dismissed for misconduct if he did not respond. He denied misconduct in his memorandum of 3 August, and when the Director of Personnel confirmed his transfer on 7 September, the complainant appealed on 12 September. On 25 September 1990, the complainant was dismissed for refusal to transfer.

The complainant appealed the decisions both to transfer him and to dismiss him. He had contended that, *inter alia*, a senior liaison officer was moved into his old unit and placed against the new post which carried duties similar to those he himself had been performing. However, the Tribunal considered that, despite some similarities, such as the grade, with the complainant's former post, the new one was substantially different: the terms of reference included the development of a new programme of cooperation with non-governmental organizations and streamlining and reallocating the tasks of the units which used to be in charge of relations with them. The Tribunal concluded that the complainant had failed to show that the new post carried duties similar to those he had previously performed, but even if it did it did not follow that the creation of that post made his transfer retroactively unlawful. As the Tribunal pointed out, there was a need to appoint someone as representative in the posts offered to him and the Director-General had acted properly, in accordance with regulation 301.012 of the Staff Regulations and paragraph 311.422 of the FAO Manual, in seeking to assign the complainant, who was qualified, to one of them.

In not wishing to transfer out of headquarters, the complainant had argued that he had more than "ordinary family needs". However, the Tribunal pointed out that there was nothing unusual about a situation where spouses each had a job at the same duty station and neither wished to give it up. Nor were the educational needs of his children an insurmountable problem. The Tribunal further noted that FAO had given the complainant 14 months in consideration of his family situation, and when set against the Organization's own interests in filling the important post of representative in a Member State his family circumstances did not warrant any further restriction on transfer. Moreover, the complainant had failed to obtain a post at headquarters because his qualifications and experience did not match the then vacancies at his grade and the posts for which he had applied were filled by better-qualified applicants.

The complainant also contended that even if the decision to transfer him was lawful, his dismissal was inappropriate. He claimed that the Organization had never instructed him to transfer to El Salvador, but had only sought his reply to various offers to transfer. However, the Tribunal in considering all the evidence observed that the complainant was not left in any doubt whatever that there was a decision to transfer him. Only the date of transfer was not definite. Moreover, the Tribunal considered that the complainant's refusal to accept the El Salvador assignment was in breach of his obligation to the Organization to comply with a request to transfer under regulation 301.012; and, in view of the responsibilities of the post of representative, that refusal impeded the effective operation of the Organization, pursuant to paragraph 330.152(iv) of the FAO Manual, and amounted to misconduct. The Tribunal further noted that the complainant had not challenged the validity of the transfer, but rather had sought to circumvent or delay it by raising a series of questions and by evading a direct response.

The complainant had further argued that the imposition of the sanction of summary dismissal was inconsistent with the principle of proportionality. The Tribunal, however, noted that from 22 February 1990 onwards the complainant's attention had been drawn to the likely consequences of refusing to accept a transfer away from headquarters, and if he had accepted the El Salvador post, even after disciplinary proceedings had been initiated, the Organization would have been willing to discontinue them and still transfer him to El Salvador. In the Tribunal's view, the Organization's willingness to accept his last-minute repentance showed good faith, not disregard of proportionality.

The complainant also contended that the Organization had not proposed an agreed termination, instead of dismissal. The Tribunal considered that the Appeals Committee, taking into account, *inter alia*, the complainant's age and future career, suggested that consideration be given to convening dismissal for misconduct into a termination under regulation 301.0911 of the Staff Regulations. However, the Tribunal noted that it was the complainant who had declined to seize this opportunity.

For the above reasons, the Tribunal dismissed the complaint.

10. JUDGEMENT NO. 1278 (14 JULY 1993): ROGATKO v. WORLD HEALTH ORGANIZATION[17]

Non-renewal of fixed-term contract—Question of a substantive promise by an international organization and its enforcement (Judgement No. 782 (in re Gieser*))*

While employed with a cancer research institution in the United States, the complainant, a Brazilian citizen and permanent resident of the United States, accepted a two-year fixed-term appointment, from 1 July 1990 to 30 June 1992, with WHO's International Agency for Research on Cancer (IARC) in France, to work on the programme in genetic epidemiology. The complainant contended that upon acceptance of WHO's offer he was promised that his employ would extend beyond the two-year period, and obtained a statement, dated 17 December 1991, to that effect from the Chief of his Unit when he was warned in November 1991 that the programme in genetic epidemiology was being discontinued because of the Agency's "financial position". By letter of 7 January 1992, the complainant was informed that his contract would be terminated at 30 June 1992.

The complainant appealed the decision not to renew his contract, complaining that he was given to understand that the Agency had a long-term commitment to the development of research in genetic epidemiology and that it was in reliance on that understanding that he gave up his job at Sloan-Kettering, five years' funding by the National Institute of General Medical Sciences at Bethesda and his status as a permanent resident of the United States, and uprooted his family on the strength of his expectations of a career at IARC.

The Organization pointed to rule 420.3 of the Staff Rules which stated that fixed-term appointments carried no expectation of automatic renewal or completion, and that the Chief of the Unit was not competent to issue the statement of 17 December 1991 and that, in any event, it contained no promise.

The Tribunal, citing Judgement No. 782 (in re *Gieser*), stated that it would enforce a promise by an international organization to a staff member if the promise was substantive, i.e., to act, or not to act, or to allow; it must come from someone who was competent or deemed competent to make it; the breach of it must cause injury to the person who relied on it; and the position in law must not have altered between the date of the promise and the date at which fulfilment was due. The promise could be written or oral, express or implied. In this regard, the Tribunal considered that the statement by the Chief of the Unit had set the facts out clearly and that an application for a research grant, signed by the Agency's Director, naming the complainant as the principal investigator for a research project to end on 31 March 1996, confirmed those facts. Both the Director and the Chief of the Unit, in the Tribunal's view, were competent to confirm the long-term commitment to research.

Moreover, the Tribunal considered that WHO might not absolve itself from liability for keeping a promise by pointing to the provision that there shall be no expectation of renewal. In this regard, the Tribunal noted that if the Agency had kept its commitment to research, the promise of which persuaded the complainant to go to Lyons, there would have been no problem over the renewal of his appointment. Since the position had not altered in law since the promise was made, all the conditions set out in Judgement 782 for the enforcement of a promise were fulfilled in this case. The Tribunal concluded that the Organization had a duty to keep its promise and, if unable, should have compensated him for the injury he suffered.

In view of the foregoing, the Tribunal set aside the Director-General's decision and awarded the complainant the amount he claimed for the three-year period less the equivalent of his earnings from employment to date and his anticipated earnings from employment in the remainder of that period. He was also awarded the estimated cost ($7,000) of his obtaining permanent resident status in the United States for him and his family, as well as $700 in costs.

C. Decisions of the World Bank Administrative Tribunal[18]

Decision No. 131 (10 December 1993): John Laverne King III v. International Bank for Reconstruction and Development[19]

Rescission of disciplinary measures—Rule 8.01 of the Staff Rules—Basic principles of due process in disciplinary matters—Question of proof of misconduct

The Applicant, who was the Section Chief of the Plant Operations Section, was informed on 1 May 1991 by one of his staff members that some scrap copper, which belonged either to the Bank or a demolition contractor, had been removed from the site by certain staff members and sold to a Washington scrap merchant. The Applicant ordered that they stop and informed his superior, Mr. B, who informed his superior, Mr. C, who in turn instructed Mr. B to do nothing until he was told otherwise. An investigation was carried out, with disciplinary action subsequently being taken against the Applicant, because he had not tried to take corrective action as soon as he had learned of the removal and sale of the copper, and it was alleged that the Applicant had learned of the sale at a much earlier date than May 1991. The disciplinary measures taken against the Applicant included the removal of his supervisory responsibilities, effective 1 January 1992; no promotion to his next level as had been scheduled; 5 per cent net salary reduction; no salary increase in 1992; and a written reprimand. The Applicant appealed, claiming that the Respondent had violated the provisions of rule 8.01 of the Staff Rules and had not observed due process.

The Tribunal noted that rule 8.01 was intended to give expression to the basic principles of due process of law with respect to disciplinary measures and observed that the essential ingredients of due process—the precise formulation of an accusation, the communication of the precise accusation to the Applicant, the giving to the Applicant of an opportunity to rebut in detail the specifics of the charge and the opportunity to invoke all pertinent factors—all were missing from the procedure followed by the Respondent. Simply telling the Applicant that the Ethics Officer was conducting an investigation, that the investigation could result in the imposition of disciplinary measures and that the Applicant was advised to read staff rule 8.01 had not satisfied the basic requirements of due process. The Tribunal emphasized that there was a difference between investigating a matter and confronting a staff member with an accusation.

After concluding that the procedure followed in this case was so defective as to render null and void the decision taken against the Applicant, the Tribunal also found that the Applicant could not be held responsible for a failure to take corrective action earlier than 1 May 1991 when there was no proof that he had heard of the matter before that date, when there was proof that he had reported the matter to his superior, Mr. B, virtually immediately and when there was also evidence that in all likelihood Mr. C had been informed of the matter even before 1 May and within a week or 10 days of 2 May and had directed the supervisor to do nothing pending further instructions.

The Tribunal further considered that the Bank should have ascertained the ownership of the scrap copper to determine to whom it belonged, the Bank or the contractor, or whether it had been abandoned, before bringing disciplinary measures against the Applicant and the other staff members. In other words, if the material had indeed been abandoned, then there would have been no basis for bringing disciplinary action against any of the staff members.

In view of the foregoing, the Tribunal rescinded the Bank's decision of 26 November 1991 and put the Applicant in the same financial position as regards salary, salary increases, pension entitlement and performance evaluation as if the aforesaid decision had never been taken. It was also ordered that all references to the copper salvage matter be removed from the Applicant's 1992 Performance Review and that the Bank should pay the Applicant $50,000.

Notes

[1]In view of the large number of judgements which were rendered in 1993 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the three Tribunals, namely, judgements Nos. 587 to 633 of the United Nations Administrative Tribunal, judgements Nos. 1204 to 1300 of the Administrative Tribunal of the International Labour Organization and decision Nos. 127 to 135 of the World Bank Administrative Tribunal, see, respectively: documents AT/DEC/587 to 633; *Judgements of the Administrative Tribunal of the International Labour Organization:* 74th and 75th Ordinary Sessions; and *World Bank Administrative Tribunal Reports*, 1993.

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

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

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: 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]Mr. Jerome Ackerman, President; Mr. Ioan Voicu and Mr. Francis Spain, Members.

[4]Mr. Samar Sen, First Vice-President, presiding; Mr. Luis de Posadas Montero, Second Vice-President; and Mr. Francis Spain, Member.

[5]Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Hubert Thierry and Mr. Francis Spain, Members.

[6]Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Ioan Voicu and Mr. Francis Spain, Members.

[7]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 1993, the World Health Organization (including the Pan American Health Organization), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meterological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organisation for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organisation, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organisation for International Carriage

by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization, the International Fund for Agricultural Development and the International Union for the Protection of New Varieties of Plants. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour 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.

[8]Sir William Douglas, Vice-President; Mr. Edilbert Razafindralambo and Mr. Michel Gentot, Judges.

[9]Sir William Douglas, Vice-President; Miss Mella Carroll and Mr. Edilbert Razafindralambo, Judges.

[10]Miss Mella Carroll, Mr. Pierre Pescatore and Mr. Michel Gentot, Judges.

[11]Miss Mella Carroll, Mr. Pierre Pescatore and Mr. Michel Gentot, Judges.

[12]Mr. José Maria Ruda, President; Mr. Pierre Pescatore and Mr. Michel Gentot, Judges.

[13]Miss Mella Carroll, Mr. Pierre Pescatore and Mr. Michel Gentot, Judges.

[14]Miss Mella Carroll, Mr. Pierre Pescatore and Mr. Michel Gentot, Judges.

[15]Mr. José Maria Ruda, President; Mr. Pierre Pescatore and Mr. Michel Gentot, Judges.

[16]Sir William Douglas, Vice-President; Miss Mella Carroll and Mr. Mark Fernando, Judges.

[17]Mr. José Maria Ruda, President; Miss Mella Carroll and Mr. Mark Fernando, Judges.

[18]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.

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