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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 United Nations Administrative Tribunal[2]

1. Judgement No. 440 (17 MAY 1989): Shankar v. the Secretary-General of the United Nations[3]

Rescission of the decision compensating, rather than reinstating, the staff member for his separation vitiated by lack of good faith and of due process — Commitment to renew appointment must be based on conclusive proof — Article 9 of Administrative Tribunal statute — Question of compensation — Confidential, adverse documents not shown to staff member must be removed from his official status file

The Applicant had been employed as a File Clerk with the Asian and Pacific Centre for Transfer of Technology (APCTT) at Bangalore, India, an organ of the Economic and Social Commission for Asia and the Pacific (ESCAP), under a series of fixed-term contracts since 1 January 1983, receiving periodic within-grade salary increments until his separation on 31 December 1985.

The Applicant appealed the non-renewal of his fixed-term contract and the Joint Appeals Board (JAB) found that the Applicant's separation was vitiated by lack of good faith and lack of due process and recommended that he be reinstated in his post or in a position commensurate with his qualifications and experience, or in the event this could not be done he be granted compensation equivalent to one year net salary at the time of his separation. When the decision was taken to compensate the Applicant instead of reinstating him, he appealed to the Administrative Tribunal.

As to the Applicant's argument that all staff members had been told that the renewal of their fixed-term appointments depended on their performance and the financial situation of the Centre and that his performance had been good, the Tribunal noted that the Applicant had signed his fixed-term letter of appointment, wherein it was clearly spelled out that such an appointment carried no expectancy of renewal, and that the Tribunal had previously held that a legal expectancy of renewal would not be created by efficient or even by outstanding performance. Therefore, a valid claim to renewal must be based not on mere verbal assertions unsubstantiated by conclusive proof, but by a firm commitment to renewal.

The Applicant had also argued that the decision not to renew his appointment was attributable to the faults of ESCAP and the Director of APCTT who had made false and malicious allegations about the Applicant's performance. In this regard, the Tribunal agreed with the JAB finding that the non-renewal of the Applicant's fixed-term appointment was vitiated by lack of due process,

lack of good faith and procedural irregularities. As to the issue of reinstatement in such circumstances, the Tribunal, recalling paragraph 1 of article 9 of its statute, wherein the Secretary-General had expressly recognized the right of the Secretary-General to compensate the Applicant without further action being taken, concluded that the Secretary-General had exercised his valid discretionary power in this case.

The Applicant had further contended that, if the Secretary-General wished to exercise the option given to him under article 9 of the Tribunal's statute to order payment of compensation instead of reinstatement, he be compensated equivalent to his salary with all benefits from 1 January 1986 until the date on which he would retire, and to order payment of damages of $10,000 from ESCAP or APCTT to him.

The Administrative Tribunal considered that the Applicant in his last three years of employment was offered a fixed-term appointment for three months which was successively extended for nine months and twice for one year. On that basis, if his contract had been renewed, it would in all likelihood have been renewed by a further one year. To presume, in the view of the Tribunal, an extension beyond that point would be a matter of mere speculation. Therefore, the Tribunal found that the amount of compensation paid by the Respondent was adequate, and, accordingly, the Tribunal made no additional award in that respect.

The Applicant also had requested the removal of all those documents which were "fabricated and confidential" from his personal file. In this regard, the Tribunal concurred with the JAB finding that adverse material had been included in the Applicant's official status file which had not been shown to him for comment or rebuttal in disregard of the decision of the Secretary-General and administrative instruction ST/AI/292 of 15 July 1982, and therefore should be removed from the official status files of the Applicant. All other pleas were rejected.

2. Judgement No. 441 (18 MAY 1989): Shaaban v. the Secretary-General of the International Civil Aviation Organization[4]

Denial by ICAO of reimbursement of income tax imposed by United States authorities — Entitlement governed by letter of appointment, ICAO Service Code and established administrative practice — Special circumstances do not establish an administrative practice or reflect unlawful discrimination — Effect of incorrect informal advice — Human rights complaints versus conditions of service governing contracts of employment

The Applicant, a Lebanese national, worked at the International Civil Aviation Organization at its headquarters as a Projects Implementation Officer when, in order to obtain United States citizenship, he relocated his residence from Montreal, Canada, his duty station, where he was subject to Canadian taxation on his ICAO income, to Plattsburgh, New York, just below the Canadian border, where he became subject to United States and New York State income taxes on his ICAO income. On 2 January 1987, the Applicant requested reimbursement of income taxes imposed by United States authorities upon his relocation to the United States and subsequently was turned down. He challenged the decision of 4 November 1987 of the Secretary-General of ICAO to accept the unanimous recommendation of the Advisory Joint Appeals Board (AJAB) that the Applicant's appeal be rejected.

In consideration of the question, the Tribunal noted that prior to 1983, ICAO staff members who were subject to United States income taxes were eligible for reimbursement under the employment conditions then in effect at ICAO. However, because of changes in United States tax laws, the United States had discontinued its reimbursement arrangement with ICAO and, on 26 September 1983, ICAO by a circular memorandum announced a policy with respect to reimbursement of United States income taxes paid by United States citizens employed by ICAO as technical assistance field staff. The Tribunal further noted that the Applicant had made inquiries about his eligibility for reimbursement of United States income taxes, and was told unofficially that the circular memorandum was applicable to him and that there was an established administrative practice at ICAO to reimburse the payment of United States income taxes regardless of whether the staff member was part of the technical assistance field staff or of the regular programme staff. Indeed, his initial request was approved and he received $3,000; however, shortly thereafter he was informed that the payment was made in error and that he would have to return the money.

The Tribunal was of the view that the question of whether the Applicant was entitled to the tax reimbursement he sought from ICAO depended entirely on whether his employment contract or the ICAO Service Code provided for such reimbursement, or whether ICAO's refusal represented an unjustified discriminatory departure from an established administrative practice. In agreement with the findings reached by the AJAB, the Tribunal concluded that the Applicant was not entitled to reimbursement of United States income taxes from ICAO.

In this regard, the Administrative Tribunal observed that the Applicant's entitlements were governed by his letter of appointment dated 11 April 1984, which made no reference to any reimbursement of national income taxes. Furthermore, although his appointment was subject to the provisions of the ICAO Service Code, the ICAO Staff Regulations and Rules, as amended, did not provide for reimbursement of the Applicant's United States income taxes.

The Applicant had argued that there was an established administrative practice of ICAO reimbursing staff United States income taxes, pointing to the 26 September circular memorandum and ICAO Field Service staff rule 3.14. However, the Tribunal considered that neither the circular memorandum nor the staff rule supported the Applicant's position. The circular memorandum had applied to United States citizens who were members of the technical assistance field staff, whereas the Applicant was a Lebanese national who was a member of the ICAO regular programme staff. Similarly, staff rule 3.14 did not apply to the Applicant's situation.

The Administrative Tribunal observed that the only evidence of reimbursement of United States income taxes paid by regular programme staff members subsequent to 1982 failed to establish an administrative practice which would have supported a finding of unlawful discrimination in the Secretary-General's refusal to reimburse the Applicant and had no application to the Applicant's situation. Those instances involved three United States citizens who were employed on short-term appointments outside the United States, but not long enough to entitle them to a tax exemption under United States law, and the Secretary-General had determined that it was in the interest of the Organization to employ them on those terms. In the conclusion of the Tribunal, that the Secretary-General offered those individuals, because of special circumstances, conditions which

would not normally have been available to permanent regular programme staff members did not show either an established administrative practice or unlawful discrimination against the Applicant. Moreover, the Tribunal further observed that when one of the three became eligible for the tax exemption because of extension of his contract he repaid to ICAO the amount he previously had received from it as tax reimbursement.

The Tribunal also considered the fact that the Applicant had doubtless relied in good faith on the erroneous informal advice he had received regarding tax reimbursement, which in the view of the Tribunal was unfortunate, but nevertheless imposed no obligation on ICAO. As the Tribunal had pointed out in the 1988 *Noll-Wagenfeld* case (Judgement No. 410), it was incumbent on a staff member to seek and obtain a written authorization from an appropriate official of the Organization before embarking on a course of conduct based on a questionable interpretation of an official pronouncement. Otherwise, the staff member acted at his or her own risk.

The Applicant also had argued that he was exercising a basic human right in accordance with the Universal Declaration of Human Rights when he decided to move to the United States in order to become a citizen. Again, recalling a previous judgement (Judgement No. 326, *Fischman* (1984)), the Tribunal concluded that the Applicant was confusing general human rights with particular conditions of service which governed his employment contract.

The application was rejected in its entirety.

3. Judgement No. 443 (22 May 1989): Sarabia and De Castro v. the Secretary-General of the United Nations[5]

Discriminatory treatment with regard to the payment of daily subsistence allowance on mission — Competency of Tribunal — Question of an injury — Infringement of the principle of equality

The Applicants, typists in the Spanish Typing Unit at the United Nations Office at Geneva, were assigned on mission to the sixth session of the Commission on Human Settlements, which was held at Helsinki from 26 April to 6 May 1983. Their complaint concerned a discrepancy in the amount of daily subsistence allowance (DSA) they were paid while on the mission. They were paid 366 markkaa pursuant to a circular dated 18 March 1983; however, pursuant to another circular dated 12 April 1983, they were informed of an increased DSA rate of 500 markkaa, but that rate would not apply in cases where staff members shared a hotel room during the mission. The Applicants had already reserved a double room for themselves in Helsinki before the arrival of the later circular.

The Applicants requested the Tribunal to decide that the Secretary-General should "take steps to ensure that in future no personal discrimination against staff members on mission will be possible, especially as regards the DSA, and that the dignity of staff members will be scrupulously respected in all circumstances". As the Tribunal explained, it was not empowered to address injunctions to the Secretary-General and order him to take general measures, and that its competency was set out in article 2.1 of its statute, which permitted it to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members or of the terms of appointment of staff members. On the other hand, the Tribunal was competent to rule on whether the Applicants should be paid the portion of DSA which, allegedly, was not paid to them.

The Applicants contended that because they shared a room they were paid less DSA than those who stayed in a single room, and that they would not have shared had the later circular reached them before they had reserved the double room. The Tribunal noted that the Applicants had indeed tried to change their reservation, but it was too late. The Tribunal further noted that the Deputy Controller, who had refused to grant the Applicants the higher rate, did offer them the concession that, if they were able to provide documented evidence in the form of paid hotel bills and other receipts showing that they had incurred "out-of-pocket" expenses under the standard DSA rate of 366 markkaa, the Administration was prepared to review each case.

While the Tribunal observed that the Applicants had not submitted any such evidence, it did find that they had sustained an injury. If they had occupied single rooms they would have been left with 306 markkaa after paying the hotel, but in sharing a room they were left with only 231 markkaa. Furthermore, the Applicants certainly suffered the discomfort and inconvenience of being obliged to share a room under the stressful conditions of a fairly long conference.

In this connection, the Tribunal noted that requesting the Applicants to provide documented evidence of their actual expenditures in the form of paid hotel bills and other receipts, while other staff members, who were receiving the special 500 markkaa subsistence allowance, did not have to substantiate their expenditures, infringed upon the principle of the equality of staff members in the same category. The Tribunal, while not questioning the powers of the Secretary-General to define the conditions for the granting of a special subsistence allowance, and finding no procedural irregularity in the establishment of that allowance, considered that the Applicants were not in a position to make a timely choice between a shared room and a single room. The Applicants therefore sustained an injury requiring compensation, and the compensation offered by the Administration in the form of reimbursement if they could prove that they had spent more than the normal subsistence allowance was not acceptable.

The Tribunal concluded that the injury sustained by each Applicant was equal to the difference between the amount of DSA they received and of the special allowance they should have received, like their colleagues assigned to the same mission. All other pleas were rejected.

4. Judgement No. 444 (23 May 1989): Tortel v. the Secretary-General of the United Nations[6]

Non-promotion to D-2 — Special commitment to a staff member might imply discriminatory treatment as to other staff members — Question of a commitment to promote staff member to Director — Commitment versus promise of priority — Effect of omission of delegation of authority in administrative instruction — Question of reasonableness of reliance on verbal commitments of the Under-Secretary-General — Organization should honour commitments on which staff members had relied in good faith — Responsibility of Organization when a decision is made not to promote a staff member to whom commitments had been made — Issue of "penalty box" jobs

The Applicant, who had been in the service of the Organization since 17 August 1966, was reassigned on 1 September 1984, at the D-1 level, as Deputy Director of the Division of Recruitment and Chief of the Professional Recruitment Service, upon the understanding from the Under-Secretary-General for Administration and Management that he would be given priority for appointment to the post of Director of that Division upon the departure of the current Director. However, on 9 February 1987, the Secretary-General decided to appoint two new Directors from outside the Office of Personnel Services to head the Division of Recruitment and the Division of Personnel Administration. The Applicant appealed, contending that he should have been promoted in accordance with the commitment made by the Under-Secretary-General.

The Tribunal, while recalling Judgement No. 342, *Gomez* (1985), in which the Tribunal stated that to enter into special, legally binding contractual arrangements for the career development of staff might imply discriminatory treatment as to those staff members who were not made the subject of special arrangements, observed that the evidence was compelling in the present case that a commitment, however undesirable it might prove to be in terms of personnel policy, was entered into with the Applicant. In that regard, the Tribunal noted that the Respondent did not seriously dispute the Applicant's factual claims of having been induced in 1984 by the Under-Secretary-General for Administration and Management along with the Assistant-Secretary-General for Personnel Services to become the Deputy Director of the Division of Recruitment. The statements of the Applicant, corroborated by the Director of the Division of Recruitment, who was present at the relevant conversation between the Applicant and the senior officers, the Under-Secretary-General and the Assistant Secretary-General, clearly indicated that a commitment had been made that the Applicant would succeed the current Director when he left.

The Respondent, using the Applicant's own words, argued that instead of a commitment there was only a promise of priority in replacing the Director with the Applicant. However, in the circumstances of the present case, the Tribunal considered that the difference in a commitment and priority was not material inasmuch as "priority" must mean that the Applicant would have preference over other candidates for the Directorship, unless it was clearly established that he did not meet as well as his competitors the criteria established and applied by the Respondent in making the selection. In any event, the Tribunal found no indication whatever that the Applicant was given "priority" consideration.

The Respondent also contended that it was unreasonable for the Applicant to have relied on verbal commitments and that in any event the Under-Secretary-General had no authority to speak for the Secretary-General on the matter. In that connection, the Respondent relied upon administrative instruction ST/AI/234, which was issued by the Under-Secretary-General for Administration and Management, and described various delegations of authority by the Secretary-General to persons below the level of under-secretary-general but made no delegation at all to the Under-Secretary-General. The Tribunal, however, viewed the omission of delegation of authority to the Under-Secretary-General not as a denial of any delegation to him but as an indication that, except as understood between him and the Secretary-General, the Under-Secretary-General had ex-

tremely broad authority with regard to personnel matters. If, as between the Secretary-General and the Under-Secretary-General, the understanding was that the latter had no authority whatever to make commitments regarding promotion to the D-2 level, it was the responsibility of the Under-Secretary-General to act in accordance with that understanding, and it must be presumed that there was no such understanding when the Under-Secretary-General acted as he did in the present case.

More important, in the opinion of the Tribunal, was that the Under-Secretary-General for Administration and Management held so senior a position in the Organization as to give the sort of commitment he made in the present case a measure of finality. It was entirely reasonable for the Applicant to have thought that the Under-Secretary-General spoke with authority in the matter and therefore the Tribunal could not conclude that the Applicant had to bear the consequences of any lack of actual authority on the part of the Under-Secretary-General. Furthermore, the Tribunal noted in that context that the Applicant relied on the strength of the undertaking he received by accepting the position offered in 1984, and subsequently refrained from pursuing other opportunities for advancement which might have been available to him for the next three years. As the Tribunal stated in *Gomez* (Judgement No. 342 (1985)), the Administration must behave responsibly in its administrative arrangements and refrain from expressing hopes or intentions it has no expectation of fulfilling ...” That there was a change of senior officials in the Administration between 1984 and 1987 had hardly any application or consequence; the commitment to the Applicant continued to subsist. A staff member was normally entitled to expect the Organization to honour commitments on which the staff member had relied in good faith.

As the Tribunal stated in Judgement No. 418, *Warner* (1988), “the decision to appoint or promote a staff member to whom commitments have been made is the sole prerogative of the Administration. If this decision is not taken, however, the attendant circumstances may well entail the responsibility of the Administration”. The Tribunal found that the circumstances in the present case entailed the responsibility of the Administration; promotion and disposition of members of the staff were within the Respondent’s discretion taking into account all the appropriate factors. Here, no serious attempts had been made to observe the obligation of priority consideration towards the Applicant, and he was, therefore, entitled to compensation.

The Tribunal did not consider further allegations that staff who presented legitimate grievances for redress tended to be removed from current posts or reassigned to newly created inconsequential, if not redundant, positions, since in the present case that allegation was not taken up before the Joint Appeals Board. However, the Tribunal stated that it would nonetheless be concerned about seemingly coincidental reassignments of staff members who availed themselves of the appeals process to “penalty box” types of jobs.

The Tribunal awarded the Applicant compensation equivalent to three months of his net base salary for the injury he had suffered as a result of the Administration’s failure to fulfil its obligations. All other pleas were rejected.

5. Judgement No. 447 (25 May 1989): Abbas v. the Secretary-General of the United Nations[7]

Non-selection to D-2 post — Vacancy announcements should be advertised — Question of adequate consideration for appointment to post — Requirement of a suitable examination of and report on allegations of prejudice and discrimination before Tribunal can make a decision

The Applicant had entered the service of United Nations Conference on Trade and Development on 16 September 1965, at the P-4 level, and was eventually promoted to the D-1 level, on 1 April 1980, as a Principal Economic Affairs Officer. On 12 September 1980, he became Chief of the Technical Co-operation Service, one of the three services comprising the Division for Programme Support Services.

On 24 January 1985, UNCTAD issued vacancy announcements for four D-2 posts, for which the Applicant did not apply. The posts were subsequently filled by external candidates; however, when one of the candidates declined the post it was filled by the transfer of a staff member. In the meantime, a fifth D-2 post, the post of Director of the Division for Programme Support Services, where the Applicant was serving, had become vacant on 30 April 1985, but was not advertised. That post was filled on 1 May 1986 by the transfer and subsequent promotion of another D-1 Principal Officer, from the Department of International Economic and Social Affairs. The Tribunal noted that within seven weeks of the new Secretary-General taking over UNCTAD he had requested of the United Nations Headquarters, on the basis apparently of some agreement already arrived at, the appointment of the individual selected for the D-2 post, with the understanding that for the first six months he would, under instructions from the Secretary-General of the United Nations, receive the emoluments of a D-1 post (which he was already holding in New York) before he was formally promoted as D-2. That arrangement was made because of the financial stringency the Organization was facing. The individual joined UNCTAD in May 1986 at the level D-1 as Head of the Programme Support Services and became D-2 in November 1986.

The Applicant appealed contending that the post should have been advertised and that he should have been given proper consideration for occupying it. He further claimed that he was senior to the individual chosen and had an excellent record of performance and was experienced in the work of the Division.

The Tribunal was of the opinion that all vacancies were to be advertised, but the Secretary-General would have authority to indicate in each advertisement how he would wish to fill the vacancy: by outside recruitment, by internal promotion or transfer or on a replacement basis of a staff member's working on secondment. In the present case, in the view of the Tribunal, the lack of advertisement would be irrelevant if it could be established that the Applicant had in fact been given adequate consideration. In that regard, recalling Judgement No. 362, *Williamson* (1986), the Tribunal stated that the burden of proof of having given consideration was on the Respondent whenever a staff member questioned that such consideration was given. Secondly, such consideration should to some

measurable degree meet the criterion of "fullest regard" in a reasonable manner. And finally, there must be good faith and consciousness of all circumstances surrounding any claim. In the present case, the Tribunal noted that except for the assertion that the Applicant had been considered for the post, there was no convincing evidence of any merit that the above criterion had been met. The Tribunal also considered it self-evident that even if the Applicant had been given full consideration, he automatically would not have been selected for the post.

As regards the allegation of prejudice and discrimination made by the Applicant, the Tribunal found that the Joint Appeals Board (JAB) did no more than conclude that inasmuch as no one in the Division for Programme Support Services had been selected for the post of Director, there had been no discrimination. In the absence of any knowledge of who the other eligible candidates outside of UNCTAD might have been, it was clearly not feasible for the JAB to examine the Applicant's claim in relation to all other candidates and decide if there was in fact any discrimination.

As to other allegations regarding discrimination and prejudice made by the Applicant, the Tribunal considered that in the absence of suitable examination of and a Joint Appeals Board report on those allegations, the Tribunal could not come to any firm decision on those matters, nor did it consider it necessary to reopen those issues at the current stage.

The Tribunal concluded that even if the Applicant's claims for the post of D-2 in the Division for Programme Support Services were examined, such examination was at the most cursory and could not have met the requirements of staff regulation 4.4 or the standard of consideration the Tribunal had laid down in *Williamson*. The Tribunal also held that while it had not made any determination as to prejudice or discrimination against the Applicant, the procedure followed in insufficiently investigating his various complaints and the handling of his candidature were inappropriate. On these grounds, the Tribunal awarded the Applicant U.S.$5,000 for the injury he had suffered and rejected all other pleas.

6. Judgement No. 455 (31 October 1989): Denig v. the Secretary-General of the United Nations[8]

Question of a binding contract for one-year appointment — No entitlement to salary for performing no work — Question of fulfilment of condition before formation of valid employment contract — Significance of invalid contractual requirement — Staff member placed at financial disadvantage by the Administration

The Applicant, a national of the United States, who had been working as a consultant with the Office of the United Nations High Commissioner for Refugees at its sub-office in Hargeisa, Somalia, was offered, on 17 September 1995, a one-year appointment at the L-3, step VIII, level as Field Officer in that office. The offer stated that the appointment was "subject to medical and United States clearances and satisfactory reference checks". The United States clearances requirement was based on Executive Order 10422, issued in 1953 by the President of the United States of America, which required that United States nationals seeking United Nations employment obtain a United States security clearance. Through an informal understanding, that requirement had been concurred in by the Secretary-General. Furthermore, it was suggested by the Chief of the Recruitment Unit that he could later apply for the post of Head of the Hargeisa sub-office, a P-4

level post, when it became vacant. UNHCR was anxious to regularize the administrative situation of the sub-office and was concerned that if the Applicant's contractual status was not settled expeditiously, the Applicant would eventually leave, and then the north-west region of Somalia, where refugee problems were extremely serious, would be left unattended by UNHCR Professional staff.

In the meantime, pending receipt of the United States security clearance, the Applicant's consultancy contract was extended until 23 January 1986, when he then notified UNHCR that he was terminating his consultancy contract, stating, *inter alia*, that after many months as Acting Head of the Hargeisa sub-office and repeated requests to the Branch Office for assistance in securing the "L" post offered by UNHCR headquarters, he was leaving for the United States in order to obtain his security clearance. He departed Mogadishu on 29 January 1986, not signing his consultant's contract for January and February since the documents had not yet arrived. He travelled to Geneva where he informed the Head of Personnel Services that he would only return to Hargeisa if he were paid at the L-4, step VIII, level. The Head of Personnel informed him that UNHCR could not compensate him at the L-4 level and that under the circumstances his employment with UNHCR was terminated.

The Applicant then travelled to the United States and in a letter dated 1 March 1986 to the Deputy High Commissioner he stated that he had obtained the security clearance and taken all medical examinations and that he was willing to return to Somalia at the P-4 or P-5 level. On 4 May 1986, the Applicant wrote to the Chief of the Recruitment Unit stating that since the UNHCR conditions concerning medical examinations, United States clearances and reference checks had been fulfilled, a valid contract at the L-3, step VIII, level had been concluded between him and UNHCR as of 15 March 1986, the date of receipt of his United States security clearance. However, UNHCR informed him, referring to the Applicant's abrupt departure from Hargeisa, that the offer made to him was de facto cancelled.

The Applicant appealed, contending that, as of 15 March 1986, he had a binding contract for one year until 15 March 1987, at the L-3, step VIII, level, which he was wrongfully not permitted to perform by the Administration, and that he was entitled to $6,733 in additional compensation with respect to the period from 17 September 1985 to 31 January 1986, because he had performed the duties of Head of the Hargeisa sub-office during that period and not the consultant duties for which he was being paid.

The Tribunal, on the other hand, found no valid basis for the Applicant's contention that he had a one-year contract for which he was entitled to be paid for performing no work for the Organization for the period in question. Although the Applicant might have felt he had justification for leaving Somalia in January 1986 because of expiration of the consultancy contract extension and the delay by the Administration in implementing the 17 September 1985 offer for lack of United States security clearance, that did not entitle him to a paid vacation until 15 March 1987. Nor did it entitle him to a new contract for appointment at a higher level than that provided in the 17 September 1985 offer as the price for his return to the United Nations service in Somalia. The Tribunal considered that the negative responses by the Administration to the Applicant's requests, among other things, had led the Applicant to leave the Organization on 5 February 1986.

Having come to the conclusion that the Applicant's claim for compensation with respect to the period from 15 March 1986 to 15 March 1987 should be rejected, the Tribunal considered that his position was not wholly without merit. Contrary to the Respondent's position, the Tribunal was of the opinion that the requirement for a United States security clearance should not have been regarded as a condition that had to be met before the contract contemplated by the 17 September 1985 proposal could come into effect. In that regard, the Tribunal observed from the record that by or before 17 September 1985 the Applicant, though serving under a consultancy contract, had been discharging the duties and responsibilities of the Head of the Hargeisa sub-office (who had left and had not been replaced) and that the Applicant had continued to do so until the end of January 1986. The post actually being encumbered by the Applicant during that period was acknowledged by the Administration to have been at a higher level than the L-3, step VIII, position provided for in the 17 September 1985 offer. In view of that situation, which the Administration permitted to continue, the Tribunal noted that the Respondent could hardly assert that it would be reasonable now to construe the requirement for a United States security clearance as so vital to the formation of the contract contemplated that it must be regarded as a condition that had to be met before any valid contract could be entered into. The Tribunal concluded that in the present case the requirement of a security clearance must have been deemed a condition which could be satisfied by the Applicant after he began performing the contract, and that the offer of 17 September 1985 was accepted by the Applicant's performance of duties either identical to, or at a higher level than, those he was to perform in the L-3, step VIII, post.

When the Applicant's security clearance was received in March 1986, it should have been considered effective as of 17 September 1985. The Applicant's signed acceptance on 1 November 1985 should be regarded as confirming the fact that the offer was already accepted by performance. Accordingly, the contract was in effect before the offer was revoked or withdrawn.

On an alternative ground, the Tribunal likewise found the contract to have been in existence on 17 September 1985. The Tribunal noted that on 21 September 1984, the United States Court of Appeals for the First Circuit rendered a decision in *Ozonoff v. Berzah*,[9] on the basis of earlier decisions of the United States Supreme Court, that Executive Order 10422 prescribing security clearance for United States citizens seeking appointments in the United Nations system was unconstitutional, because of its vagueness and its infringement on freedom of speech. Furthermore, the United States District Court for the Eastern District of Pennsylvania in April 1986, in *Hinton v. Devine*,[10] followed the rationale of the *Ozonoff* decision and also declared Executive Order 10422 to be unconstitutional. The United States Government had decided at that point not to pursue the matter further and on 2 June 1986 informed the United Nations that observance of the Executive Order was suspended. United Nations officials at Headquarters also had been informed of the *Ozonoff* decision, and in the view of the Tribunal the inclusion of the United States security clearance requirement in the 17 September 1985 offer to the Applicant represented a mistake of law.

However, under the circumstances of the present case, that defect was not a ground for total rescission of the contract. Given the course of events, the Tribunal concluded that the date of the *Ozonoff* decision established the invalidity of the security clearance programme under Executive Order 10422, thus

eliminating any reason for including the security clearance requirement in the 17 September 1985 offer. In the opinion of the Tribunal, because of the extraneous nature of the security clearance provision as regards the subject matter of the contract, the parties would have simply omitted that provision from the contract if failure to take account of the *Ozonoff* decision had not occurred, and, therefore, in consequence the requirement was to be regarded as irrelevant.

Had the Applicant elected to remain in Somalia until the expiration of the one-year term of the 17 September 1985 contract, i.e., 16 September 1986, he would have been entitled to all of the contract's emoluments regardless of whether he eventually obtained a United States security clearance. However, the Applicant had left Somalia at the end of January 1986, because he was then under the impression that his only entitlement was under the consultancy contract he had received to that date, which he regarded as inadequate. As acknowledged by Administration officials, the Applicant had been placed at a financial disadvantage by the continued delay and uncertainty with regard to implementation of the terms of his 17 September 1985 contract provisions due to absence of the United States security clearance. Yet the Applicant had throughout been performing at the L-3 or higher level.

In those circumstances, the Tribunal was of the opinion that the Applicant's decision to leave Somalia at the end of January 1986 was an effort to correct the unfortunate situation into which he had been placed and should not deprive him of relief.

For the reasons set forth above, the Tribunal determined that the 17 September 1985 offer became a binding contract on that date and that the Applicant should receive the difference between the salary and all allowances he would have received as an L-3, step VIII, level staff member with respect to the period from 17 September 1985 until his separation from service on 5 February 1986 as a result of his discussions in Geneva, and the amounts he received as a consultant with respect to that period. Moreover, the circumstances of his separation should be without prejudice to the possibility of his being re-employed by the Organization in the future. In addition, as compensation for the injury sustained by the Applicant due to the mishandling of his situation by the Administration, leading among other things, to the Applicant's departure from Somalia, the Applicant was awarded the sum of $3,000.

7. Judgement No. 456 (2 November 1989): Kioko v. the Secretary-General of the United Nations[11]

Termination of permanent appointment for unsatisfactory performance — Importance of notification and opportunity to respond to recommendation for termination — Clarification of delegation of authority in five-year reviews of permanent appointments — Question of strict adherence to administrative instruction regarding preparation of performance reports — Generous treatment by the staff member's department negates claim of prejudice — Issue of delays by Joint Appeals Board

The Applicant entered the service of United Nations Environment Program on 11 February 1974 at the G-3, step I, level, as a Machine Operator/Clerk, and was promoted to G-4 on 1 April 1977. On 1 May 1978, he was granted a permanent appointment. Subsequently, as a result of his five-year review by the ap-

pointment and promotion bodies, he was separated from service, in accordance with the provisions of staff regulation 9.1(a), effective 18 May 1984. The Applicant appealed the decision, challenging the decision to terminate his appointment because of his alleged failure to maintain the standards of efficiency and competence required by the Organization. The Applicant claimed that the decision was not made on the basis of poor performance but because of the physical impairment suffered by him when he lost the sight of one eye in June 1983, as the result of an assault by an individual who was later convicted in a local court.

Upon consideration of the case, the Administrative Tribunal noted that the Applicant's termination because of unsatisfactory service had not occurred in the normal fashion, i.e., pursuant to administrative instruction ST/AI/222, but rather as a consequence of the five-year review of the Applicant's permanent appointment, under staff rule 104.13(b)(ii), and even those circumstances were extraordinary. In the course of the five-year review, the Applicant's department was asked for the assessment of the Applicant, which replied in favorable terms. Ordinarily the department's reply would, under staff rule 104.13(c)(ii), simply have been reported to the Appointment and Promotion Board (APB) and then routinely submitted to the Secretary-General with no further action being taken to alter the status of the permanent appointment.

In the present case, however, despite the department's recommendation of no change in status based on its affirmation that the Applicant had maintained the requisite standards of suitability, which was submitted to the Appointment and Promotion Panel (APP) on 21 September 1983, the latter panel on 2 February 1984 received a Performance Evaluation Report (PER) on the Applicant covering the period from 16 March 1982 to 15 January 1984. That report, similar to his previous two two-year period reports, was critical of him but rated his performance as adequate. The APP, following its review of the relevant documents, recommended that the Applicant's case should be reviewed by the APB under staff rule 104.13(c)(iii). Contrary to the department's 21 September 1983 evaluation and recommendation that no change be made in the Applicant's status, the APP thought that the Applicant did not meet the requisite standards of efficiency and competence and should therefore be separated from United Nations service. The APP's recommendation to terminate the Applicant's appointment for unsatisfactory service was subsequently accepted and the Applicant was terminated on 15 May 1984. The Applicant appealed.

However, as noted by the Tribunal, the difficulty with the foregoing was that the Applicant had received no notification from the APP, the APB or anyone else of his possible termination for unsatisfactory performance. None of the last three performance reports he received had indicated either partial or total unsatisfactory performance ratings. Because the Applicant had not been given the opportunity to make any presentation on his own behalf before the APP or the APB before the termination recommendation was submitted to and carried out by the Executive Director of UNEP, it was the view of the Tribunal that that was a clear failure on the part of the Administration to observe a fundamental procedural protection accorded to staff members under the applicable staff rules and administrative instructions, the importance of which had been repeatedly stressed by the Tribunal in its previous judgements, e.g., Nos. 98, *Gillman* (1966); 131, *Restrepo* (1969); 157, *Nelson* (1972); and 184, *Mila* (1974).

The Applicant had argued that the Executive Director did not have the delegation of authority to terminate him for unsatisfactory performance. Although annex V to administrative instruction ST/AI/234 reserved that authority to the Secretary-General, the Respondent alleged that the situation was different when a termination occurred in the course of the five-year review, on the theory that it was an incident of the appointment process under staff rule 104.13 and therefore part of the appointment delegation to the Executive Director. The Tribunal noted that although the Secretary-General eventually ratified the Executive Director's action on 30 October 1987, it did not deem it essential to resolve either the issue or the Applicant's contention regarding the scope of the APB's authority under staff rule 104.13(c)(ii) and 104.14(f)(ii)(B) following a departmental recommendation for no change in status. The Tribunal did, however, suggest that the Respondent might wish to clarify the authority delegated to the Executive Director, as well as the authority of APPs and APBs, in similar situations involving five-year review of permanent appointments.

The Applicant also had contended that the Administration had acted improperly in preparing and submitting to the APP the last performance evaluation report covering the period from 16 March 1982 to 15 January 1984, a period of less than two years, contrary to administrative instruction ST/AI/240/Rev.1 which, except for special reports, provided for the preparation of reports at three-year intervals. The Tribunal accepted the Respondent's response that under the version of ST/AI/240 in effect immediately prior to ST/AI/240 Rev.1, the intervals were two years and the last performance evaluation report was probably prepared with that in mind. Furthermore, the Tribunal did not consider that the three-year interval provided for by ST/AI/240/Rev.1 necessarily prohibited the preparation of a PER covering a shorter period, if there was a good reason to do so. Here, the Administration's action was entirely proper since a five-year review was under way and apparently had been somewhat delayed by the eye injury sustained by the Applicant in early June 1983.

With respect to the Applicant's assertion that the decision to terminate him had been motivated by prejudicial and extraneous factors, no evidence submitted by the Applicant to the Tribunal supported that contention. On the contrary, as noted by the Tribunal, the Applicant's treatment by his department within UNEP, if anything, appeared to have been generous and understanding, as reflected by the ratings he received in his PER. Generous treatment also was reflected in the initial assessment and recommendation made by the department in connection with the five-year review. Similarly, the evidence showed that the Applicant's department had given due consideration to the Applicant's handicap after he suffered the loss of an eye, and there was no evidence that he was terminated because of that event.

The Tribunal, recalling its previous expressions of disapproval of delays, also registered its dismay that although the termination occurred in mid-May 1984 and had been challenged by the Applicant in a timely fashion, the Joint Appeals Board (JAB) report was not issued until 23 June 1987. Moreover, there appeared to have been an unexplained delay on the part of the JAB in making documents to which the Applicant was entitled available to him. Those delays, in the opinion of the Tribunal, were especially deplorable in cases involving termination of employment.

In view of the lapse of three years before the JAB report and the egregious failure by the APP and APB to conduct a "thorough, searching and balanced" review, the Tribunal did not consider it appropriate in the present case to proceed under article 18 of its rules, for that would further delay the resolution of the case.

Because of the complete failure of notice and opportunity for the Applicant to respond to the proposal to terminate his permanent appointment prior to action taken by the Executive Director on 15 May 1984, the Tribunal found that the application was well founded and ordered the rescission of the Respondent's decision to uphold the Applicant's termination. In accordance with article 9, paragraph 1, of the Tribunal's statute, the Tribunal fixed the amount of compensation to be paid to the Applicant for the injury sustained, should the Respondent decide that the Applicant shall be compensated without further action being taken in the case, as an amount equivalent to 18 months' net base salary at the rate in effect at the time of his separation from service. All other pleas were rejected.

8. Judgement No. 457 (7 November 1989): Anderson v. the Secretary-General of the United Nations[12]

Rejection of recommendation of the rebuttal panel to upgrade performance evaluation report — Question of an administrative decision — Question of Tribunal's competency in matter — Issue of truthful performance reports — Importance of warning of poor performance to staff member — Charge of prejudice negated by careful appraisal of rebuttal panel report and positive statements about staff member

The Applicant entered the service of the United Nations on 18 May 1964 as a Clerk Stenographer at the G-3 level in the Purchase and Transportation Service of the Office of General Service. Subsequently, on 1 April 1974, she was promoted to the P-1 level as an Associate Procurement Officer, to the P-2 level on 1 April 1977 and to the P-3 level on 1 April 1980.

The Applicant's performance during the period running from 31 March 1981 to 1 March 1983 was evaluated in a performance evaluation report (PER) dated 22 March 1983 (hereinafter referred to as "the first report"). The Chief of the Field Missions Procurement Section, who signed the report as first reporting officer, gave the Applicant six "outstanding" ratings and seven "very good" ratings, and her overall performance was rated "a very good performance".

Regarding the Applicant's performance during the subsequent period running from 1 March 1983 to 1 March 1986 (hereinafter "the second report"), the Chief of the Field Missions Procurement Section, who again acted as first reporting officer and was the Applicant's immediate supervisor, had indicated that the Applicant's performance had been evaluated pursuant to the new PER format, which provided for a more accurate assessment of performance. He rated the Applicant's competence as "good" (C); her initiative as "somewhat below standard" (E); her skill in producing a solution as "fair"(D); and her effectiveness in maintaining harmonious working relations as "unsatisfactory"(F). The

Chief of the Purchase and Transportation Service, who acted as second reporting officer, rated her overall performance as "a performance that does not fully meet standards" and noted that "in particular, the lack of harmonious communication with supervisors precludes an effective performance".

As a result of the Applicant's rebutting her second report, the ratings were dramatically upgraded by the Panel. The Panel's report included, *inter alia*, an explanation from the first and second reporting officers, who had prepared and signed the Applicant's first and second PERs, to the effect that the Applicant's performance had remained the same over the two reporting periods, but that they had prepared the second report to truly reflect their opinions of the staff member's performance, at the suggestion of the Assistant Secretary-General, who had indicated that she wanted honest evaluations. Also included in the Panel's report were general observations of the members of the Panel stating that while they fully supported the Assistant Secretary-General's suggestion that honest evaluations be provided, under the current system any staff member would be at a serious advantage if "truth" were to be told with respect to him or her unless that were done for all staff members.

The Assistant Secretary-General of the Office of General Service rejected the Panel's recommendation to upgrade certain ratings in the second report, and the Applicant appealed.

Upon consideration of the issues raised, the Tribunal did not accept the Respondent's contention that the appraisal of the report of the Rebuttal Panel was not an administrative decision reviewable under staff regulation 11.1. Appraisal was ordinarily a process which led to and included an administrative decision whether or not to accept the Panel's report, and it was that decision on which the Tribunal was competent to pass judgement.

The Tribunal stated that it should not substitute its own opinion for that of the officer making the appraisal. It would only interfere with that opinion if it was the consequence of prejudice, discrimination or some other extraneous consideration. The Applicant had contended that the contested decision was influenced by the Applicant's union activities and to the vigilance which she demonstrated in processing purchase orders. However, in the view of the Tribunal no evidence was submitted that supported her contention, other than the fact that she was indeed vigilant in connection with the processing of purchase orders.

The fact that previous performance evaluation reports were substantially more favourable to the Applicant than the report currently under consideration could in some circumstances be evidence of prejudice or other irregularity. In the present case, as observed by the Tribunal, it was not contested that the series of favourable reports had come to an end and was followed by the report in question, not because of any change in the Applicant's performance but because the Assistant Secretary-General had drawn attention to reporting officers to the need for reports to be truthful, and that in itself could not be considered an irregularity. Although the Tribunal attached great importance to the integrity of the performance evaluation reporting system and the need for candor and honesty, it nevertheless pointed out that it was regrettable that the Applicant had

been confronted with this tightening of reporting criteria without any specific warning so as to alert her to the need to improve her performance, in particular, by improving her relations with her colleagues. Furthermore, no evidence had been produced to show that the tightening of criteria was discriminatory, in the sense that it only applied to the Applicant and not to all members of the staff for whom the Assistant Secretary-General was responsible.

The Tribunal further noted that the Assistant Secretary-General had made a very thorough and careful appraisal of the Rebuttal Panel's report and demonstrated her lack of prejudice against the Applicant by expressing the hope that her future usefulness to the Organization would not be impeded.

For the foregoing reasons, the Applicant's pleas were rejected.

9. Judgement No. 461 (10 November 1989): Zafari v. the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.[13]

Termination — Competency of Tribunal in matter — Importance of opportunity of judicial recourse against administrative decision — Question of renunciation of right to seek compensation for improper dismissal — Termination under regulation 9.1 must be justified

The case concerned the termination of a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and before considering the merits of the termination case, the Tribunal addressed the Respondent's contention that the Tribunal was not competent to hear the appeal. At the same time, the Tribunal noted that the Respondent, by simply pleading that the Tribunal was not competent and not presenting, as a subsidiary matter, his contentions on the substance, delayed settlement of the dispute. Recalling its Judgement No. 57, *Hilpern* (1955), the Tribunal observed that the jurisdiction of the Tribunal might be extended to any specialized agency upon the terms established by a special agreement to the effect between such agency and the Secretary-General, and such an agreement was all the more possible between the Commissioner-General of UNRWA, which, moreover, was not a specialized agency but a subsidiary organ established by the General Assembly under Article 22 of the Charter of the United Nations and the Secretary-General of the United Nations. The Tribunal noted that such an agreement existed between the Secretary-General and the Commissioner-General of UNRWA. Furthermore, in the *Radicopoulos* case (Judgement No. 70 (1957)), the Tribunal had confirmed its jurisdiction in reviewing cases emanating from UNRWA.

In the present case, the Respondent had invoked the UNRWA Staff Regulations and Rules to support his contention that the Tribunal was no longer competent. The Respondent, referring to chapter XI of those Regulations, stated that the Applicant's appeal had been considered by a "special board" of the Joint Appeals Board (JAB). The JAB had considered that it was "purely an administrative matter which should be handled by the Administrator and the Legal Adviser" and therefore unanimously declared itself not competent to handle the matter. Subsequently, the Applicant had been informed that the unanimous recommendation of the JAB had been accepted by the Commissioner-General of UNRWA and that therefore any further appeal to the Panel of Adjudicators was barred, as stipulated in area staff regulation 11.1(c). The Tribunal noted that, in

that instance, the Applicant had thus been deprived of any recourse against the decision of the Commissioner-General of UNRWA and therefore had truly been denied justice because of a legal vacuum which the existing area staff regulations and rules had not filled.

In this connection, the Tribunal recalled the International Court of Justice opinion of 13 July 1954 concerning awards of compensation made by the United Nations Administrative Tribunal, wherein it was stated that it would be inconsistent with the aim of the Charter of the United Nations if the Organization afforded no judicial or arbitral remedy to its own staff for settlement of any disputes which arose between it and them. The Tribunal considered that, in the absence of any judicial procedure established by the area Staff Regulations and Rules for settlement of disputes submitted to the JAB under regulation 11.1, the competence of the Tribunal as stated in its earlier judgements remained and therefore the Tribunal considered that it was competent to deal with the application.

The Applicant had joined UNRWA in 1952 as a Registration Clerk, and on 1 January 1979 had been appointed Area Officer for the Damascus area. In a letter dated 5 May 1985, the Director of UNRWA Affairs for the Syrian Arab Republic confirmed that, as stated at their meeting on 2 May, he was terminating the Applicant's services, and the only reason he gave for the termination was that he had lost confidence in the Applicant. He added that the decision was "in the interest of the Agency under staff regulation 9.1". The Tribunal noted that the Respondent had not disputed the Applicant's allegation that the manner of the termination was abrupt and arbitrary. The Respondent merely maintained that the Applicant had opted for an "early voluntary retirement benefit" and that accordingly the mode of his separation was not a termination. The Tribunal noted that it was true that, on 7 May 1985, just two days after his services were terminated, the Applicant had sent the Administration a handwritten note asking for such a benefit. However, the Tribunal considered that that informal note appeared to have been written when the Applicant was understandably upset following his abrupt termination. Under those circumstances, the Tribunal considered that the note did not constitute a renunciation of the Applicant's right to seek compensation at a later date for improper dismissal.

Moreover, it was not until the Applicant had requested the regional Director of UNRWA, on 3 June 1985, to review the decision to terminate his appointment, that a new personnel action form, changing termination to separation, was issued on 4 June 1985. At the same time, the Respondent had alleged that the decision to terminate the Applicant's contract had been automatically withdrawn under area staff rule 109.2, paragraph 11. Contrary to what the Respondent maintained, as noted by the Tribunal, rule 109.2, paragraph 11, did not state that a request for voluntary early retirement led to the "automatic withdrawal" of an administrative decision on termination.

The Tribunal noted that, in effect, the Director had not invoked any facts in support of his opinion that termination of the Applicant's contract would be "in the interest of the Agency". He had merely stated that he had lost confidence in the Applicant. The Tribunal considered that that simple statement was insufficient to justify application of regulation 9.1, as it did not allow the Tribunal to exercise its power to verify the facts and whether there was any misuse of power or arbitrary action. The Tribunal further noted that at the time the events took

place, the Applicant had served the Organization for over 30 years and that he was generally well regarded and appreciated. Under the circumstances, the Tribunal considered that the decision to terminate the Applicant was in fact a disciplinary measure.

The Tribunal therefore concluded that the decision of 2 May 1985 had been taken in violation of the Applicant's rights and must be rescinded. Should the Respondent decide not to reinstate the Applicant, he would be awarded compensation in the amount of $15,000. All other pleas were dismissed.

10. Judgement No. 465 (15 November 1989): Safavi v. the Secretary-General of the United Nations[14]

Non-renewal of fixed-term appointment — Question of legal expectancy of renewal — Proof of prejudice or improper motivation — Importance of staff member being given opportunity to respond to charges of unsatisfactory performance — Post facto presentations of documents are not normally an adequate substitute for contemporaneous performance records

The Applicant originally had been recruited by the United Nations on 16 July 1978 as an Urban Planner at the L-4 level at the Office of Technical Cooperation in Riyadh and served on a succession of fixed-term project personnel appointments until completion of the project on 31 July 1983, receiving a performance rating of "very good". On 5 February 1984, the Applicant re-entered the service of the United Nations to work on a UNCHS/UNDP National Physical Planning Project of assistance to the Government of Bangladesh, at the L-5, step II, level as a Physical Planner at Dhaka. On 3 September 1984, the Resident Representative wrote a letter to the Coordinator of the Asia, Pacific and Americas Unit (UNCHS), expressing concern with the progress of the project and expressing doubt about the National Director, the Project Manager and the Applicant's ability to work at the expected level. Thereafter, on 4 January 1985, the Coordinator informed the Applicant that after reviewing his input to the Project, UNCHS had found his performance below expectations and that his appointment would be extended only six months, and the Applicant was separated from the Organization at the expiration of his appointment on 4 August 1985. The Applicant appealed.

The Applicant claimed that he had a legal expectancy for a one-year renewal of his fixed-term appointment, pointing to a communication from his immediate superior several months before his fixed-term appointment was to expire regarding the Applicant's interest in an extension; indications early in the course of the Project that he might expect to be in Bangladesh for three years; and a written request dated 8 January 1985 from the Government of Bangladesh to UNDP requesting that his contract be extended for one year from 5 February 1985. However, the Tribunal did not consider that the foregoing points, considered singly or together, or any other evidence in the case, were sufficient to establish the claimed legal expectancy. The Applicant's immediate superior neither had the authority to commit the Administration to an extension, nor purported to do so. The written communication from him to the Applicant, which was in question, was viewed by the Tribunal as merely an inquiry. The written request by the Government of Bangladesh was also insufficient to establish a

legal expectancy. It was not for the Government unilaterally to make any commitment regarding an extension; that was a matter that required UNCHS and UNDP concurrence. Furthermore, indications that the Applicant might be in Bangladesh for three years did not have the effect of creating a legal expectancy beyond the fixed-term specified in his contract. Nor did the fact that aspects of the project on which the Applicant had been working were unfinished at the time of his separation.

However, although the Tribunal was unable to conclude that the Administration violated the Applicant's terms of employment, or the relevant Staff Rules, when it separated the Applicant on the expiration of his fixed-term appointment, the Tribunal had found troubling inconsistencies in the manner in which the Administration proceeded. These were not satisfactorily resolved by the post facto documentation produced by the Administration following the Applicant's appeal. For example, the Tribunal had difficulty understanding why, if the Applicant's performance was as unsatisfactory as later asserted by the Administration, he had been given a within-grade salary increment with respect to his first year.

Despite the foregoing and other concerns arising from the record of the case, in the Tribunal's view, if there had been no action by the Administration beyond permitting the Applicant's fixed-term contract to expire, a matter within its discretion, the Tribunal would be hesitant to sustain the application based on allegations of prejudice or extraneous factors. Under the Tribunal's consistent jurisprudence, the burden of proving prejudice or other improper motivation rested with the Applicant and he had not demonstrated to the satisfaction of the Tribunal that the non-renewal of his contract was tainted by prejudice or improper motivation. The Applicant's claim that his treatment reflected retaliation against him by the UNDP Resident Representative for having successfully appealed with respect to a subsistence allowance matter, while raising suspicions, was not considered by the Tribunal sufficient to sustain the Applicant's burden of proof because other staff members who also were involved in the subsistence allowance appeal did not appear to have suffered any adverse consequences. Nor did the personality eccentricities of the Resident Representative alleged by the Applicant establish prejudice or improper motivation.

However, as observed by the Tribunal, the Administration had done more than decline to renew the Applicant's contract. It had intervened in efforts by the Applicant to secure other United Nations employment. Since the Respondent cited unsatisfactory performance by the Applicant in an attempt to influence negatively potential employment opportunities for him, the Tribunal considered whether the Respondent had followed a fair procedure in arriving at its conclusion. In other words, basic notions of due process suggested the Respondent should have given the Applicant: (*a*) a reasonably detailed specification of his alleged performance shortcomings in January 1985, or earlier, instead of the simple conclusory statement that he received; (*b*) an opportunity to respond; and (*c*) then given fair consideration to his response. Because that had not been done in the present case, the Tribunal was faced with the Respondent trying to justify his position on the basis of post-appeal factual assertions and arguments, which also included a favorable assessment by the Project Manager, and a request that the Applicant continue in his post for an additional 30 days in lieu of taking accrued leave.

The Tribunal pointed out that procedural due process protections were designed to assure, insofar as possible, that the Administration would fairly consider a staff member's point of view and, having done so, would presumably arrive at a fair and reasoned decision. Based on the foregoing, the Tribunal concluded that the Applicant had not been treated fairly and that if he sought future employment with the Organization he should be considered for it without reference to his alleged unsatisfactory performance on the Bangladesh Project.

With respect to the Applicant's requests for the production of documents, those deemed relevant were sought from the Respondent by the Tribunal and some were furnished. However, other documentation requested which might have thrown light on evaluations of the Applicant's performance were not made available by the Respondent. In the opinion of the Tribunal, post facto presentations in the context of an appeal were not normally an adequate substitute for contemporaneous performance records or evaluation procedures.

Notwithstanding the lack of proof of prejudice or improper motivation in the present case, the Tribunal found that no serious attempts had been made by the Administration to observe the obligation of due and fair process vis-à-vis the Applicant. Even more damaging, the entry into his personnel files of an unsatisfactory performance rating for which no justification had been established could not but injure his professional reputation.

In view of the foregoing, the Tribunal set compensation for the injury to the Applicant at five months of his net base salary at the time of his separation of service, plus $2,000 in costs, and a copy of the judgement was placed in the Applicant's file.

B. Decisions of the Administrative Tribunal of the International Labour Organization[15]

1. Judgement No. 958 (27 June 1989): In Re El Boustani (No. 3) v. United Nations Educational, Scientific And Cultural Organization[16]

Non-promotion to head of section — Competency of Tribunal in matter — Proof of personal prejudice — Question of indicating reasons for ranking of candidates — Weight of factors in selection process — Question of providing an explanation for an administrative decision — Ability of staff member to defend his or her rights — Corroboration of plea by citing other cases

The complainant joined the staff of UNESCO on 14 August 1975 as a translator and minute-writer at grade P-3 in the section for translation into Arabic, and on 1 June 1980 he was promoted to reviser at grade P-4. On 4 November 1986, he applied for a post, COL-274, as principal reviser and head of the section. A shortlist was created, with the complainant placed second on the list. The third candidate, however, was appointed to the post and the complainant appealed, contending that the Director-General disliked him as a militant member of one of the two staff associations, the STA, and a ringleader in many staff disputes.

In consideration of the case, the Tribunal noted that according to UNESCO staff regulations and the general principles governing the international civil service the Director-General had wide discretion to appoint, transfer and promote

staff in the interests of the Organization he headed. The Tribunal would review his decisions, short of interfering in his actual management, considering whether a decision showed any formal or procedural flaw or a mistake of law or of fact, whether any essential fact had been overlooked or any mistaken conclusion drawn from the evidence, or whether there was abuse of authority.

As to the allegation of personal prejudice, the Tribunal had often said that it was usually concealed and its existence therefore usually had to be established by inference. In consideration of the matter, the Tribunal observed that the foremost and surest safeguard against personal prejudice was due process, which above all was designed to prevent improper influence on administrative decisions. In this regard, the complainant contended that the procedure that had culminated in the decision was faulty on two counts: (*a*) the Senior Personnel Advisory Board (SPAB), which according to staff rule 104.1 advised the Director-General on promotions, had been improperly constituted, and (*b*) it had failed to give reasons for its recommendations. The complainant had objected to the Chairman of SPAB and to two of the three other members, on the ground that they were not impartial. However, the Tribunal noted that the Board members were unanimous in approving the Board's report and moreover that there was an observer representing STA, in which the complainant was active, who had not included in his comments any mention of impartiality in the proceedings. There was no other evidence put forward of bias on the part of the Board.

The complainant further objected to the Board's actual report — the Board merely recommended an order of preference — Mr. Hanna, himself and Mr. El Keiy — without stating any reasons for it, contending that a statement was needed in difficult cases and cases affecting staff militants. The Tribunal observed that in a case in which the activism of one of the applicants for a post had attracted notice or even aroused resentment in the upper reaches it was only reasonable that the Board should prefer to state the reasons for its choice. But in the present case, the Board may have held that in unanimously approving the recommendation of the competent Sector that had reviewed the candidates it had endorsed the Sector's reasoning and therefore did not need to repeat the reasoning in its own report. The Board might, for that matter, have felt that a staff association was immaterial to its recommendation. Upon considering all the evidence, the Tribunal concluded that there was no formal flaw in the advisory proceedings.

The complainant further argued that the decision showed a mistake of law, evident misappraisal of the facts and abuse of authority. In that regard, the Tribunal noted that the Director-General was bound to take a whole set of factors into account in making a selection and to give whatever weight he thought fit to other factors provided for in the rules, and only if he were shown to have wilfully overlooked one of those factors might the complainant's plea succeed. Not only were technical skill and talent for administration considered, but also age, seniority and ability to ease tension in the unit. The Tribunal further noted that the senior officers, as they were bound to do, had given priority, in their Advisory Board's report to the Director-General, to the last criterion and they had felt that the other two candidates were more promising on that score. The Tribunal also noted that in selecting Mr. El Keiy for the post the Director-General had accordingly resolved without questioning the professional and technical merits of the other two applicants to give pre-eminence to the ability to reduce tension in the unit. The Tribunal concluded that in rejecting the complainant's candida-

ture after what was described as a "careful study of all the material factors" the Director-General had made no mistake of law and drawn no clearly wrong conclusion from the facts.

As to the complainant's contention that the decision had only a veneer of lawfulness and that the rejection of him could not have been in the Organization's interests since there was personal prejudice that made the decision an abuse of authority, he cited evidence of such prejudice in the absence of an explanation of the actual decision, and argued that an explanation was required by him based on general principle and because such an explanation would enable him to plead his appeal properly.

As had been observed by the Tribunal in its other judgements, many decisions by international organizations that prompted complaints — discretionary ones, for example — were unsubstantiated, yet the staff member was still able to defend his rights. Though not stated in the actual text, the reasons for the decision might be discerned from earlier correspondence between the parties or in the last resort from the organization's brief in reply to the complaint, which the staff member might comment on in his rejoinder. The Tribunal further observed that unless there was express derogation the rule was that the organization need not, if that was not the practice, state the reasons for all its decisions: what mattered was that the absence of a statement should not be to the staff member's detriment.

In that regard, the Tribunal noted that the complainant had had at his disposal minutes which his supervisor had written on 8 and 19 January 1987, making a technical assessment of the various applicants, the Advisory Board's concurring recommendation of 10 February 1987, the comments of 12 February 1987 by the STA's observer, and he had filed a rejoinder to UNESCO's reply to his complaint. In the Tribunal's view, therefore, the absence of a formal statement of reasons had caused him no injury.

The complainant also had cited other cases of STA members being harassed, in order to corroborate his plea that rejecting him amounted to an abuse of authority. However, the Tribunal observed that the STA members he mentioned had not filed a complaint, so the complainant was driven to find evidence about those cases from various scattered sources. The Tribunal objected to that way of gathering evidence, and the Tribunal had already had occasion to declare it inadmissible.

For the above reasons, the complaint was dismissed.

2. Judgement No. 972 (27 June 1989): In Re Unninayar v. World Meteorological Organization[17]

Non-renewal of contract — Standard for review of decision — Exhaustion of internal means of redress — Question of reviewing all facts before making a decision — Standard for retention in the Organization — Importance of opportunity to answer charges — Question of a remedy

The complainant joined the World Meteorological Organization in Geneva on 10 February 1981 under a two-year appointment, as a grade P-5 Scientific Officer. Remaining at grade P-5, effective 26 January 1984, he was appointed Chief of the World Climate Data Programme Division of the World Climate

Programme Department. The following year, the structure of the Department was changed and the Division ceased to exist, and the complainant was reassigned as "senior scientific officer" to a new unit, the World Climate Data Office.

On 10 November 1987, the complainant was summoned to a meeting with the Secretary-General, the Assistant Secretary-General and the new Director of the World Climate Programme Department in order to consider the renewal of the complainant's fixed-term contract. It appeared that at the meeting there had been discussion about the complainant's signing letters as Chief of the World Climate Data Programme Division after he had been reassigned and asking the permanent representative of one member State to write directly in her capacity as head of a national meteorological service to prevent the delay that would occur if her letter were routed through official channels. The meeting ended abruptly when the complainant used a "coarse expression" and left the Secretary-General's office. On 11 November, the Secretary-General informed the complainant that his contract would not be renewed and the complainant appealed.

In consideration of the case, the Tribunal noted that the decision whether or not to renew or convert an appointment was at the Secretary-General's discretion, and the Tribunal's case law was that it would interfere only if such a decision had been taken without authority or in breach of a rule of form or procedure, or based on an error of fact or law, or if an essential fact was not taken into consideration, or if there had been abuse of authority, or if a clearly mistaken conclusion had been drawn from the facts.

The complainant also had argued that according to the terms of his contract he was entitled to a permanent appointment at grade P-5. However, in the view of the Tribunal, the complainant's argument failed because he had never challenged any administrative decision on his entitlement to a permanent appointment. Any complaint regarding refusal by the Organization to grant him such an appointment was irreceivable under article VII (paragraph 1) of the statute of the Tribunal because he had failed to exhaust the internal means of redress.

The complainant also contended that the Secretary-General's decision not to renew his appointment was flawed by procedural error, error of law and failure to take essential facts into consideration. The Tribunal noted that regulation 4.2 of the WMO Staff Regulations stated that "the paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity". Rule 145.2(d) made the evaluation of performance as reflected in periodic reports the basis for "decisions concerning the staff member's status and retention in the Organization" and rule 145.2(c) required the communication of any adverse report to the staff member in writing. In that context, the Tribunal noted that the complainant's performance reports all showed that he was a highly competent and dedicated officer who had done valuable work for the Organization and letters in the dossier supported the view that administrations in several countries appreciated the effectiveness of the programme he supervised.

The Tribunal observed that the Secretary-General had not only omitted to give weight to the complainant's excellent record of service over a period of seven years, but also the reasons put forth by the Secretary-General for not

renewing the complainant's appointment, including the signing of correspondence as chief even though his title was senior scientific officer and not routing correspondence according to standing instructions, could have been put right if the complainant had been given the opportunity to answer the charges.

Because of those flaws, his decision not to renew the complainant's appointment must be set aside. The Tribunal was satisfied that in the circumstances of the case the complainant's reinstatement would not have been advisable, and noting that the complainant had already found employment elsewhere the Tribunal ordered the Organization to pay him two years' salary and allowances at the rates obtained at the date of separation as damages for material injury; 25,000 Swiss francs as damages for moral injury; and 10,000 Swiss francs as costs.

3. Judgement No. 975 (27 June 1989): In Re Nowak v. European Patent Organisation[18]

Request to substitute certified sick leave for maternity leave so as to preserve full period of maternity leave entitlement — Expressio unius exclusio alterius — *Significance of recommendation from the Appeals Committee — Effect of a previous misinterpretation of the rules in a subsequent similar situation — Question of equality of treatment*

The complainant had been a permanent staff member of the European Patent Organisation (EPO) since 1984. During her second pregnancy, on 2 December 1986, her doctor certified that the likely date of birth of her child was 14 June 1987. Because of prenatal complications he later gave her three successive medical certificates stating that she required sick leave from 13 April to 16 June 1987. She gave birth to a daughter on 11 June.

In the complaint, she challenged the refusal of EPO to allow her to begin her maternity leave at the date of birth of her daughter, and from that date take the 16 weeks' leave provided for in article 5(a)(i) of circular 22 as amended. In accordance with the above circular, if a woman, having begun maternity leave six weeks before the expected date of her confinement, gave birth after that date, she would ordinarily be entitled to 10 weeks' leave after the actual, as against the expected, date of confinement in addition to whatever period had elapsed since she began her leave. She would thus be entitled to a total period of over 16 weeks. If the child was born before the expected date, the mother would not have her leave curtailed: she would still be entitled to not less than 16 weeks.

The complainant requested that the certified sick leave the complainant took before the date of birth be substituted for maternity leave so as to preserve her entitlement to a full period of 16 weeks' maternity leave after that date. EPO had refused such substitution on the ground that sick leave might be substituted only for home leave or annual leave in accordance with article 62(4) of the EPO Service Regulations. On appeal, the Appeals Committee had held, citing article 5(a)(i) as authority, that the total period of maternity leave was not reduced when the confinement had taken place earlier than had been expected or when the mother had continued to work up to the date of confinement. But the President had confirmed the refusal of the complainant's claim.

In consideration of the case, the Tribunal noted that it appeared that there was a practice in EPO of allowing staff who worked during the six weeks before the expected date of confinement to add any days not taken to the period of

maternity leave granted after the date of birth. The complainant was seeking to extend the privilege by claiming sick leave during the six-week period and adding it to the period of leave due after the date of birth.

In the opinion of the Tribunal, the President was correct in rejecting the unanimous recommendation of the Appeals Committee. Involved was a principle of interpretation, *expressio unius exclusio alterius*, that express mention in a text of one or more things belonging to a category excluded by implication all other things in the category. In that regard, the Tribunal noted that article 62(4) provided that if an employee was certified sick while on home leave or on annual leave the period was not deducted from such leave but was deemed to be sick leave; that precluded applying 62(4) also to maternity leave, which was another form of leave.

The Tribunal also noted that the President was not bound to endorse the Appeals Committee opinion in the matter: article 109(i) of the Service Regulations stated merely that "the authority concerned shall take a decision having regard to this opinion". The President's duty was to consider the opinion before reaching his decision, not to follow it.

The complainant had argued that since she had received a deferment of maternity leave because of illness for her first pregnancy, she should be granted it for her second. In the view of the Tribunal, however, the fact that she formerly benefited from misinterpretation of the rules did not entitle her to have the rules wrongly applied a second time.

The Tribunal observed that the purpose of maternity leave was to allow the pregnant woman a period of rest before birth if she wanted it and a rather longer period after birth to recover and spend time with her child. The rules applied to all women whatever the state of their health. Though women in good health would enjoy their maternity leave more than those who suffered from complications or were not so robust, there was still equality of treatment in that all women were entitled to the same period of maternity leave.

For the above reasons, the complaint was dismissed.

4. Judgement No. 977 (27 June 1989): In Re Ratteree v. International Labour Organization[19]

Non-selection to posts — Question of receivability — Authority of Director-General to assign staff — Question of arbitrary and unfair treatment of staff member

The complainant, a United States citizen, had held short-term appointments with the International Labour Organization from 1980 and a series of fixed-term appointments from July 1981 at the P-3 level, in the Equality of Rights Branch (EGALITE). His duties related to the ILO's campaign against apartheid in southern Africa. In April 1987, the ILO advertised an internal competition to fill a vacant P-4 post in EGALITE which covered the duties the complainant was performing. The Selection Board recommended him as the only candidate to meet the stated requirements in full. The second choice was a female candidate from Ghana, who was eventually selected by the Director-General. Having learned of that decision in September at a meeting with the Chief of the Personnel Development Branch and the Deputy Director-General, the complainant made

a "request" for review on 7 October 1987 and explained orally to the Personnel Department that he was worried about his future because his duties formed part of the post granted to the selected candidate. A Personnel Officer wrote a letter to the complainant, dated 26 October, stating that he seemed not to be objecting to the appointment of the selected candidate and reassured him about his future in the Organization.

In a minute of 26 November 1987, the Director of the Promotion of Equality Department informed the complainant that he was to be placed on a post which included duties relating to the Arab territories occupied by Israel, only on a temporary basis, because the position was thought to be delicate and the complainant's nationality to be unsuitable. The complainant agreed to the assignment provided that he did not have to go on mission to the territories. However, when the Director-General learned of the complainant's new assignment, he instead granted a one-year appointment at the P-4 level to another staff member, a French national, who was holding a short-term appointment at the P-3 level, to a new post in EGALITE that would cover work related to the territories, including going on mission there. The complainant continued work on projects relating to southern Africa, and on 8 April, he filed a "complaint" challenging those decisions.

Regarding the decision of 20 August 1987, whereby the Director-General appointed the Ghanaian staff member to the P-4 post instead of the complainant, attention was drawn to the time limits for submission of an appeal. The Tribunal observed that the complainant, having made his article 13.1 request for review on 7 October 1987, had submitted a "complaint" under 13.2 on 8 April 1988. The lodging of the 13.1 request and the substance of it showed that the complainant had become aware of "the treatment complained of" over six months before he had lodged his "complaint", and it was therefore out of time under 13.2. The complainant had argued that the time should run from the date of receipt of official written notice of the impugned decision, but as the Tribunal pointed out, that was not what the Staff Regulations provided: if he was aware of the treatment complained of more than six months before acting under 13.2 his internal "complaint" was out of time. The complainant had further contended that he could not have known whether what he had been told was true, but the Tribunal observed that his sources of information were at a high level, and he must have known the information to be authoritative. The Tribunal therefore concluded that since the complainant had failed to act within the relevant time limit his complaint was irreceivable.

Regarding the decision of 11 February 1988, concerning the appointment of another staff member to carry out duties in relation to the Arab territories, the Tribunal observed that under article 1.9 of the ILO Staff Regulations, it was for the Director-General to assign the complainant to his duties, and he was acting *intra vires* in cancelling the within-branch transfer. Furthermore, there was never any question of appointing the complainant permanently to the post and his temporary appointment to it had duly ceased in January 1988. Indeed, the minute of 11 February 1988 which contained the decision of appointment requested that all administrative and other steps be taken to give effect to it as soon as possible, including submitting the new appointment to the Selection Board pursuant to article 4.2, the appointment of which was approved by the Board.

The Tribunal was satisfied that the treatment the complainant had received was neither arbitrary nor unfair. The complainant had argued that ILO had given no explanation when it ended his temporary appointment. The Tribunal observed that when he received the oral notice of termination he was told that the reason, though "vaguely stated", was his unsuitability, and while more than a vague statement might have been expected, so might a request for a more detailed explanation from the complainant. In the view of the Tribunal, since he did not ask for one, there was nothing arbitrary or unfair about the way in which the matter was dealt with.

As the Tribunal further noted, the reason why the complainant was offered the temporary appointment in November 1987 was that there could be such direct transfer within the Branch without seeking the approval of the Selection Board. He had accepted the post at grade P-3 and his contract was renewed at that grade. Although the French national was appointed at P-4, the grade held by the previous incumbent, there was nothing arbitrary or unfair about offering the complainant the post temporarily and provisionally at P-3.

As the Tribunal further noted, the Director-General had terminated the temporary appointment because he did not consider the complainant suitable for the post, for the job called for someone who would carry out all the duties, including missions to the occupied Arab territories, permanently and not just temporarily. Nationality was an important criterion because the holder of the post must be able to travel to the territories without interference or difficulty, as indeed the complainant himself recognized in asking to be relieved from going on mission to the territories. In the opinion of the Tribunal, the decision to remove the complainant from his temporary posting was at the Director-General's discretion and the exercise of his discretion was proper.

For the above reasons, the complaint was dismissed.

5. Judgement No. 978 (27 June 1989): In Re Meyler v. United Nations Educational, Scientific and Cultural Organization[20]

Withdrawal of recurrent benefits upon marriage — Question of receivability — Effect of discriminatory staff rule — Applications to intervene in case

The complainant, a British citizen, joined UNESCO in 1979 in Paris. Her "recognized home" being in England, she was accustomed to receiving the non-resident's allowance, besides other benefits and allowances due to expatriate staff. On 3 October 1986, she married a French citizen and so informed the Organization, adding that she did not wish to acquire French nationality. As a result of her marriage she lost her entitlement to certain recurrent benefits, such as home leave, "family visit", education grant and travel expenses in respect of dependants, as well as to the non-resident's allowance, and she appealed.

The Tribunal pointed out that at the material time UNESCO staff rule 103.14(b)(iii) provided that "the non-resident's allowance shall not be paid, or shall cease to be paid, to a staff member ... whose husband is a national of the country of the duty station ..." Thus, before 29 April 1988, when the text was amended to replace the word "husband" with "spouse", a woman staff member who had been entitled to payment of the allowance ceased to be entitled if she

married a national of the country of the duty station. Furthermore, rule 103.14(h) provided, on loss of the non-resident's allowance under (b)(iii), for review of the staff member's eligibility for home leave, "family visit", education grant and travel expenses in respect of dependants, which were recurrent benefits during the period of service, and for "separation travel, repatriation grant and removal of household goods", which were benefits paid on retirement; a decision on subsequent entitlement was to be taken by the Director-General.

The Organization contested the receivability of the complainant's claim as regards the loss of her non-resident's allowance, claiming that she had not protested against the original decision not to pay it, and that it was now time-barred. The Appeals Board had held that it might properly entertain an appeal against the loss not only of the recurrent benefits but also of the allowance because appeal against a decision which had recurring effects could not be time-barred: each month in which the non-resident's allowance was withheld there was a new cause of action. The Tribunal agreed with that view, citing previous case law to that effect. The delay would, however, result in her not being able to claim any payment of the allowance falling due more than one month before the lodging of her claim in accordance with the rules.

The Organization was correct in its submission that the complainant had never protested to the Director-General against the decision not to pay her the non-resident's allowance, and since she had not exhausted the means of internal redress and in order to claim payment she would have to initiate the correct preliminary procedure. Payment was not, however, the same thing as entitlement, and the Organization had not established that the complainant had surrendered her entitlement to the allowance. It could not be held that when she appealed against the decision to withdraw her recurrent benefits on the grounds of discrimination she was at the same time surrendering her right to the allowance.

The Organization further submitted that the claim to the recurrent benefits was irreceivable because it was subsidiary to the time-barred claim to the allowance. However, the Tribunal observed that since the rule was unlawful it could never have become lawful by lapse of time or by acquiescence and a claim could therefore never be barred. Even though a claim to actual payment to the allowance could not succeed in those proceedings because of the complainant's failure to follow the proper internal procedure, the question of her entitlement to the allowance must be considered because of its bearing on the matter of the recurrent benefits.

In considering the merits of the case, i.e., withdrawal of payments of the recurrent benefits under 103.14(h), the Tribunal observed that the Organization had not denied that 103.14(b)(iii) discriminated against women on its staff. Indeed, it had amended the offending text with effect from 29 April 1988, the word "husband" having seemingly been allowed to survive in the text only by oversight. That did not, however, in the view of the Tribunal, relieve the Organization of liability. The old text of 103.14(b)(iii) was not enforceable because it was discriminatory, and, therefore, the Director-General should have confirmed the complainant's entitlement to the recurrent benefits. Since he failed to acknowledge the discriminatory and, therefore, unenforceable character of the provision, his decision was based on a mistake of law and must be quashed.

The Organization had submitted that because of its failure to amend 103.14(b)(iii) the payment of the allowance to men was a mistake and the com-

plainant might not claim the benefit of equality in breach of the law. However, as the Tribunal pointed out, there was no breach of the law in paying the allowance to a man regardless of the nationality of his wife. On the contrary, it was paid in accordance with the rule and not by mistake.

As to her claim to reinstatement of the recurrent benefits, rule 103.14(h), under which the Director-General took his decision to withhold them, came into play only if the right to the allowance was lost under 103.14(b)(iii), (iv) or (v). Since, as was stated above, (b)(iii) was unenforceable insofar as it was discriminatory, it could have no effect. Since it had no effect, 103.14(h) did not come into play and there was no authority to withhold the benefits.

Lastly, the Organization had argued that the Director-General had exercised his discretion in accordance with objective criteria; however, the Tribunal noted that the applicability of the criteria in the exercise of his discretion depended on whether the non-resident's allowance had been validly withdrawn. In the present case, the allowance had been wrongly withdrawn and the Director-General did not have authority to exercise his discretion under 103.14(h) at all.

Fourteen women officials had lodged applications to intervene on 21 February 1989. All of them had formerly been paid the non-resident's allowance but lost it on marriage. Some of them also had lost some or all of the recurrent and the retirement benefits. The Tribunal observed that none of the interveners was barred by any lapse of time from claiming entitlement to the non-resident's allowance and to the other benefits. Being unlawful, the discriminatory provision in 103.14(b)(iii) was unenforceable. Acquiescence was not a valid plea open to the Organization and a woman staff member might at any time object to discriminatory treatment. The interveners, however, must be in the same legal and factual situation as the complainant, and in the present case they were not, and for that reason the Tribunal did not allow their applications. Of course, they could make individual claims and the Board would presumably apply the principles set out in the present judgement.

For the above reasons, the Tribunal ordered the Organization to pay the complainant all sums due from the date of her marriage in respect of home leave, family visit, education grant and travel in respect of dependants which it would have paid to a man receiving the non-resident's allowance and married to a Frenchwoman, and 15,000 French francs in costs. The applications to intervene were dismissed.

C. Decisions of the World Bank Administrative Tribunal[21]

1. Decision No. 78 (5 May 1989): Charlotte Robinson v. the International Bank for Reconstruction and Development[22]

Complaint against advice received from Bank regarding United States tax liability on commuted pension payments — Question of jurisdiction of the Tribunal — Advice to staff members given by Bank must be reasonable

The Applicant, a United States citizen, retired from the Bank on 31 October 1986 and exercised the option to withdraw a "commuted" portion of her pension in the belief that the lump sum would be free from taxation under United States law. That belief derived in part from a seminar she had attended in April

1986 which had been sponsored by the Bank's Personnel Management Department. On 8 August 1986, she consulted a Pension Information Assistant of the Bank and was accurately informed that the Applicant could withdraw a commuted sum from her pension shortly after retirement without fear that it would be subject to United States income tax. On 16 August, a Conference Committee of the United States Congress tentatively agreed on a tax reform bill that would resolve differences between the House and Senate versions passed in the previous months, and, on 25 August, an unofficial summary of a tax reform bill was forwarded by United States authorities to the Respondent. On 23 September 1986, the full text of the bill and supporting report reached the Respondent. On 22 October 1986, the bill became law and the final text of the statute, which contained a retroactive provision effective 2 July 1986, was received by the Respondent on 3 November. The Applicant retired on 31 October 1986, and the Respondent informed her at the turn of the year that the commuted pension payments she received in November and December 1986 would be subject in large part to United States income tax.

In February 1987, she once again contacted the Pension Information Assistant, who informed her that there was nothing the Bank could do for her. She ultimately contacted the Ombudsman in June 1987, who accurately informed her that a result favourable to the staff member in an appeal pending before the Appeals Committee would be extended by the Bank to her case as well. She filed an appeal with the Appeals Committee on 19 August 1987.

The Respondent challenged the Tribunal's jurisdiction, in that when the Applicant consulted the Pension Information Assistant in February 1987, she had neither sought nor received an "administrative decision" from which an appeal could ultimately be taken to the Tribunal; she had merely claimed that the Pension Information Assistant had failed to give accurate advice. On the other hand, the Respondent claimed that the Applicant had failed to invoke in a timely manner her internal administrative review, but such review applied only to "review of an administrative decision" pursuant to staff rule 9.01, paragraph 3.01.

However, the Tribunal observed that it was understandable that there could be uncertainty on the part of the Applicant as to whether the Bank's internal administrative review provisions in staff rule 9.01 were applicable and as to whom the Applicant should turn to for recourse. She was therefore not unreasonable when she moved promptly to seek the advice of the Staff Association and then of the Ombudsman. The Applicant might well have moved equally promptly to file an appeal with the Appeals Committee had she not been accurately advised by the Ombudsman that she need not do so because of a pending appeal the Bank had agreed to apply to her should the outcome favour the staff member. The Tribunal was of the view that staff rule 9.01 and its provisions for administrative review should not be construed in an overly technical manner. Those provisions were designed to rectify misunderstandings and to resolve a wide range of claims by staff members in an expeditious but essentially informal manner. Between the Bank and its staff members, there were often ongoing communications and letters and memoranda exchanged that sometimes rendered it unclear whether firm decisions had been made and time periods crystallized. As the present case showed, there might have been ambiguities about whether the administrative review procedures were intended to apply at all. Given the

fact that those provisions were designed to be utilized by all categories of staff members, most of them lacking legal expertise and most of them presumably acting without the aid of counsel at this relatively early dispute stage, the Tribunal concluded that they should be applied flexibly, in accordance with their terms and spirit.

The Respondent also had argued that the case was "moot" because there had been no "administrative decision" that the Tribunal had jurisdiction to review. The statute of the Tribunal, however, did not limit its jurisdiction to the review of only affirmative decisions by the Bank. It was clear that claims of nonfeasance were as much within the Tribunal's jurisdiction as claims of improper affirmative decisions. If the contract of employment or terms of appointment of a staff member imposed an obligation upon the Bank to act and an improper failure to act resulted in injury to a staff member, the Tribunal was given the power to redress that injury.

The Tribunal concluded that the Applicant had adequately framed her claim as one for the "non-observance of [her] contract of employment or terms of appointment", i.e., that the Respondent had undertaken to provide accurate tax advice to its retiring staff members, that she reasonably had relied on that understanding and that the Respondent had neglected to inform her in a timely manner of the retroactive change in the United States tax law so that she might accordingly conform her decisions regarding the commutation of pension payments.

The Tribunal observed that the Bank had undertaken, through general information seminars and through individualized counselling of staff members by Pension Information Assistants, to keep its staff members abreast of pertinent legal developments that bore upon their compensation and other terms of employment. By doing so, the Bank could properly be expected to act reasonably in the circumstances, keeping in mind that reasonably offered advice would sometimes prove ultimately to be wrong. The Bank therefore might not intentionally or recklessly or carelessly give inaccurate information to its staff members, knowing that the information would be utilized by staff members in making important decisions regarding their employment.

In this regard, the Tribunal noted that the advice provided at the April 1986 seminar and the advice given by the Pension Information Assistant on 8 August were sound. However, the record before the Tribunal demonstrated that the retroactivity feature that was incorporated in the tax bill and report could reasonably have come to the attention of the Bank on 23 September 1986 and that its passage by the United States Congress had taken place by 27 September. The Respondent had more than one month in which to become apprised of the retroactivity provision in the bill, to identify that the change was of pertinence to Bank staff members, and to contact the 10 to 15 staff members whose pension payment would fall within the statutory retroactivity period.

It also was noted by the Tribunal that all staff members could have had recourse to their own individual tax attorneys or advisers during the period of uncertainty in the legislative revision process and that that was particularly true given the expressions of doubt and unpredictability on the part of the lecturers at the April 1986 seminar. But the Bank had held out the Pension Information Assistants as providers of pertinent information in the period after the seminar and it appeared that at the meeting between the Applicant and the Pension Infor-

mation Assistant on 8 August 1986 the advice given the Applicant contained no suggestion that she needed any further advice to keep abreast of legislative developments. For those reasons the Tribunal concluded that the failure to inform the Applicant of the adverse tax consequences of her pension payments until December 1986 was a violation of the Respondent's duty to act reasonably in all the circumstances.

The Tribunal decided that the Respondent pay the Applicant a sum equal to the difference between the Applicant's federal and state tax liability on her pension receipts as calculated according to the cost-recovery and exclusion-rate methods, with interest, and $1,000 in attorney's fees and costs.

2. Decision No. 81 (22 September 1989): Trent John Bertrand v. International Bank for Reconstruction and Development[23]

Non-selection to a post during 1987 Bank reorganization — Question of time limits regarding Applicant's reply — Tribunal's competency in the matter — Appropriateness of considering policy views of staff members in selection process — Importance of factual support for factor given negative weight in selection process — Detailed allegations and factual support of Applicant's case shifted burden to the Respondent to disprove — Assessment of damages

The Applicant began his association with the Respondent as a consultant while he held a tenured professorship at a university in the United States. Subsequently, effective 7 February 1983, he was given a regular appointment at the Bank, as a Senior Economist, and in January 1985 the Applicant resigned his tenured position at his university. In October 1985 he was promoted to the position of Senior Economist (level 25), and in April 1986 he was promoted to level 26 as Chief, Economics and Policy Division, Agriculture and Rural Development Department, Operations Policy Staff. During the course of his work, the Applicant had several disagreements on important policy and analytical issues with his director, and in the Applicant's Performance Review for 1986/87, his director noted the adverse effect of their disagreement upon their working relationship.

During the 1987 reorganization of the Bank, the Applicant was not offered a position at level 26 during the management-selection process set forth in staff rule 5.09. On 12 June 1987, prior to the start of the selection process for staff generally, the Applicant elected separation from the Bank with the Enhanced Separation Package, and he filed a timely appeal on 28 March 1988 with the Appeals Committee, challenging the fairness of the Bank's decision not to offer him a position at level 26.

The Applicant filed his reply more than a month beyond the date provided in rule 9 of the Rules of the Tribunal. He had requested that the Tribunal exercise its authority under rule 25 to modify the time limit, in view of the fact that he was on an extended trip abroad when the Respondent's answer to his appeal was transmitted to his home in the United States and he did not receive the answer until his return. The Tribunal concluded that that fact did not constitute "exceptional" circumstances as required in rule 25 to justify extending the time limit for filing the Applicant's reply. When the Applicant filed his application, he should have been able to anticipate when the Respondent would file its answer, and he therefore could have made some arrangements before leaving the

country so as to assure his prompt receipt of the answer. Alternatively, he might in advance have filed a request with the Tribunal invoking grounds justifying a suspension of the running of time for filing his reply. Adherence to the time limits set forth in the Rules of the Tribunal was to be expected, and the Tribunal therefore confirmed the decision of the President to deny acceptance of the Applicant's reply.

The Tribunal observed that the decision not to select the Applicant had been taken in the exercise of a discretionary power and the Tribunal had previously held that it was not for the Tribunal to substitute its own judgement for that of the competent organs of the Bank. Furthermore, the Tribunal would only interfere with the exercise of such discretion in the event the decision constituted an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

The Respondent had stated that it was legitimate for the director to take into account policy differences and the Applicant's effectiveness, or lack thereof, in arguing his views and that the managerial selection process was a very competitive one and that the skills and talent of others were deemed superior to the Applicant's. The Tribunal considered, as a matter of law, that it was not inappropriate for the Bank to take policy differences into account in the selection process. However, in any particular case, there must at the least be some plausible indication that there was factual support for the factor given negative weight, that such factor had not been weighed in a manner that was discriminatory when compared with its application to other staff members and that the weight given to such factor was not otherwise arbitrary or manifestly unreasonable. Similarly, the weight given by senior managers to policy differences should properly turn upon such considerations as the level and responsibilities of the staff member, the position-relationship with his or her superior, and the traditions of the discipline or of the work unit and the manner in which such differences are articulated.

In that regard, the Tribunal noted that the Applicant was a division chief at the time of the management-selection round of the 1987 reorganization, and although that imposed upon him the duty to conform his decisions and actions to Bank policy it was also true that staff members at that level could reasonably be expected frankly to air their differences with their superiors when preparing policy statements. Moreover, the record supported the conclusion that robust mutual criticism was quite characteristic of the working relationships within the Applicant's department and that the Applicant appeared not to have been previously admonished therefor. The Tribunal also observed that it was clear that by the time of the management-selection round a personal element had crept into the relationship between the Applicant and his director and indeed the director was candid enough to concede that he might have been partly to blame therefor.

The Tribunal concluded that in the light of all those factors, including the detailed allegations and factual support presented by the Applicant in his pleas, that his case should properly be treated as one in which the burden of proof moved to the Respondent to show that Bank management acted fairly to the Applicant, rather than resting upon the Applicant to show that the Bank acted unfairly. In the typical case in which the Applicant pointed to specific reasons for casting serious doubt upon the fairness of the Bank's selection process, it was for the Bank to dissipate that doubt by providing the facts that were readily available to it in order

to show no more than its discretion had been fairly exercised. The Bank had not attempted to discharge that burden, other than with conclusory statements relating to the content and manner of assertion of the Applicant's policy views, and the perceived superiority of other candidates for managerial positions. It was the opinion of the Tribunal that those statements were insufficiently detailed to discharge the Respondent's burden of demonstrating that its decision-making process had been based upon giving no more than their due weight to legitimate factors.

The Applicant had requested compensation in the amount of three years salary or more for violation of his rights and for loss of his tenured professorship given up in order to join the Bank. He also had requested reasonable legal fees. Upon his non-selection to a level-26 position in the reorganization, the Applicant chose, as Bank regulations expressly permitted him to do, to leave the Bank with the Enhanced Separation Package and the Respondent estimated that by doing so he received between $30,000 and $63,000 more than he would have received had he separated from the Bank under the usual terms provided in staff rule 7.01. The Respondent further correctly pointed out that, under the Tribunal's decision in *Harrison*, Decision No. 53 (1987), that increment must be taken into account in any calculation of damages, such that an Applicant demonstrated that the injury suffered was in excess of that increment.

The Tribunal concluded that such a demonstration had been made. The Tribunal considered that, in the calculation of damages, weight should have been given to the Applicant's extended service as a consultant to the Bank before he joined the staff full-time, a factor that accounted for the Bank's waiver of the Applicant's initial probationary period and his quick rise to a position as division chief. Taking that factor into account and taking into account the Tribunal's conclusion that the Bank had not demonstrated that the Applicant's non-selection was consistent with his conditions of employment, and also considering the rule set down in *Harrison*, it was the conclusion of the Tribunal that the Respondent should pay the Applicant damages in the amount of $80,000 net of tax. As regards the request for attorney's fees, the Tribunal noted that the Applicant had prepared his application without the assistance of counsel and counsel had not entered the case until the preparation and attempted filing of the reply, which the Tribunal had not accepted because of its untimeliness. All other pleas were dismissed.

3. Decision No. 84 (22 September 1989): Maysoon Abbass Sukkar v. International Bank for Reconstruction and Development[24]

Question of an obligation to retain staff member after external training authorized by the Bank — Question of an implied obligation

The Applicant joined the Bank on 10 November 1969 as a Clerk Typist and until 30 September 1987, the date of termination of her employment, she served the Respondent in several departments successively as Secretary, Administrative Secretary, Administrative Assistant and ultimately as Operations Assistant in the East Asia and Pacific Country Programs Department. The Applicant had expressed an interest in formal training which was endorsed by her supervisors and her department director. The Bank authorized the Applicant to complete a Bachelor of Science degree in Economics at American University, on the basis that her studies

would be beneficial both to the Bank and her, and the Bank committed itself to reimburse the Applicant three fourths of her tuition and to authorize an interest-free salary advance of up to three months' net pay. The Applicant's appointment also was converted to part-time status from 1 September 1982 to 31 December 1983. Subsequently, in September 1983 the Applicant expressed a wish to pursue her studies at the graduate level. Her supervisors again endorsed her request and on 12 November 1984 she sent a detailed proposal to her division chief for an external training programme to pursue a Master's degree full-time with financial support from the Bank, stating that her ultimate goal was to qualify for a position of Project Economist or Operations Officer. It was ultimately agreed that the Applicant's study would be pursued from 1 September 1985 to 31 May 1986, and during that period the Applicant would continue to work for the Bank 12 hours a week while the Bank would pay her 80 per cent. of her salary, as well as pay for all tuition, fees and books. She would also serve the Bank for at least three years upon completion of her studies, and should she leave before that period she would be required to repay the Respondent a prorated portion of the cost incurred by the Respondent in support of her study programme. During the processing of the Applicant's request for study, it was made clear that the proposed study was aimed at qualifying the Applicant to perform better the work of an Operations Assistant which she currently was and that there was no implicit commitment to or encouragement of the Applicant's promotion on the Bank's part. In May 1986, the Applicant obtained her Master's degree in International Public Policy and in August 1986 enrolled at her own expense for a Master of Arts degree in Economics at American University; however, the Bank paid the tuition expenses for specific courses that were relevant to the Applicant's work. In the fall of 1986, she returned to full-time status with the Bank.

Subsequently, during the 1987 Bank reorganization, no suitable post could be identified for her, in spite of great efforts on the part of the Bank, and on 28 October 1987 she agreed to separation from the Bank with an Enhanced Separation Package. In March 1988, the Applicant filed an appeal with the Appeals Committee, not for non-selection in the course of the 1987 reorganization, but for compensation for an alleged breach of the contract of employment, because the Bank had failed to meet its obligations flowing from its training policy. In other words, the Respondent had assumed an obligation under its training policy to provide her with the opportunity to demonstrate and employ the newly acquired skills which she had obtained through the studies undertaken, which were selected by her supervisors, monitored by them and partly financed by the Respondent. Furthermore, the Applicant asserted that an implied obligation on the part of the Respondent resulted from the fact that she had assumed, on her part, the obligation to stay with the Bank for a specified period of time. This, in the Applicant's contention, created a bilateral contract establishing mutual obligations regarding service to the Bank.

In the Tribunal's opinion, however, that agreement did not signify the existence of a corresponding, mutual obligation on the part of the Bank to retain for a period of time the services of the beneficiary of a full-time external training programme. There was no indication that the Bank had given up its power of declaring a position redundant. This was confirmed by the letter of 23 September 1985 approving the Applicant's study programme, where reference was made to the possibility of a termination grant and of resettlement upon termina-

tion. In any event, as noted by the Tribunal, the "mutuality" sought by the Applicant in her bilateral contract was already provided when the Bank paid a substantial portion of her educational expenses.

The Applicant further contended that by inducing her to enter on a prolonged training programme, partially paid for by the Respondent and supervised by its Training Division, the Bank assumed an implied obligation, resulting from the reasonable expectations of the parties, to the effect that she would be entitled to return to full-time work to use and demonstrate her newly acquired skills. However, the record indicates that while the Applicant intended to pursue a Master's degree, so as to qualify for a post as Project Economist/Operations Officer, her supervisors insisted that the acceptance of her educational programme had not implied any commitment or encouragement for promotion or reassignment, and made clear that she would be returning to work at her previous level as Operations Assistant, which she did.

In the light of the foregoing considerations, the Tribunal concluded that there was no legal or contractual basis which supported the claims advanced in the present application, and consequently the appeal was dismissed.

4. Decision No. 85 (22 September 1989): Pierre De Raet v. International Bank for Reconstruction and Development[25]

Non-selection during 1987 reorganization — Functions of the Tribunal — Necessity of establishing a prima facie case — Error of terminating staff member on redundancy ground for poor performance instead of for lack of skills — Principle 2.1 of the Staff Employment — Competency of Tribunal in review of staff member performance report

The Applicant, a Belgium national, had joined the Bank in 1974 at the age of 40, on a regular appointment, Level L, as a Loan Officer for Senegal in the West Africa Region, where he worked for ten years, and effective 1 January 1985 was transferred to the Indian Ocean Division of the Eastern and Southern African Region as Senior Loan Officer. In the Applicant's Annual Performance Review (APR) for 1985/86, it was concluded that while there were solid achievements, the Applicant had not fully met the demanding, yet still emerging, standards being projected for future program officers. In June 1987, the Applicant received a "less than fully satisfactory" salary increase, and was declared "redundant" under the 1987 Reorganization. In the Applicant's APR for 1986/87, his division chief noted several of the Applicant's strengths and achievements in traditional loan officer functions as well as his weaknesses, such as delays in processing of final products. He concluded that the applicant's skills and experience should not be redundant to the Bank. Ultimately, he was not selected for another post and accepted the Enhanced Separation Package (Package B) and appealed.

Before going into the merits of the case, the Tribunal pointed out that the relationship of the Appeals Committee to the Tribunal was not that of an inferior to a superior court. The proceedings before the Tribunal were entirely separate and independent despite the fact that recourse to the Appeals Committee was a condition precedent to the commencement of proceedings before the Tribunal. The function of the Appeals Committee was to assist the management of the Bank to determine for itself whether there had been a failure on the part of the Bank. The function of the Appeals Committee ended with its recommenda-

tion, which the Bank might or might not accept. Contrary to what the Applicant had claimed, the report of the Committee was never regarded as "the basis" upon which the Tribunal dealt with cases and was in no way binding upon it. The Tribunal was the only body within the Bank that dealt with complaints judicially and it did so only on the basis of the evidence before it.

Furthermore, the duty of the Tribunal was to assess the Bank's decision in the matter, as to both its content and the manner in which it had been made, to determine whether it constituted an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

Moreover, it was not the obligation of the Bank to demonstrate that there had been no discrimination or abuse of power, not, that is, until an Applicant had made out a prima facie case or had pointed to facts that suggested that the Bank was in some relevant way at fault. Then the burden would shift to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner. (See also *Bertrand*, Decision no. 81 (1989).)

As for the merits of the case, the Tribunal observed that there was room for uncertainty as to the current manner in which to interpret staff rule 7.01, section 8.02(c), under which the Applicant's redundancy notice was issued:

> "Employment may become redundant when the Bank or IFC determine in the interests of efficient administration that ... (c) a position has been redesigned to the extent that the incumbent is no longer qualified to perform the duties."

The Tribunal concluded that the probability, in an organization such as the Bank, where every position had its job description, was that the correct understanding of subsection (c) was that formal "redesign" was called for and that a written product of that design in the shape of a new job description was required. Otherwise, there was a risk that the staff member might be deprived of the benefits of the predictability of their activities and the standards implicit in an expressly formulated job description. There was also a risk that, in the absence of such explicit redefinition of job content, Bank management might too readily fall into the error of terminating on redundancy grounds the services of a staff member whose superiors were in reality moved by the poor quality of his performance rather than by his lack of the skills newly incorporated in a "redesigned" position. In that regard, the Tribunal considered that there was some evidence that precisely that error may have occurred in the critical decision to terminate the Applicant on the basis of redundancy.

Another aspect of the redundancy process that occasioned concern of the Tribunal, namely, that it appeared that it could take place without the staff member, whose position was being redesigned and whose qualifications for the new position were being examined, being informed of what was happening. That had occurred in the present case. As noted by the Tribunal, during much of the period when the Applicant was discussing with his managers his APR for 1985/86, in the apparent belief that that was the only process going on at the time that might affect his position in the Bank, the redundancy process was concurrently taking place, unknown to the Applicant. His post was being redesigned and determinations were being made by the Bank that the Applicant was not qualified to perform the duties of his position. In that regard, the Tribunal pointed out

that the undated manuscript prepared by the Bank, which had not been shown to the Applicant, appeared to be the link connecting the Applicant to the operation of the redundancy rules, and was defective. It contained no suggestion that the Applicant's position had been "redesigned", but did contain adverse comments on the Applicant expressed in term of his performance and not at all in terms of his possession of the requisite skills. The Tribunal observed that principle 2.1 of the Staff Employment stated: "The Managers shall at all times act with fairness and impartiality and shall follow proper procedure in their relations with staff members."

The Applicant also complained of his 1985/86 APR, wherein his performance had been rated "less than satisfactory". The Tribunal noted that it was not for it to substitute its own determination of the Applicant's performance for the Bank's. At most, the Tribunal could find that the rating had been reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case or other departures from established procedures, bias, prejudice the taking into consideration of irrelevant factors or manifest unreasonableness. The Tribunal concluded that the proper procedures had been followed, pursuant to staff rule 5.03, section 2.02, and that the conclusions expressed in the 1985/86 APR were not manifestly unreasonable and therefore unacceptable.

In conclusion, the Tribunal was of the opinion that the injury done to the Applicant by the wrongful determination of redundancy had in all the circumstances been sufficiently compensated by the increment in separation benefits that the Applicant had received under Package B.

For the above reasons, the Tribunal decided that the undated manuscript memorandum and the redundancy notice be removed from the Applicant's personnel file and the pleas in the application were dismissed.

NOTES

[1]In view of the large number of judgements which were rendered in 1989 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. 439 to 470 of the United Nations Administrative Tribunal, Judgements Nos. 952 to 985 of the Administrative Tribunal of the International Labour Organization and Decisions Nos. 75 to 86 of the World Bank Administrative Tribunal, see, respectively: *Judgements of the United Nations Administrative Tribunal, Numbers 439 to 501, 1989-1990*; *Judgements of the Administrative Tribunal of the International Labour Organization*: 66th Ordinary Session; and *World Bank Administrative Tribunal Reports*, November 1989.

[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 accor-

dance 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]Roger Pinto, Vice-President, presiding; Ahmed Osman and Ioan Voicu, Members.

[4]Arnold Kean, President; Jerome Ackerman, Vice-President, and Ioan Voicu, Member.

[5]Roger Pinto, Vice-President; Samar Sen and Ioan Voicu, Members.

[6]Roger Pinto, First Vice-President, presiding; Jerome Ackerman, Second Vice-President; and Samar Sen, Member.

[7]Ibid.

[8]Ibid.

[9]744 F.2d 244 (*Federal Reporter*, Second Series).

[10]633 F. Supp. 1023 E.D. Pa. 1986 (*United States Federal Supplement*).

[11]Roger Pinto, First Vice-President, presiding; Jerome Ackerman, Second Vice-President; and Ahmed Osman, Member.

[12]Arnold Kean, President; Jerome Ackerman, Vice-President; and Samar Sen, Member.

[13]Roger Pinto, Vice-President, presiding; and Ahmed Osman and Ioan Voicu, Members.

[14]Arnold Kean, President; Jerome Ackerman, Vice-President; and Ioan Voicu, Member.

[15]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 1989, the World Health Organization (including the Pan American Health Organization), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization 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 (Interpol) and the International Fund for Agricultural Development. 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.

[16]Jacques Ducoux, President; Mella Carroll, Judge; Edilbert Razafindralambo, Deputy Judge.

[17]Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; the Right Honorable Sir William Douglas, Deputy Judge.

[18]Jacques Ducoux, President; Mella Carroll, Judge; and the Right Honorable Sir William Douglas, Deputy Judge.

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

[20]Ibid.

[21]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.

[22]Eduardo Jiménez de Aréchaga, President; Prosper Weil and A. Kamal Abul-Magd, Vice-Presidents; and Robert A. Gorman, Elihu Lauterpacht, Charles D. Onyeama and Tun Mohamed Suffian, Judges.

[23]Ibid.

[24]Ibid.

[25]Ibid.