	Award
In respect of stenographic, typing and translating expenses (collective claim : $1,149.50)	$1,100.00
In respect of outside attorneys' fees (collective claim : $3,000.00)	$1,000.00
In respect of individual supplementary claim of Mlle. Aubert (claimed : $440.00)	nil
In respect of individual supplementary claim of Mlle. Goldschild (claimed : $461.00)	nil
	$2,100.00

(*Signatures*)

DIGVIJAYSINHJI
President

Mani SANASEN
Executive Secretary

Judgement No. 4

Cases Nos. 17 to 21 : Howrani and 4 others *Against:* **The Secretary-General of the United Nations**

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Lieutenant-General His Highness the Maharaja Jam Saheb of Nawanagar, President ; Mr. Rowland Andrews Egger, Vice-President ; Dr. Emilio Oribe ; Dr. Hamed Sultan, alternate member ;

Having been seized of the applications presented by Mr. R. F. Howrani, Mrs. M. J. Keeney, Miss J. Picou, Mr. B. Alper and Miss M. Kehoe alleging the improper termination of their temporary-indefinite contracts, in the case of four Applicants and, in the case of Mr. Alper, the improper decision of the Secretary-General not to renew his fixed-term contract ;

Having received the documentation of the cases on the following dates :

Case No. 17. Howrani . . Application : 27 April 1951
Respondent's answer :
20 June 1951 ;

Case No. 18.	Keeney . .	Application : 7 June 1951 Respondent's answer : 12 July 1951 ;
Case No. 19.	Picou . . .	Application : 28 June 1951 Respondent's answer : 31 July 1951;
Case No. 20.	Alper . . .	Application : 23 July 1951 Respondent's answer : 17 August 1951 ;
Case No. 21.	Kehoe . .	Application : 30 July 1951 Respondent's answer : 3 August 1951 ;

Having heard Mr. Frank J. Donner, Counsel for the Applicants ; Mr. Axel Serup, later Mr. A. H. Feller, Counsel for the Respondent ; and Mr. Telford Taylor, representing the Staff Association of the United Nations ;

Having received briefs from the two parties on 9 August together with additional statements from the Respondent on 17 August and from the Applicants on 20 August ;

Having agreed to restrict the preliminary hearings to statements on the legal issues respecting two points common to the five cases ;

Pronounced in public hearing on 25 August 1951, the following judgement :

The legal issues common to the five cases before the Tribunal are : (1) the power of the Secretary-General with respect to the termination of temporary-indefinite contracts and the decision not to renew fixed-term contracts ; and (2) the nature of the obligation, if any, of the Secretary-General to provide, at the request of the employee affected, specific reasons for the action taken in termination proceedings or in notice of intention not to renew.

The examination of these legal questions does not involve at this stage the consideration of what rule has been violated or of whether or not a rule has been violated.

It requires, instead, the consideration of what are actually the regulations and rules that govern these issues and of what is the meaning of these regulations and rules in themselves and in the general context of the provisions that regulate the relationship between the Secretary-General and the members of the Staff.

The Secretary-General contends that he has the power to terminate temporary-indefinite contracts at any time " without showing cause." His reasoning involves the construction of various regulations approved by the General Assembly and rules promulgated by the Secretary-General. The authority asserted is a broad one, and raises critical issues

affecting both general and personnel management in the United Nations Secretariat.

The United Nations Secretariat is a young organization which, since its establishment, has been almost continuously confronted with new problems and programmes demanding a high degree of flexibility and adaptability in deploying its resources. There are no indications of prospective change in its operating environment. In those circumstances, it is essential that broad powers be vested in the Secretary-General to adapt the operations of the Secretariat to achieve the goals of efficient and economic operation, and to meet the requirements imposed by the General Assembly with respect to the improvement of the standards of the Secretariat. The only effective limitation upon these powers in the present circumstances of the United Nations lies in the regulation of the manner of their exercise. It is also true that the exercise of broad powers without adequate procedural safeguards inevitably produces arbitrary limitation upon the exercise of any power. The maintenance of the authority of the Secretary-General to deal effectively and decisively with the work and operation of the Secretariat in conditions of flexibility and adaptability depends, in its exercise, in large measure upon the strict observance of procedural safeguards. In a very real sense, the mode must be the measure of the power.

In the view of the Administrative Tribunal, the construction of a rule or regulation must respond to the following requirements : (1) the interpretation must be a logical one ; (2) it must be based upon an attempt to understand both the letter and the spirit of the rule under construction, and (3) the interpretation must be in conformity with the context of the body of rules and regulations to which it belongs, and must seek to give the maximum effect to these rules and regulations.

For the purposes of clarity, the Tribunal would like to point out that the so-called temporary-indefinite contract utilized by the United Nations is *sui generis*. It has no counterpart in the contractual arrangements of specialized organizations, and is not encountered in the field of administrative law generally. The amorphous relationship which this contract establishes is rather more closely akin to the status relationship of a national civil servant employed under a " statut général des fonctionnaires " or " civil service law " than to a contractual relationship recognizable at public law.

As of 1 July 1951, 1,902 of the 3,390 employees members of the Headquarters Staff of the United Nations held temporary-indefinite contracts. According to staff rule 107, the Secretary-General anticipates that staff member holders of temporary-indefinite contracts can complete 9 or more years of service with the United Nations.

The first question to be examined in connexion with the power of

the Secretary-General with regard to the termination of temporary-indefinite contracts is the consequences of the amendments introduced in 1947 to the Staff Regulations by the General Assembly, viz., the revision of regulation 21 and the addition of new regulation 12 A.

The task of the Tribunal is facilitated by the fact that Respondent has not claimed that, under these amendments, the Secretary-General has unlimited powers in this respect. On the contrary, the Counsel for Respondent declares emphatically that " The Secretary-General himself is bound by the Provisional Staff Regulations, resolutions of the General Assembly, provisions of the Charter and guarantees accepted by him in the Staff Rules " (Brief by Respondent, page 6).

But the fact that, in consequence of the clarifying amendments introduced into the Staff Regulations in 1947, the Secretary-General is no longer limited in his power to terminate temporary-indefinite contracts by the restrictive provisions of regulation 21 (and staff rule 102), does not imply by itself that the Secretary-General is empowered to terminate temporary-indefinite contracts for any reason he might consider proper to apply in a given case, whatever that reason might be, or simply for no reason at all.

As the Counsel for Respondent aptly summarized the situation, " under these rules the Secretary-General enjoys a considerable freedom in terminating members of the Staff ". But, as he himself admits without reservation, this does not mean that the Secretary-General has unlimited powers in this respect.

It must be concluded that the General Assembly, when it waived the restrictions imposed by regulation 21 (and staff rule 102) in the case of the termination of temporary contracts, did not intend to give and did not give to the Secretary-General an absolutely discretionary power in respect of terminations.

On the contrary, by new regulation 12 A adopted simultaneously with the revision of regulation 21, the General Assembly conferred upon the Secretary-General the power to determine the " conditions " to which temporary contracts should be subject, making thus absolutely clear its will that temporary contracts and their termination must be subject to certain conditions which it permitted the Secretary-General to elaborate. The same idea of the General Assembly is more specifically enunciated in staff rule 61 issued by the Secretary-General in implementation of regulation 12 A, which states that " Temporary appointments are granted for such periods and under such conditions as the Secretary-General may determine."

Counsel for Respondent has stated before this Tribunal that, in the exercise of the powers granted to him by regulation 21 as revised and regulation 12 A, the Secretary-General has issued staff rules 61, 102 and 103 (c), introduced into the Administrative Manual in 1948.

The Tribunal cannot agree that rules 61 and 102 — which merely

re-state the provisions of regulations 12 A and 21, and Rule 103 (c), the meaning of which the Tribunal will establish in another part of this decision, inasmuch as they do not determine the periods and the conditions to which these contracts are to be subject — constitute an adequate implementation of staff regulations 12 A and 21.

The fact that the Secretary-General has not, to date, considered it appropriate to determine the " conditions " — or according to his own interpretation in rule 61, the " periods " and the " conditions " — to which temporary contracts of the type before the Tribunal are to be subject, either in the Staff Rules or in the individual letters of appointment of the applicants, does not deprive the holders of temporary-indefinite contracts, in the opinion of the Tribunal, of the rights and guarantees to which they are entitled as members of the international civil service of the United Nations, among the more essential of which are the right to appear before the Appeals Boards and the right to be heard by this Tribunal.

The second question to be examined in connexion with the power of the Secretary-General in the termination of temporary-indefinite contracts is the question of the obligation, if any, of the Secretary-General to give to the terminated official, or to state before this Tribunal, the reasons for the termination as distinct from the obligation, which is rightfully admitted by Counsel for Respondent as binding upon the Secretary-General, of exercising his powers to terminate temporary-indefinite contracts in a reasonable and responsible way and not capriciously or arbitrarily.

While recognizing that the Secretary-General does not claim " unlimited powers in this respect " (terminations of temporary contracts) and that he himself is bound by specific obligations (Brief by Counsel for Respondent, page 6), Counsel for Respondent has expressed before this Tribunal that he wishes emphatically to declare " that under the Staff Regulations and Staff Rules in force, the Secretary-General is under no obligation whatsoever to specify his reasons for termination of staff members " (Brief by Counsel for Respondent, page 22). The Tribunal is not advised whether this emphatic claim of Counsel for pointments or is also intended to cover the cases of termination of other types of appointments and indeterminate appointments in particular.

Through its answers to the Applicants, Counsel for Respondent has stated clearly that, on the basis of staff rule 103 (c), the Secretary-General has the power to terminate temporary contracts at any time without showing cause. The successive statements of the Administration both before the Appeals Board and this Tribunal have been consistent with that interpretation of its powers in cases of termination. Respondent refers only to terminations of temporary-indefinite ap-

The Tribunal cannot accept as valid the interpretation advanced by

Counsel for Respondent of staff rule 103 (c) and of the Staff Regulations and Staff Rules in general as giving to the Secretary-General, when a temporary contract is terminated, the right to withhold the reasons of the termination, not only from the terminated official, but also from the Appeals Board and from this Tribunal.

In the case of rule 103 (c), its meaning and interpreation must be construed consistently with the other provisions of the Staff Rules and with Staff Regulations.

In the view of the Tribunal, in the actual context of the provisions of the Staff Rules enacted by the Secretary-General and in the light of the principles set forth by the General Assembly in the Staff Regulations, the object and scope of rule 103 (c) are clear and simple. The expression " at any time " in rule 103 (c) cannot be read as meaning " for any reason " or " without showing cause ".

Furthermore, the second part of rule 103 (c) is solely intended to determine that, in the case of the termination of a temporary contract, the terminated staff member must be given a period of notice of thirty days.

Rule 103 itself as a whole appears in the Staff Rules under the title of " Notice of Termination " and refers specifically in its five paragraphs to the different " notice periods " to which the members of the staff are entitled in case of termination.

The limited scope of rule 103 (c) and of the whole of rule 103 excludes any interpretation of its text as a general grant of unlimited power to the Secretary-General to terminate temporary contracts " at any time and without showing cause ", be it to the terminated official, to the Appeals Board or to the Tribunal.

Such an absolute interpretation would be in conflict with the power conferred upon the Secretary-General by the General Assembly in regulation 12 A which, according to rule 61, was merely that of determining the periods and the conditions to which temporary contracts would be subject, and with the relevant provisions of the Staff Regulations and the Staff Rules referring to the right of appeal before the Appeals Board and before this Tribunal.

It would also be inconsistent with the general rule of law according to which the clauses of a contract must not be interpreted as solely placing upon one of the parties all the burden and obligations, even when, as in the case of rule 103 (c), the clause had been drafted by one of the parties alone.

As the International Court of Justice stated recently, ". . . the first duty of a tribunal which is called upon to interpret and apply the provisions " of a legal text, " is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter ", and " It is

a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd." *(Competence of the General Assembly for the admission of a state to the United Nations, Advisory Opinion : I.C.J. Reports 1950, page 8.)*

As to the argument advanced by Counsel for Respondent to the effect that there is no provision in the Staff Regulations and in the Staff Rules creating an obligation on the part of the Secretary-General to give the reasons of the terminations, the Tribunal believes that such an interpretation must be based on a misunderstanding of the letter and the spirit of several significant articles of the Staff Regulations and the Staff Rules.

In the first place, the Tribunal wishes to stress the fact that, in the very words of the Preparatory Commission of the United Nations and of the General Assembly, the Staff Regulations, and the Staff Rules made for their implementation, embody " the fundamental rights and obligations of the staff." (*Report of the Preparatory Commission of the United Nations, Chapter VIII*, section 1, Recommendation (i), page 81 and General Assembly resolution 13 (I), paragraph 10).

Counsel for Respondent has admitted that the Secretary-General is bound by the provisions of the Provisional Staff Regulations and Staff Rules and that he is under specific obligations in that respect. But the obligations imposed upon the Secretary-General are not solely the obligations resulting from such provisions as regulation 10 (" men and women are equally eligible for all posts in the Secretariat ") and regulation 6 (right to national sentiments and political or religious convictions) that incorporate within the Staff Regulations certain guarantees of a normative character. The obligations of the Secretary-General are also the result of such provisions as regulations 15 (participation of the Staff in the discussion of questions relative to appointments and promotion) and 23 (machinery of inquiry and appeal) that create in favour of the staff guarantees of a constructive and procedural or formal character which are essential for the prevention or the resolution of conflicts.

These procedural guarantees are valid for all the members of the staff, whatever their type of contract.

Neither staff regulation 23 nor staff rule 145 or 149 or the Statute of this Tribunal makes a distinction between holders of indeterminate contracts and holders of temporary contracts that would exclude the latter from the jurisdiction of the Board or of the Tribunal. Where the law does not distinguish, it is not for the court to make distinctions.

The Secretary-General himself, when he requested the General Assembly in 1947 to revise staff regulation 21 with a view to excluding holders of temporary contracts from the restrictive requirements of its provisions in the matter of terminations, did not judge it appropriate

to make the same request to exclude holders of temporary contracts from the benefits of regulation 23. Nor did the Secretary-General issue a new rule excluding holders of temporary contracts from the protection afforded by staff rule 145.

If the intention of the Secretary-General had been to exclude holders of temporary contracts from the protection afforded by regulation 23 and by rule 145, he would have acted accordingly in 1947 and 1948. Not having done so in 1947 and 1948, the Secretary-General cannot claim before the Tribunal in 1951 that holders of temporary contracts, by reason of the temporary character of their appointment, and by virtue of rule 103 (c) are excluded from the protection to which permanent members of the staff are entitled before the Appeals Board.

In the case of the Administrative Tribunal, article 2 of the Statute is clear in its meaning that the Tribunal shall be open to " any staff member of the Secretariat of the United Nations ".

The Tribunal must conclude that staff members holding temporary-indefinite contracts of the type involved in the cases before it have a right to the guarantees afforded to the members of the staff by the Regulations and Rules concerning the Appeals Board and the Administrative Tribunal.

The Tribunal, on the other hand, considers that it is clear that the contention of Counsel for Respondent to the effect that the Secretary-General " under Staff Regulations and the Staff Rules in force, is under no obligation to specify the reasons for terminating staff ", is of such a nature that, if it were accepted by the Tribunal, it would bring about the frustration of the preceedings before the Appeals Board and this Tribunal, and would amount to the outright nullification of the guarantees established in favour of the members of the Staff in the same Staff Regulations and Rules and the Statute of the Tribunal.

In the specific cases before the Tribunal, it is appropriate to remember that, in the *Report of the Preparatory Commission of the United Nations,* it was clearly stated that :

> " Provisions for disciplinary measures and the termination of appointments are set forth in the Draft Provisional Staff Regulations. The purpose of these provisions is to assure adequate protection to all members of the staff while at the same time making it possible to terminate an appointment for serious misconduct or persistent failure to give satisfactory service." (Chapter VIII, section 2, page 93, paragraph 66.)

It would be impossible for this Tribunal, as it has been impossible for the Appeals Board, to exercise properly its jurisdiction and to arrive at positive conclusions in cases properly before it, if the reasons and considerations that constituted the basis of the action of the

Secretary-General were to remain in the inner conscience of the Administration.

The guarantees afforded to the members of the Staff by the Regulations and Rules require, not only that the Secretary-General be guided subjectively in his decisions by the imperative mandates of these Regulations and Rules, but equally that these decisions and their reasons be subject objectively to the consideration of the quasi-judicial machinery provided for as a guarantee in the same Regulations and Rules.

Counsel for Respondent calls the attention of the Tribunal to the fact that, in his opinion, there is no provision in the Staff Regulations and in the Staff Rules requiring the Secretary-General, when contracts are terminated, to state the reasons for the termination. He calls the attention of the Tribunal also to the fact that he has been unable to find a provision stating that obligation in the staff regulations and rules of various other international organizations.

The Tribunal has no intention of attempting to give in this decision an interpretation of regulations which, at the moment, are not under the jurisdiction of the Tribunal.

The Tribunal considers it its duty, however, to point out that even if it were proved that there is no provision in the Staff Regulations and Rules of the United Nations, or of any other international organization, requiring the Secretary-General to give the reasons of the terminations, the allegation of Counsel for Respondent would still have to be supported by other positive evidence to be accepted by the Tribunal.

In particular, the Tribunal wishes to stress the importance of the fact that it is clear that there is no provision in the Staff Regulations and Staff Rules of the United Nations authorizing the Secretary-General or giving him the power to withhold from the terminated official, from the Appeals Board, or from this Tribunal, in case of termination of contracts, the reasons of the terminations, and that, as far as it has been able to ascertain, no such provision occurs in any of the regulations and rules of any other international organization referred to by Counsel for Respondent.

In the absence of an express rule to that effect, the Tribunal cannot assume that so important a derogation of the general principles of appeals procedure and due process of law as would result from the claim of Counsel for Respondent to the effect that the Secretary-General can withhold his reasons for termination from the terminated official, the Appeals Board and this Tribunal, was in the mind of the Preparatory Commission and later, of the General Assembly in 1946, when it enacted the Staff Regulations and recommended the Staff Rules to the Secretary-General, and in 1949, when it approved the Statute of the Tribunal.

The Tribunal must declare, to the contrary, that the whole system of conditions and guarantees incorporated by the General Assembly in the Staff Regulations and in the Statute of the Tribunal is, in its opinion, very clear in indicating that the exercise by the Secretary-General of his powers in case of terminations which are appealed is subject to the procedures of review by the Appeals Board and to further appeal on certain causes to the Administrative Tribunal, and that these procedures involve necessarily the examination by the Appeals Board and the Tribunal of the reasons for the terminations and a decision as to their conformity with contractual and other stipulations.

In its interpretation of staff rule 145 and of the Statute of the Tribunal the Tribunal shares the opinion of the International Court of Justice that in cases like those before this Tribunal, full use must be made of the principle that the legal text must remain effective rather than ineffective : *Res magis valeat quam pereat.* As has been repeatedly stated by the International Court of Justice, " An interpretation which would deprive the . . . Treaty (Text) of a great part of its value is inadmissible " and " Particular provisions should be interpreted in such a manner as to give effect to the general purposes and objects of the Treaty (Text) provided that ' it does not involve doing violence to their terms.' (*I.C.J. Reports 1949*, page 24)" (*I.C.J. Reports 1950,* page 235).

The Tribunal believes, furthermore, that in accordance with the doctrine of implied powers (accepted in the constitutional law of the United States and recently applied by the International Court of Justice in one of its advisory opinions), it must be assumed that the General Assembly, when it created the Administrative Tribunal, and the Secretary-General, when he established the Appeals Board under the instructions of the General Assembly, have also invested these organs with the necessary competence and powers to allow them to exercise effectively their functions and their jurisdiction.

In accordance with the general principles of law, it must be then considered that these organs " have those powers which, though not expressly provided in the Charter, are conferred upon it (them) by necessary implication as being essential to the performance of its (their) duties." (*Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949,* page 182).

The above stated conclusions of the Tribunal refer only to " temporary-indefinite " contracts.

The Tribunal also wishes to refer to some of the additional arguments advanced by the Respondent in the hearings of 24 August.

In the first place, the Tribunal agrees that there exists an essential difference and distinction between the two kinds of contracts created by the General Assembly and regulated by the Staff Regulations and

the Staff Rules: the indeterminate contract and the temporary-indefinite contract.

The question before the Tribunal, nevertheless, is not whether there is a difference between these two types of contracts, which has been clearly admitted by the parties and by this Tribunal, but whether, in the termination of temporary-indefinite contracts, the Secretary-General has an absolutely discretionary power or whether, to the contrary, he is limited in his power by the restriction that there have to be reasons for these terminations and that these reasons are to be given to the terminated official.

The conclusions reached by the Tribunal to the effect that in the termination of temporary-indefinite contracts the Secretary-General should have certain reasons and that these reasons must be given to the terminated official do not destroy or nullify the basic distinctions between indeterminate and temporary-indefinite contracts. These conclusions only serve to clarify the existing differences.

In connexion with the questions before this Tribunal, it suffices to note in that respect that temporary contracts can be terminated at any time and in these terminations the Secretary-General is not limited to the three reasons prescribed for indeterminate contracts in regulation 21 and staff rule 102.

In the second place, the Tribunal feels it is necessary to state that there is a fundamental distinction to be made between the general political responsibility of the Secretary-General, as chief administrative officer of the United Nations, for its operation and its compliance with the directives issued to him by the General Assembly, and the specific contractual responsibility of the Secretary-General, as a party to a contract concluded with a member of the staff, for the proper execution and observance of the terms of that contract.

The general political responsibility of the Secretary-General, as chief administrative officer of the United Nations, has always existed and been made effective before the creation of the Administrative Tribunal, and still exists and is being made effective by the General Assembly. On the other hand, previous to the creation of the Administrative Tribunal, there was no organ of a national or of an international character before which the specific contractual responsibilities of the Secretary-General, as a party to a contract concluded with the staff members, could be made effective.

It is precisely because of that deficiency, of that absence of a competent jurisdiction, national or international, able to adjudicate in conflicts between the Secretary-General and the staff members with respect to their contracts that, first in the League of Nations, and then in the United Nations, an Administrative Tribunal was created.

It cannot be claimed, for these very reasons, that in the case of a specific type of contract with members of the Staff, the responsibility

of the Secretary-General for any of the various obligations created by that contract can be made effective only before the General Assembly.

Since it is obvious that private individuals and members of the staff cannot appear in their private capacity before the General Assembly with their claims against the Secretary-General for non-observance of contracts, to maintain that the responsibility of the Secretary-General for the observance of contractual rules is only to be made effective before the General Assembly amounts to denial to the aggrieved official of any remedy whatsoever, unless he succeeds in having his cause espoused by one of the national delegations.

The recourse to such " diplomatic protection " by delegations vis-à-vis the Organization in favour of the members of the Staff is one of the evils that the General Assembly and the Secretary-General have always tried to prevent because it would ruin the independent and international character of the Secretariat prescribed by the Charter.

The Tribunal wishes to refer also to the argument that according to the Respondent nowhere, " in the vast mass of records " of the five sessions of the General Assembly and the meetings of the Advisory Committee on Administrative and Budgetary Questions " was it said at any time that the Secretary-General, in dealing with the termination of a temporary-indefinite contract, is subject to these specific limitations which are now argued upon (the Tribunal) " (A/CN.5/PV.9).

The value of this argument is reduced when the Respondent begins his next paragraph by saying : " The only reference that I can recall to this problem was in connexion with the amendment of the Regulations, when regulation 21 was adopted."

The Tribunal considers it hardly necessary to point out that if, as the Respondent himself admits, the only instance in which there is a " reference " to " this problem " is in 1947 in connexion with the amendment of the Regulations, it is not surprising that, since the question has never been raised in these precise terms, there has never been a statement as to the limitations of the power of the Secretary-General in matters of termination of temporary-indefinite contracts.

If there was no discussion of the problem, there could not possibly have been a statement on that matter — be it in favour or against the limitations of the powers of the Secretary-General with respect to termination. As to the consequences of the amendment of the Regulations in 1947, the Tribunal has already stated its opinion in the first part of this decision.

Finally, the Tribunal finds it difficult to accept the position that the pertinence or the non-pertinence of a regulation or rule in the meaning of article 2 of its Statute is to be determined in every case solely on the basis of the place or chapter where that regulation or rule is to

be found in the Staff Regulations and Staff Rules or according to the title under which it is formulated.

With respect to fixed-term contracts, Counsel for Applicant asserts that there is no essential difference between termination of a temporary-indefinite contract and non-renewal of a fixed-term contract, that the guarantees extended to all employees of the Secretariat in the Charter, the resolution establishing the Tribunal, the Regulations, the Staff Rules, and other sources of definitions of rights and obligations of Staff members, apply also to holders of fixed-term contracts, and that the Secretary-General is therefore without power to terminate the services of a holder of a fixed-term contract at the expiration of the contract without a statement of reasons.

Counsel for Respondent argues that a failure to renew a fixed-term contract is not a termination but is a simple non-renewal, that no legitimate contractual expectancy exists beyond the terminal date, and that the satisfaction of the terms of the contract itself by the Respondent, which is not in issue, constitutes full compliance.

The Tribunal is inclined to attach great weight to the legal arguments of Counsel for Respondent without necessarily embracing his legal conclusion.

As of 1 July 1951 the Headquarters Staff of the United Nations consisted of 3,390 employees other than the Secretary-General. Of this number 1,156 held indeterminate contracts, 1,902 held temporary-indefinite contracts, and 332 held fixed-term contracts.

The Tribunal has examined in some detail the type of work performed by the holders of the 332 fixed-term contracts of more than six months' duration in force on 1 July 1951. It is satisfied that many of these contracts are in fact for work the termination date of which is reasonably ascertainable, and the nature of which justifies the use of this type of contractual instrument. Its use, moreover, in connexion with the Assistant Secretaries-General and most of the Principal Directors appropriately reflects the recognition of political considerations in the constitution of the " top management " of the Secretariat.

On the other hand, it is equally clear that many of the fixed-term contracts have been and are now reflective of nothing more than the momentary preference of one or the other of the contracting parties for this type of agreement, and bear no relation to the nature of the work performed by the contract-holder or its probable date of completion.

Many of the fixed-term contracts are, in fact, held by personnel engaged in work which, it may reasonably be predicted, will be performed by staff employed directly by the United Nations for as long as the United Nations itself shall continue.

Since, therefore, fixed-term contracts are not exclusively employed under conditions which reasonably predicate a termination of the

contractual relationship when the work has been completed, they may give rise to expectancies not necessarily concluded by the fact a fixed date of termination is incorporated in their provisions.

The Tribunal wishes to point out, however, that two conditions are antecedent to a claim in a case before it. The first is that an unlawful act must have been committed. The second is that an injury must have been sustained by the claimant.

As a general rule, it is difficult to see how the failure to renew a fixed-term contract — assuming general compliance in all other respects — can be regarded as inflicting an injury justifying recovery on the contract by the holder of the expired agreement. On the other hand, since the fixed-term instrument is indiscriminately utilized by the United Nations and may in some circumstances give rise to expectancies of continuation beyond the specified date of termination, the Tribunal will consider appeals for equitable relief on the merits of the case with respect to holders of expired fixed-term contracts.

For these reasons the Administrative Tribunal is of the opinion:

1. That the power of the Secretary-General to terminate staff members holding temporary-indefinite contracts is limited by the Charter, by resolutions of the General Assembly, by Staff Regulations, by Staff Rules, and by other instruments defining the rights and obligations of members of the Secretariat.

2. That the power delegated to the Secretary-General to determine the terms and conditions of temporary-indefinite contracts by the revision of staff regulation 21 and the addition of staff regulations 12 A has not been implemented and could not legally be implemented, by staff rule 103 (c), which is a part of a rule referring solely to the amount of terminal notice required for holders of various types of contracts, and not to substantive periods and conditions of termination.

3. That a statement of cause, if requested by the terminated employee, in terms sufficiently specific to facilitate proceedings before the Appeals Board and the Administrative Tribunal, is an essential element of due process in the termination of temporary-indefinite contracts, and may be an essential element of due process in the non-renewal of fixed-term contracts, if, on the merits of the case, the tribunal finds that reasonable expectancies, not necessarily foreclosed by the inclusion of a terminal date in the agreement, have been raised by the circumstances surrounding the performance of the work under the fixed-term contract.

4. That while it is not for the Tribunal to substitute its judgement for that of the Secretary-General with respect to the adequacy of the grounds for termination stated, it is for the Tribunal to ascertain that an affirmative finding of cause which constitutes reasonable grounds for termination has been made, and that due process has been accorded in arriving at such an affirmative finding.

5. That adequate cause for the termination of holders of temporary-indefinite contracts includes, but is not limited to, all those specified in staff regulation 21 ; and that other causes, not necessarily related to mere technical proficiency of a type reflected in favourable service ratings, may reasonably be invoked for termination of temporary-indefinite contracts.

6. That in the case of termination of employees with service ratings of " satisfactory " or better, there is a presumptive right to consideration for posts elsewhere in the Secretariat for which their qualifications are appropriate, and that an essential of due process is either an affirmative showing that reasonable efforts were made to place such employees in other posts, or a statement of reason why this was not done.

The conclusions relating to temporary-indefinite contracts are majority conclusions ; other conclusions in this judgement have been adopted unanimously by the Tribunal.

Judged and pronounced in public hearing on 25 August 1951, at New York, by the Administrative Tribunal composed of the members indicated above.

(*Signatures*)

Digvijaysinhji of NAWANAGAR
President

Mani SANASEN
Executive Secretary

Dissenting Opinion of Mr. Rowland Egger

I dissent from that part of the opinion of the Tribunal which relates to the power of the Secretary-General to terminate temporary-indefinite contracts upon thirty days' notice, and statement of cause for such termination. I *concur* in all other parts of the opinion.

The authority of the Secretary-General with respect to temporary contracts is the subject of an unequivocal delegation of power by the General Assembly in the Staff Regulations. For six years the power claimed by the Secretary-General in the cases now before the Tribunal has been exercised in its present form, with the full cognizance of the General Assembly, and with the concurrence of even the Staff Association representative in the Appeals Board until the present cases. The power of the Secretary-General was neither added to nor subtracted from in the resolution creating the Administrative Tribunal. The additional requirements imposed upon the process of terminating temporary-indefinite contracts are not essential to the adjudication of the present cases, and are more appropriately within the purview of the General Assembly than of the Administrative Tribunal.

(*Signature*)

Rowland EGGER