

days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

As the issue whether the Applicant's daughter, who was a participant in the Pension Fund in her own right, could lay claim to a child's benefit as beneficiary of another participant is not a "decisive factor" in determining the Applicant's claim to the payment to him of the child's benefit and as the point now raised is more a fresh argument than a new fact, the Tribunal holds that the application does not meet the requirements of article 12 of the Statute.

VI. The application is therefore rejected.

*(Signatures)*

R. VENKATARAMAN  
*President*

Suzanne BASTID  
*Vice-President*

Francisco A. FORTEZA  
*Member*

*New York, 9 October 1974*

MUTUALE TSHIKANKIE  
*Alternate member*

Jean HARDY  
*Executive Secretary*

## Judgement No. 191

*(Original: English)*

**Case No. 188:**  
**de Olagüe**

**Against: The Secretary-General of  
the Inter-Governmental  
Maritime Consultative  
Organization**

*Non-renewal of the fixed-term appointment of an IMCO technical assistance expert.—Request for the payment of various indemnities.*

*Request for the hearing of a witness.—Request rejected as being unrelated to the Respondent and extraneous to the subject-matter of the application.*

*Article 1 of the agreement extending the competence of the Tribunal to IMCO.*

*Request for reimbursement of the cost of transportation of personal effects and household goods.—Request incompatible with Staff Rule 207.20 (i) (i).—Request for reimbursement of the cost of travel of a dependant.—Condition contained in Staff Rule 207.9 (a) (ii) not fulfilled.—Request for reimbursement of the cost of travel by road.—Applicability of Staff Rule 207.5 (c).—Request for payment of daily subsistence while travelling.—Applicability of Staff Rule 207.24 (c).—These requests as a whole are rejected.*

*Request for payment of overtime.—Professional staff not covered by the rules relating to overtime.—No provision in the contract entitling the Applicant to overtime payments.—Request rejected.*

*Requests for compensation based on the Applicant's claim that IMCO had a duty to support him by appointing him to another post.—Statements invoked by the Applicant to sustain his claim that he*

*had a reasonable expectancy of continued employment by IMCO.—The Tribunal cannot share the view that they contain promises of continued employment.—Clauses in the letters of appointment signed by the Applicant stating that the appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.—Conclusion of the Tribunal that IMCO had no legal obligation to appoint the Applicant to another post.—Requests rejected.*

*Claim for compensation for defamation of which the Applicant was allegedly the victim.—Claim rejected, the Tribunal being unable to accept the thesis of the Applicant that he had been the victim of any defamation.*

*Request that the Tribunal answer certain questions posed by the Applicant.—Unnecessary for the Tribunal to answer these questions, which either do not relate to legal matters or do not relate to the Applicant's contract.*

*Other requests dealing with a variety of matters, none of which relates to the Applicant's contract, are rejected.*

*The claim for costs also fails.*

*The application as a whole is rejected.*

#### THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Sir Roger Stevens;

Whereas, on 8 July 1974, Ricardo de Olagüe y Negueruela, a former technical assistance expert of the Inter-Governmental Maritime Consultative Organization, hereinafter called IMCO, filed an application the pleas of which read as follows:

“(a) As a preliminary measure, the Administrative Tribunal is requested to call Mr. John O. Honnold, Chief of the International Trade Law Branch, Office of Legal Affairs, United Nations, New York, to testify in connexion with his letter of 17 September 1973 (annex 86) and my letters dated 23 September 1973 and 22 January 1974 (annexes 87 and 88), and to explain why he did not reply to my letters and for what reason I have not been given the post that he offered me in annex 86.

“(b) I request rescission of the decision taken by Mr. Leighton van Nort on 21 June 1973 (annex 64) and that I be granted the right to receive the amount specified in the letter dated 5 June 1973 (annex 65), i.e., \$US 1,420.06, plus the amount for car mileage from Guatemala to Panama, plus subsistence and other travel expenses which the United Nations allows, for the duration of the journey from Guatemala to Panama and of the journey from Panama to Madrid for the four members of my family.

“(c) 1. I request that against the payment of \$US 4.80, Mr. Douglas Oliden deliver to me the silver and bronze medals commemorating the twenty-fifth anniversary of the United Nations (annex 85) in the event that it is proved that it was owing to his fault or negligence, and not any fault of New York, as he asserts in his undated note (annex 85) that I did not receive them, since the date 16 October 1972 is written in my handwriting and the signature and seal were apposed by the young lady who gave me the rest of the medals more than two years later in the office of the United Nations Resident Representative in Panama (see annexes 81 to 85).

“(c) 2. I request that I should be reimbursed for overtime worked as an expert, translator and typist, in the amounts specified in paragraph (d) 1.

“(c) 3. I request that I should be reimbursed for damages in the amounts specified in paragraph (d) 2.

"(c) 4. I request that I should be awarded the sums mentioned in paragraph (d) 3 for defamation.

"(d) 1. I was in the service of IMCO for 425 days which, multiplied by an average of two hours of overtime per day, gives a total of 850 hours. As my salary was approximately \$1,500 per month, inclusive of all benefits, the pay for a working month of 140 hours would amount to \$10 per hour. As overtime is usually paid at 50 per cent above the normal rate, I should receive \$15 per hour of overtime, broken down as follows:

"Value of overtime worked as an expert .....	850 × 15 =	12,750.00
"Value of overtime worked as a translator .....	425 × 7.5 =	3,187.50
"Value of overtime worked as a typist .....	850 × 7.5 =	<u>6,375.00</u>
"TOTAL \$US		22,312.50

(The hours of translating work were calculated, bearing in mind the fact that half the work was done in English, at half the hourly rate for an expert. With regard to typing work, account was taken of the total number of hours of overtime, at half the hourly rate for work done as an expert.)

"(d) 2. The only damages claimed are \$14,000 which the Applicant had to pay out of his own pocket during his 28 months of residence in Panama to cover the deficit between his income and the cost of supporting his family. No account is taken of the monthly savings that he could have set aside if his income had been \$1,500 per month.

"(d) 3. The responsibility incurred by Mr. Colin Goad as Secretary-General of IMCO was fully established by my letter to him of 25 August 1971 (annex 62). By taking no action and, furthermore, by not giving me a new post, as was his obligation, Mr. Goad aided and abetted the activities of Mr. Gonzalo Andrade and Mr. Gonzalo Serrano. It is clear from the explanatory statement that IMCO's request to the Spanish Government for experts in my field of specialization, a request expressed not only in letters to the Spanish Ministry of Foreign Affairs but also through the journey made by Mr. de Franchis to Madrid, served to show that I was rejected by IMCO, with the very clear implication that my conduct as an IMCO expert had not been correct and that, therefore, something *very serious* had happened which prevented me from being accepted by the organization. *Please bear in mind that the defamation took place in six Central American countries and in two centres of great importance to the professional life of the Applicant: the Spanish Ministry of Foreign Affairs and the University of Madrid.*

"The amount of \$50,000 is claimed for moral and material damage caused by the conduct of IMCO under its Secretary-General, Mr. Colin Goad, since in the time that has elapsed, neither the Spanish Ministry of Foreign Affairs nor the United Nations has again called on the services of the Applicant. Nor has he been able to obtain a post with the University of Madrid.

"(e) 1. I request that a clear and unequivocal statement be issued to the effect that there is no evidence within the United Nations or its specialized agencies which could tarnish my reputation, my professional conduct and my capacity as an expert.

"(e) 2. I request that a document be sent to the Department of International Organizations of the Ministry of Foreign Affairs of Spain, stating that there is absolutely no evidence against the expert in maritime legislation within either the

United Nations or its specialized agencies and that the United Nations is prepared to offer him a post with the Inter-Governmental Maritime Consultative Organization at its headquarters in London, as soon as a vacancy occurs which is suitable for the Applicant, Ricardo de Olagüe Negueruela.

“(e) 3. I also request that Mr. Douglas Oriden, Mr. Gonzalo Serrano and Mr. Gonzalo Andrade, the first two being UNDP Resident Representatives in San Salvador and Panama, respectively, and the last-named a shipping expert with ECLA (Mexican Office) should publish in a newspaper with wide circulation in the cities of Guatemala, San Salvador, Tegucigalpa, San José de Costa Rica, Managua and Panama, the following:

“ ‘We the undersigned, Douglas Oriden, Gonzalo Serrano and Gonzalo Andrade, being, respectively, Resident Representatives of the United Nations Development Programme in San Salvador and Panama and a shipping expert with the United Nations Economic Commission for Latin America (ECLA), declare that Mr. Ricardo de Olagüe y Negueruela, formerly the Regional Expert for Central America of the United Nations Inter-Governmental Maritime Consultative Organization, is a person of unimpeachable reputation and that the work which Mr. Olagüe carried out in the countries of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama, in the above-mentioned capacity, proved worthy of a person who has a thorough grasp of his field. Mr. Olagüe always acted within the terms of reference of his appointment and his conduct was exemplary at all times and in relation to all persons with whom he had dealings.

“ ‘The undersigned, Messrs. Douglas Oriden, Gonzalo Serrano and Gonzalo Andrade publicly request Mr. Ricardo de Olagüe y Negueruela to forgive them for the damage they have caused to him and solemnly swear never again to do or say anything that could impair the honour and reputation of Mr. Olagüe.’

“(e) 4. The Applicant also requests the Administrative Tribunal to rule on the following questions:

“(1) Whether it is fair that the Applicant should have used his own money (in dollars) to travel from Madrid to Guatemala and that he received his salary and other benefits nearly two months later, in quetzales.

“(2) Whether it is fair for the Applicant to have received his final remuneration of more than \$4,000 nearly 10 months after he had left Guatemala.

“(3) Whether it is reasonable that, after IMCO had asked the Applicant to try to persuade the Central American countries to become members of IMCO, and when the Applicant was in the course of so doing, the matter should be dropped, causing obvious damage to the United Nations and to the countries concerned.

“(4) Whether it is reasonable that the Applicant should ask IMCO for basic documents relating to that organization and that IMCO should not send them to him.

“(5) Whether it is just that the final report of the Applicant and, in particular, the entire Compilation of Central American Maritime Laws (annex 1) should be totally rejected, signifying a total waste of effort and of the money which the United Nations had to spend on the Applicant.

“(6) Whether it is fair that the Applicant should draft a final report, consisting of 300 pages (annex 1), and write more than 300 letters to the United Nations in English and Spanish without the services of a translator, and more than 100 letters to the Central American countries without the services of a secretary, and that he should do this at home, without a typewriter and outside office hours, because neither the United Nations nor IMCO provided him with a secretary, a translator or a typewriter.

“(7) Whether it is fair that, in the light of a disagreement between an organization outside the United Nations and the expert, the expert’s organization, IMCO, should not defend him, despite having undertaken to do so (annex 9).

“(8) *Whether a contract of employment between the United Nations, IMCO and an expert may be rescinded solely and exclusively at the request of a legal entity which is not a party to the contract (annex 16).*

“(9) Whether it is fair for an expert to be dismissed at the request of an organization—the Permanent Secretariat of the General Treaty for Central American Economic Integration (SIECA)—which has had and continues to have a very precarious existence, without taking into account the work, capacity and activity of the expert in his field of competence (the Applicant was appointed Regional Expert for Central America, not an expert of SIECA, which was not mentioned to the Applicant in his briefing, in the interview he had with Mr. Mensah, the Director of IMCO’s Legal Division in London, or by Mr. Oliden, whom the expert visited on his arrival in America, as the attached letters demonstrate (annexes 2, 3, 4, 9 and 14) (annexes 7, 8, 10–13 and 15)).

“(10) Whether an expert and his family can be removed from a stable post with promises of continued employment (annex 3) and suddenly, without explanation and without justifiable cause, be deprived of employment, with obvious detriment to the United Nations, given the shortage of experts in maritime law, and to the expert himself.

“(11) Whether the attitude of Mr. Oliden concerning the medals commemorating the twenty-fifth anniversary of the United Nations was without fault or neglect.

“(12) Whether it is compatible with professional ethics for the Representatives of the United Nations to say one thing to the expert when alone with him and to act differently behind his back and to write letters which cast doubt on the expert’s reputation, to the point of causing his rejection by a Government (annexes 22, 24 and 25).

“(13) Whether the ECLA expert, Mr. Gonzalo Andrade, was authorized by the United Nations or by IMCO to calumniate and defame the Applicant at Governmental meetings, since he was acting on behalf of the United Nations when he spoke of the Applicant in defamatory terms.

“(14) Whether it is fair that the Applicant should be rejected by the Secretary-General of IMCO for a post in the Legal Division of IMCO, after he had served as a regional expert for that Organization, for reasons of nationality and geographical distribution and not because of any lack of qualification for the post, and that a person from outside IMCO, of Swiss nationality, should be accepted in his place, despite the fact that the Applicant has been applying for a post in the above-mentioned Division since 1964 (annex 5) and had submitted a further application for that post (annex 32).

“(15) Whether it is fair for the Secretary-General of IMCO to promise the Applicant, orally and in writing, that, if the Government of Panama officially sought his services as an expert, the Applicant would be allowed to remain in Panama as an IMCO expert, but not to keep his word when he received an official request to that effect from the Ambassador of Panama, despite the fact that the request was supported by three Panamanian Ministries, namely the Ministries of Foreign Affairs and Finance and the Office of the President (annexes 27, 33 and 29 and 34).

“(16) Whether it is fair that, when the Applicant was awaiting employment with IMCO, the latter body addressed itself to the Spanish Ministry of Foreign

Affairs in an attempt to find an expert in his field of specialization, and that, when the Ministry proposed the Applicant's name, IMCO rejected him, with obvious damage to his reputation.

"(17) Whether it is fair and equitable that, after holding a post with the United Nations at Level IV, Step VII, the expert should subsequently be given employment at Level IV, Step I, when the experts who worked with him in America, who had less experience, were less qualified academically, and were new to United Nations work, began at Level V.";

Whereas, in a communication dated 8 July 1974, the Applicant submitted receipts of money spent by him for photocopying and posting his application, requesting that the amount, namely 3,987 pesetas (\$US 70), be included in plea (d) 2 of his application;

Whereas, on 19 August 1974, the Respondent filed his answer, the pleas of which requested the Tribunal:

"1. To declare that the matters raised under Section II, paragraphs (a), (c) .1, (e).1 and (e).3, do not disclose any claim against the Inter-Governmental Maritime Consultative Organization since, *inter alia*, they are not matters relating to the observance or non-observance of the contract or terms of appointment of the applicant with IMCO.

"2. To declare similarly that the issues and questions raised in paragraph (e) .4, subparagraphs 3(a), 5 (a), 11(a), 12(a) and 13(a) [3, 5, 11, 12 and 13], are not matters relating to the applicant's contract or terms of appointment with IMCO.

"3. To declare that the decision of 5 [21?] June 1973 regarding the applicant's demand for payment in respect of transportation costs for himself and his family and for his personal effects was correct and in accordance with the Regulations and Rules applicable to the applicant's contract and terms of appointment and that, therefore, IMCO is under no liability to him in that regard.

"4. To declare the applicant's claim for payment in respect of overtime alleged to have been worked by him is not justified as being

"(a) not in accordance with his contract and terms of appointment, and

"(b) not supported and in any case vague and unreasonable in its computation.

"5. To declare that the applicant is not entitled to any payments from IMCO in connexion with his stay in Panama, since this stay was entirely at his own volition and without any request or inducement from IMCO.

"6. To declare that the applicant's claim for material and moral damages cannot be sustained because:

"(a) there is no evidence to support the allegation that IMCO has directly or indirectly defamed the reputation and character of the applicant or in any way contributed to or assisted in such defamation by any other person;

"(b) there is no evidence that the applicant has in fact suffered any material or moral damage as a result of any defamation of his character, reputation or competence as an expert.

"7. To declare that IMCO is under no legal obligation to make any declaration to the Government of Spain about the applicant or to undertake to offer the applicant a post in the Secretariat of IMCO on the conditions requested by him, or on any conditions.";

Whereas the Applicant filed written observations on 26 September 1974;

Whereas the facts in the case are as follows:

By a letter dated 25 July 1969, the Deputy Secretary-General of IMCO offered to the Applicant, a Spanish national, a project appointment for one year as Expert in Maritime Legislation (Regional Expert for Central America), based at Guatemala City; the letter specified that the appointment, which was subject to the IMCO Staff Regulations and to the United Nations Staff Rules 200.1 to 212.7 applicable *mutatis mutandis* to IMCO Technical Assistance Project Personnel, was of a fixed-term nature and did not carry any expectancy of renewal or of conversion to any other type of appointment. On 5 August 1969 the Applicant accepted the offer of appointment on the terms and conditions set out in that letter. In an exchange of correspondence prior to the appointment, the Head of the Technical Co-operation Division of IMCO had, on 11 July 1969, expressed the hope that "this mission in Latin America might prove the commencement of a long-lasting mutually rewarding relationship", and on 21 July 1969, the Applicant had taken note of that remark. The Applicant left Madrid on 24 September 1969 and arrived at Guatemala City on 26 September 1969, accompanied by his two sons but not by his wife, from whom he was legally separated and for whom he did not claim any allowance. On 29 September 1969 the Applicant wrote to IMCO about the practical exigencies of his mission, including his need for office space and secretarial help. On 17 October 1969 the Head of the Technical Co-operation Division replied that the Regional Representative of UNDP in Central America had been asked to assist the Applicant in obtaining those services. In subsequent correspondence the Applicant complained about delays in the payment of his salary and allowances. On 4 November 1969 the Head of the Technical Co-operation Division urged the Applicant to make every effort to fulfil the basic requirements of his mission within its "relatively short duration", adding: "the scope of work is large and, since you will be in Central America only 10 ½ months, it is very probable that you will not have time to do those other things you have suggested, which, while desirable, do not fit into your basic terms of reference". On 29 December 1969, in a letter addressed to the Head of the Technical Co-operation Division, the Applicant, whose office had been installed in the SIECA building, complained *inter alia* of antagonism on the part of Mr. Gonzalo Andrade, an ECLA expert, with whom he had to work, of SIECA's disregard of his independent status as an IMCO expert, and of his conditions of work at SIECA ("I need to do practically all the work myself, from ordering papers at the printer's, to typing the letters and translating reports, quite apart from my proper work of studying and drafting laws in order to help the Governments of Central America. . . . I work in SIECA morning and afternoon; in the evenings I work at home, and also on Saturdays and some Sundays."). On 27 January 1970 the Head of the Technical Co-operation Division replied that the Applicant should collaborate with ECLA and SIECA, guided by Mr. Andrade but not directed by him, that he was not to be considered as an employee of SIECA, and that his need for a separate office and a secretary was understandable but difficult to meet; the Head of the Division added:

" . . . If your mission was going to be a permanent one or a very lengthy one we would indeed have to make some concentrated effort to give you more secretarial help and better accommodation.

" . . .

"In respect of your mission we should like to have a report at the end of February as to your own evaluation of the progress being made and as to whether you are going to be able to finish your mission in the approximately 10 ½ months that you have for it. If you do not feel that your mission is going to be completed, we should also like to have your opinion, after discussion with the Regional Representative, as to for how long the mission should be prolonged to enable you to complete that which is expected of you. Of course, if the mission is to be prolonged we must receive a formal request through the Regional Representative

stemming from the relevant Central American authorities that the continuation of your mission is desired."

On 19 March 1970 the Regional Representative of UNDP in Central America sent to the Head of the Technical Co-operation Division a cable reading in part: "Extension regional IMCO post in 1971 already proposed to Central American countries and should be considered independently from decision regarding expert". On 16 July 1970 the Regional Representative addressed the following letter to the Deputy Secretary-General of IMCO:

" . . .

"In his trips to Panama, Costa Rica and Nicaragua, duly authorized by SIECA and this Office, in order to collect local maritime regulations and to take into account the legislation, vocabulary and other specific aspects of the Central American countries with regard to the preparation of uniform maritime codes, Mr. Olagüe again contacted senior officials not directly concerned with his task. This was not done on a personal basis, but rather as an international expert on mission; and, what is more important, Mr. Olagüe again discussed with them matters well outside his terms of reference. Besides that, the persistent attitude of Mr. Olagüe to raise interest in the official circles of the region about an assorted number of 'projects' annoys SIECA very much. He has not fulfilled the assurances given to this Office to avoid such erratic activity and concentrate on his job description.

"He has also overlooked the terms of the Aide Memoire signed by Messrs. Paul Drouilhet and Ricardo Olagüe from IMCO, Jawdat Mufti from UNDP, Alvara Ossa from ECLA, Gonzalo Andrade, UNCTAD expert and Salvador Sánchez Aguillón from SIECA, dated 21 April 1970. This document . . . was intended to provide guidelines for the activity of IMCO experts providing advisory services to SIECA in carrying out their work. In fact, the main purpose of said document was to prevent Mr. Olagüe from dissipating his efforts, unceasingly promoting new ideas.

"Considering these circumstances, I should suggest that you request Mr. Olagüe to follow strictly his terms of reference and the terms of the above-mentioned Aide Memoire and in this way, perhaps, forestall a formal protest from SIECA."

The Applicant's contract was due to expire on 20 September 1970. On 30 July 1970 IMCO cabled the Regional Representative, requesting:

"AAA decision on extension regional IMCO post in 1971 as already proposed to Central American countries BBB Your own recommendation with respect Olague if post extended CCC If your recommendation re extension services Olague is negative please inform expert on IMCOs behalf that he should proceed take leave to which he is entitled so as complete before expiration contract . . .".

On 12 August 1970 the Regional Representative replied by the following cable:

"SIECA requesting extension regional maritime legislation post through 1971 but desires presentation new candidatures. Informing Ricardo Deolague accordingly . . .".

On 14 August 1970 the Deputy Secretary-General formally advised the Applicant that his contract would not be extended. On 20 August 1970 the Regional Representative sent the following cable to IMCO:

"After reviewing work progress with expert SIECA requesting Olague's two months extension for port legislation study completion and early submission candidates for replacement".



On 28 August 1970 IMCO replied as follows:

"AAA IMCO will agree to extension limited to two months of Olague contract provided repeat provided such extension supported by you and you can secure additional allocation from UNDP for this purpose Stop Otherwise our notice of nonrenewal Olague contract remains in force BBB Upon extension for further period of two months Olague becomes eligible for step increase on basis satisfactory service Stop Please advise whether you consider his service satisfactory so salary applicable can be determined".

On 1 September 1970 the Regional Representative advised IMCO that he had requested from UNDP an additional allocation for a two-month extension of the Applicant's contract, and that the Applicant should be granted a step increase. The proposed extension was approved by UNDP and, on 15 September 1970, a fixed-term appointment of two months as from 21 September 1970, on the same terms as the initial appointment, was offered to the Applicant who accepted it on 29 September 1970. On 15 October 1970 the Minister of External Relations of Panama submitted to the Resident Representative of UNDP in Panama a request that the services of the Applicant be made available to the Government of Panama. On 21 October 1970 the Resident Representative transmitted that request to IMCO. On 30 October 1970 the Applicant wrote to the Secretary-General of IMCO, expressing an interest in joining the Legal Division of IMCO in London. On 10 November 1970 the Secretary-General of IMCO advised him that the Legal Division had only three professional posts, already filled, and that therefore it would not be possible to recruit any further professional staff for the Legal Division during the current budgetary period. On 11 November 1970 the Applicant informed the Personnel Section of IMCO that he had remarried the day before. On 21 November 1970 the Applicant informed the Secretary-General that he was leaving by car with his family for Panama, where he would stay for a few weeks before returning by air to Madrid; he added:

"Because I have not yet received news from you as to whether or not I shall work for the Panamanian Government, under the auspices of IMCO, according with their application, I shall wait in Panama until I receive your reply.

"Also I should like to know if, at present, I am going to continue working for you in another part of the world, or if there is no such possibility.

"Also I shall await your reply giving me the reason why my contract has been terminated, when another IMCO expert will have to be sent here. It seems a little strange to me, as all the Governments in Central America and Panamá were happy with me and my work."

On 24 November 1970 IMCO advised the Deputy Regional Representative of UNDP, whom the Applicant had consulted before leaving, that IMCO agreed to the Applicant's repatriation travel from Guatemala to Panama by road and from Panama to Madrid by air provided no additional cost to IMCO was involved. On 30 November 1970 the Secretary-General sent the following reply to the Applicant:

"Thank you for your letter of 21 November 1970. As you are probably aware, appointments for project personnel are made by the executing agencies. Candidates are proposed by Member States to IMCO and finally selected on the recommendation of the Governments. In accordance with the terms of your contract dated 25 July 1969 in paragraph two 'the nature of the appointment is fixed-term and does not carry any expectancy of renewal or of conversion to any other type of appointment', there is no guarantee of any prolongation.

"Appointments are made in consultation with Resident Representatives and the Governments concerned. I wish to assure you that in your case we have strictly applied the procedures as outlined above.

"We have no plans for you to work for the Government of Panama under the auspices of IMCO. The Organization has, therefore, no responsibility as far as your stay in Panama is concerned.

"At the present time we have no suitable opening for which your qualifications are required, but I hope that it will be possible for us to make use of your services at some future stage and I take this opportunity to thank you for the services rendered to IMCO."

On 1 December 1970 the Resident Representative of UNDP in Panama cabled to the Secretary-General reiterating the request of the Government of Panama that the Applicant be assigned to Panama. On 19 March 1971 the Applicant wrote to the Secretary-General that, because it appeared that he was going to have a post with IMCO working for the Government of Panama, he has settled his family there. On 15 April 1971 he wrote again, explaining that the Department of Planning of Panama was going to apply to the Secretary-General for the Applicant to work for the Government of Panama as expert of IMCO. On 25 August 1971, in a further letter to the Secretary-General, the Applicant contended that his honour, prestige and reputation were at stake because of statements made by Mr. Andrade to the Government of Panama, and asked that remedial action be taken by IMCO, including the issuance of a letter to various Panamanian authorities stating *inter alia* that the Applicant's work as Regional Expert of IMCO had been correct and had been carried out according to the instructions of IMCO and within his terms of reference, that he was a person of good character and reputation, and that, if the Government of Panama forwarded a petition to IMCO requesting his assignment as expert of IMCO in Panama, IMCO would grant the petition. In a reply dated 6 September 1971, the Secretary-General referred to earlier letters in which it had been clearly indicated to the Applicant that IMCO had no plans to renew or prolong his fixed-term employment either in Central America or in Panama beyond the terms expressly foreseen; with regard to the Applicant's request for the issuance of a letter to various Panamanian authorities, the Secretary-General stated that according to practice IMCO should confine itself to describing the nature of the Applicant's duties and the length of his service as indicated in a certificate already dispatched to him, but that a certificate with more detailed remarks might of course be asked for by him directly from the authorities with which he had had the occasion to co-operate during the course of his mission in Central America. From 14 to 18 September 1971 a member of the Legal Division of IMCO carried out a mission in Spain with a view to drawing up a list of prospective maritime legal experts to be employed in Latin American countries under the auspices of UNDP; as a result of his mission, three Spanish legal authorities undertook to work out such a list. On 28 October 1971 the Applicant, who had met the Secretary-General while attending the seventh session of the IMCO Assembly as adviser-delegate of the Government of Panama, sent him a letter saying:

"...

"According with the conversation I had with you on Friday, October 15th we are waiting for the letter you were going to write to the Minister of Foreign Affairs through Mr. Gonzalo Serrano [Resident Representative of UNDP in Panama], saying that IMCO would be pleased for Mr. Ricardo de Olagüe to remain in Panama as expert of IMCO working for the Consular and Shipping Department of the Ministry of the Treasury."

On 8 November 1971 the Secretary-General replied:

"I was very glad to see you during the Assembly and I only hope that there is no misunderstanding. I am not able to write to the Minister of Foreign Affairs saying that IMCO would be pleased for you to remain in Panama as an IMCO expert. What I think I said—and certainly what I intended to say—was that if the

Government of Panama decides to seek your services as an expert we, of course, would have nothing against that—rather the contrary.”

On 22 November 1971 the Applicant wrote to the Secretary-General that a request from the Panamanian authorities to IMCO for the assignment of the Applicant to the Government of Panama as an IMCO expert was forthcoming. On 7 January 1972 the Applicant sent to the Head of the Technical Co-operation Division a copy of a letter dated 5 January 1972 from the Government of Panama to the Acting Resident Representative of UNDP in Panama requesting that the Applicant be appointed for six months to a post of Expert in Port Administration under a technical assistance project proposed by Panama to UNCTAD (United Nations Conference on Trade and Development), together with a copy of a letter of 7 January 1972 sent by him (the Applicant) to the Technical Assistance Department of UNCTAD in Geneva. On 24 January 1972 the Head of the Technical Co-operation Division advised the Applicant that since the request of the Government of Panama for technical assistance in port development was apparently being dealt with by UNCTAD, it was best for the Applicant to continue negotiating directly with that organization. On 11 March 1972 the Applicant applied for a post vacant in the Legal Division of IMCO. On 5 June 1972 he was informed by the Personnel Section that the Secretary-General had decided to offer the appointment to another candidate. On 12 June 1972 the Ambassador of Panama to the United Kingdom wrote to the Secretary-General, requesting officially the appointment of the Applicant as an IMCO expert in Panama. On 13 June 1972 the Secretary-General replied that IMCO had no funds of its own for technical co-operation projects and relied entirely upon UNDP to supply funds for that purpose, and that the only UNDP financed project in the maritime field in Panama of which he had knowledge was a project being carried out by UNCTAD, to which the Government of Panama might wish to convey its views with respect to the Applicant if it considered that he would be suitable for the project in question. On 18 October 1972 the Assistant Secretary-General for Personnel Services of the United Nations forwarded to the Secretary-General of IMCO a complaint which the Applicant had submitted to the Secretary-General of the United Nations regarding his conditions of service with IMCO, as well as an appeal which the Applicant had filed with the Joint Appeals Board of the United Nations, explaining that the IMCO staff were not entitled to use the appeal machinery of the United Nations. On 9 November 1972 the Head of the Legal Division of IMCO returned the documentation to the Assistant Secretary-General for Personnel Services of the United Nations with the observation that it would be more appropriate for the Secretary-General of the United Nations to inform the Applicant that his appeal had been addressed to the wrong forum. On 20 November 1972 the documentation was returned to the Applicant by the Office of Personnel Services of the United Nations. On 5 June 1972 the Applicant submitted to the Deputy Secretary-General of IMCO a claim for reimbursement of travel and removal expenses from Guatemala to Panama and from Panama to Madrid, and on 21 June 1973 the Head of the Technical Co-operation Division sent to the Applicant a reply reading in part:

“...  
“Under UN Staff Rules, entitlement to return travel and removal expenses ceases if the travel has not been undertaken within six months after the date of separation from service.

“We would further point out that you were provided with air tickets for return from Guatemala to Madrid for yourself and entitled dependants and the cost of removing your personal effects from Guatemala to Panama was paid to you in 1971.

“During the two and a half years which have elapsed since this project ended, the accounts in our books have been closed and no further UNDP funds are

available. The Secretary-General is, therefore, unable to make any exception to the UN Staff Rules and we regret we are not able to consider your claim."

On 15 and 30 June 1973 respectively the Applicant submitted his various claims against IMCO in two appeals addressed to the Secretary-General of IMCO. On 27 February 1974 the Secretary-General of IMCO informed the Executive Secretary of the Tribunal and the Applicant that he agreed to have the dispute submitted directly to the Tribunal in accordance with article 7 of its Statute. On 25 March 1974, at the request of the Applicant, the Deputy Secretary-General of IMCO transmitted the Applicant's appeals to the Executive Secretary of the Tribunal, who returned them to the Applicant for corrections under article 7, paragraph 10 of the Rules. On 8 July 1974 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The application rests on the following legal basis:

(a) The United Nations Charter, particularly the part of the Preamble reaffirming faith in fundamental human rights and in the dignity and worth of the human person;

(b) The Universal Declaration of Human Rights, particularly article 12 which provides that no one shall be subjected to attacks upon his honour and reputation;

(c) The provisions relating to defamation in the penal codes of those countries which have codified legal systems and in the law of tort in countries in which the laws are not codified;

(d) The rules of the United Nations and of IMCO with regard to contractual relationships and travel expenses as between the Applicant and IMCO;

(e) The labour regulations of the International Labour Organisation and the applicable national regulations.

2. For reasons of contract and equity, and given the qualifications of the expert, he should continue to work indefinitely for the United Nations, provided that there is a vacancy for him. If no vacancy exists, his contract should be terminated, not on the date indicated in the contract but in the following cases:

(a) Termination of the project or task assigned to the expert which was the reason for his recruitment;

(b) Disciplinary reasons;

(c) Incompetence of the expert.

To act in any other way would be an abuse of right and might constitute defamation of the expert's character.

No one has cast doubt upon the Applicant's professional capacity, no proceedings have been taken against him, and it has been clearly demonstrated that not only has the work for which he was recruited as an expert not been completed, but the number of posts in which that type of work can be carried out has been increased, and the Government of Panama has sought and continues to seek the Applicant's services as an expert in maritime questions.

3. The Applicant relies on the recommendation made in equity by the Joint Appeals Board of the United Nations with respect to his former employment by the United Nations (Case No. 156, 16 December 1968) to the effect that "special and sustained efforts be made to sponsor the appellant's candidacy for vacancies within technical assistance programmes of the United Nations and its related agencies, with a view to obtaining for him, within a reasonable period of time, a project personnel post befitting his qualifications".

Whereas the Respondent's principal contentions are:

1. A number of claims made by the Applicant are against persons not in the

employment of IMCO or acting on its behalf, and in respect of matters not within the terms of the Applicant's contract.

2. In respect of the claims which relate to the Applicant's service with IMCO:

(a) As to plea (b): The Applicant was not entitled to any further payments from IMCO in respect of transportation costs for himself, any entitled dependants or removal of his personal effects;

(b) As to pleas (c) 2 and (d) 1: The Applicant was not entitled to overtime payment and even if he were, his claim is vague, unsupported and unreasonable in its computation;

(c) As to pleas (c) 3 and (d) 2: The Applicant's decision to remain in Panama was neither requested, induced or in any way acquiesced in by IMCO, and IMCO cannot, therefore, be held responsible for it or accept any liability for any loss which the Applicant might have incurred thereby;

(d) As to pleas (c) 4 and (d) 3: IMCO did not at any time make any statements against the Applicant's competence or reputation; IMCO was under no obligation to appoint him to another post in Central America or elsewhere; IMCO did not at any time, during the approaches made to the various bodies in Spain, make any reports or references to the character or work of the Applicant; and there is no evidence that he was adversely affected by any allegations which might have been made against him to the Governments of Latin America;

(e) As to claims *e* (1) and *e* (2): Not having at any time said or written anything derogatory about the Applicant, IMCO cannot reasonably be required to make, or to send to the Spanish Government, a declaration of the type requested.

The Tribunal, having deliberated from 25 September to 11 October 1974, now pronounces the following judgement:

I. As a preliminary measure, the Applicant requests the Tribunal to call Mr. John O. Honnold, Chief of the International Trade Law Branch, Office of Legal Affairs, United Nations, New York, to testify in connexion with an exchange of correspondence between him and the Applicant in late 1973 and early 1974 and to explain why the Applicant was not given the post apparently offered to him at that time by Mr. Honnold.

The Tribunal notes that this request is not related to the Respondent i.e. IMCO, is extraneous to the subject-matter of the application and therefore falls outside the jurisdiction of the Tribunal in relation to the present application.

II. The Tribunal notes that, on 20 February 1964, pursuant to article 14 of its Statute, the Secretary-General of the United Nations signed an agreement with IMCO—effective as of 1 December 1963—whereby the competence of the Tribunal was extended to the above-mentioned specialized agency. Article 1 of the agreement, using the language of article 2 of the Statute of the Tribunal, stipulates the following:

“The United Nations Administrative Tribunal shall be competent to hear and pass judgement, in accordance with the applicable provisions of its Statute and its Rules, upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the Inter-Governmental Maritime Consultative Organization, hereinafter referred to as ‘the Organization’, or of the terms of appointment of such staff members. The words ‘contracts’ and ‘terms of appointment’ shall include all pertinent regulations and rules in force at the time of alleged non-observance including the staff pension regulations”.

In view of the diversity of matters dealt with in the application, the Tribunal deems it advisable to consider first those pleas directly connected with the contract and terms of appointment of the Applicant.

III. Plea (b) of the application requests the Tribunal to revoke the decision of 21 June 1973 taken by the Head of the Technical Co-operation Division of IMCO and to grant the Applicant the right to receive the amount claimed by him in his letter dated 5 June 1973 to the Deputy Secretary-General of IMCO, namely:

- (i) \$US 1,013 for transportation of his personal effects and household goods from Panama to Madrid;
- (ii) \$US 407 for the journey by air of his wife from Panama to Madrid;
- (iii) The appropriate amount of reimbursement for the 1400-mile journey from Guatemala to Panama;
- (iv) Daily subsistence and other travel expenses for the duration of the journey from Guatemala to Panama and of the journey from Panama to Madrid.

In order to determine what rules are applicable to the case, it should be recalled that, on accepting the appointments offered him on 25 July 1969 and 15 September 1970 by the Secretary-General of IMCO, the Applicant stated on 5 August 1969 and 2 October 1970: "I am also acquainted with the IMCO Staff Regulations and the United Nations Staff Rules 200.1 to 212.7 which apply, *mutatis mutandis*, to IMCO Technical Assistance Personnel, and accept the conditions laid down in them".

With respect to point (i), it should be noted that this matter is regulated by United Nations Staff Rule 207.20 and that IMCO duly paid the Applicant the cost of the transportation of his personal effects and household goods from Guatemala to Panama at the end of 1970. The Tribunal accordingly considers that the claim for payment of transportation from Panama to Madrid in 1973 is contrary to the provisions of Staff Rule 207.20 (i) (i), reading "Shipment shall be made in one consignment unless otherwise warranted, in the opinion of the Secretary-General, by exceptional circumstances", inasmuch as the Secretary-General at no time approved any exception to this rule.

Point (ii) should be considered in the light of United Nations Staff Rule 207.9 relating to initial and return travel of dependants. Paragraph (a) (ii) of that Rule establishes that "the dependants are expected to remain in the mission area for at least six months during the individual's service there . . .". As the Applicant remarried on 10 November 1970 and left Guatemala on the 21st day of that same month, it is clear that the provision in question excludes him from this benefit. While subparagraph (b) of that same rule provides that the Secretary-General may approve travel based on a shorter period than that specified if, in his view, the circumstances warrant it, the Secretary-General did not exercise his discretion in this instance.

In connexion with point (iii), the Tribunal notes that while it seems to be the Applicant's understanding that the claim is covered by United Nations Staff Rule 207.7, it is in fact Staff Rule 207.5 (c) which is applicable in this case. The Tribunal notes further that it was under the provisions of that Rule that the Applicant was authorized to travel from Guatemala to Panama by automobile "provided no additional cost to IMCO [was] involved" as stated in a cable sent to the Applicant in Panama on 25 November 1970 by the Deputy Regional Representative of UNDP.

The last point refers to expenses covered by Staff Rule 207.3 (a) (ii), (iii) and (iv), to which the Applicant would normally have been entitled within the limits prescribed in Staff Rule 207.5 (c) for the journey from Panama to Madrid but not for the journey from Guatemala to Panama. However, since the journey to Madrid was not made until 7 April 1973, the Applicant having relinquished his post as from 20 November 1970, the applicable provision is Staff Rule 207.24 (c) which reads: "Entitlement to return travel and removal expenses shall cease if travel has not commenced within six months after the date of separation from service".

For the foregoing reasons, the requests included in plea (b) are rejected as a whole.

IV. Pleas (c) 2 and (d) 1 both refer to a claim for payment for overtime which the Applicant alleges that he worked in the capacity, not only of expert, but also of translator and typist. Without entering into consideration of the computation of overtime submitted by the Applicant, the Tribunal notes that staff members in the professional category are not covered by the IMCO Staff Rules relating to overtime (Rule 103.7 and Annex II). In addition, there is no provision in the Applicant's contract entitling him to overtime payment in the event that overtime has to be worked in the course of his duties. The claim is accordingly rejected.

V. Pleas (c) 3 and (d) 2 refer to the claim for damages to cover the alleged gap of \$US 14,000 between the Applicant's privately earned income and the expenses incurred by him during his stay of a little more than two years in Panama. These pleas, together with numbers (c) 4 and (d) 3, are the basic points of the application since the Applicant seems to believe that IMCO had a duty to support him by appointing him to another post during his stay in Panama and subsequently. The points mentioned can be considered together with those dealt with in pleas (c) 4 and (d) 3, both of which refer to the compensation of \$US 50,000 claimed for moral and material damage in respect of defamation, resulting *inter alia* from IMCO's failure to give him "a new post, as was [its] obligation", in the words of plea (d) 3 of the application.

The Applicant claims to have had a reasonable expectancy of continued employment by IMCO. The Applicant no doubt had in mind a statement of Mr. Drouilhet, then Head of the Technical Co-operation Division, who wrote to the Applicant on 11 July 1969 expressing his hope that the "mission in Latin America might prove the commencement of a long-lasting mutually rewarding relationship". But the Tribunal cannot share the Applicant's view that the letter of Mr. Drouilhet quoted above contained "promises of continued employment", as is stated in plea (e) 4. (10) of the application.

The Applicant claims further to have received encouragement from a letter addressed to him on 8 November 1971 by the Secretary-General himself, Mr. Colin Goad, who wrote *inter alia*: "... if the Government of Panama decides to seek your services as an expert we, of course, would have nothing against that—rather the contrary". It was only thereafter, when the Government of Panama officially expressed interest in having the Applicant appointed as an expert in that country, that Mr. Colin Goad fully explained to the Ambassador of Panama in London in a letter dated 13 June 1972 that IMCO had no funds of its own for that purpose and that the requisite financing would have to be provided by UNDP. Here again the Tribunal is unable to share the opinion of the Applicant that the Secretary-General, in failing to appoint him, did not "keep his word" (plea (e) 4. (15)).

The Applicant also claims that, having applied for a post as Legal Officer at IMCO headquarters on 11 March 1972, he was "rejected" for that post, "after he had served as a regional expert" for IMCO (plea (e) 4. (14)). The Applicant seems to believe that the mere fact of his applying for a post made it obligatory on IMCO to appoint him and that IMCO's failure to do so constituted damage to his reputation [plea (e) 4. (16)]. The Tribunal does not share that view. The Tribunal notes that the Applicant was given two appointments by IMCO, on 25 July 1969 and 15 September 1970, for periods of one year and two months respectively, and that, in the text of each letter of appointment, it was expressly stated that "the nature of the appointment is fixed-term and does not carry any expectancy of renewal or of conversion to any other type of appointment." Nowhere in the two contracts signed by the Applicant is there any indication of future obligations of IMCO to the Applicant; on the contrary, as the Tribunal has noted earlier, the contracts expressly excluded any such obligation. While it is understandable that the Applicant may have found encouragement in the statements mentioned above, the Tribunal determines that there is no legal basis for concluding that

the Applicant had acquired the right to remain in the service of IMCO or to be re-employed by that organization.

Since, in addition, it has been clearly established that the legal relationship between the Applicant and IMCO ceased to exist upon the date of expiry of his second contract, i.e. 20 November 1970, the Tribunal cannot agree with the Applicant when he refers either to the "rescinding" of his contract (plea (e) 4. (8) and page 1 of the Applicant's written observations), to his "dismissal" (plea (e) 4. (9)), or to a "stable post" (plea (e) 4. (10)).

The Tribunal concludes that IMCO had no legal obligation to appoint the Applicant to a post either during his stay in Panama or thereafter. The corresponding claims for compensation are therefore rejected.

Plea (c) 4 of the application refers to the claim for compensation for defamation in the amount mentioned in plea (d) 3. It speaks of \$US 50,000 "for moral and material damage caused by the conduct of IMCO". The Applicant alleges that "by taking no action", the Secretary-General of IMCO supported and assisted the action of certain persons who, according to the Applicant, were defaming him. The Tribunal cannot accept the thesis of the Applicant that any defamation resulted from inaction on the part of IMCO. On the contrary, it shares the view expressed by the Respondent in its plea 6 to the effect that "there is no evidence to support the allegation that IMCO has . . . defamed the reputation and character of the Applicant or in any way contributed to or assisted in such defamation by any other person". Accordingly, there is no ground for the claim.

VI. Plea (e) 4 of the application asks the Tribunal to rule on 17 matters presented in interrogative form. While the Tribunal is under no obligation to answer such questions, it finds that many of them refer to operational details or to opinions on policy rather than to legal matters (items (1) to (7) and (17)), and that other subjects raised in the same plea are concerned with situations created between the Applicant and United Nations staff members which do not relate to the Applicant's contract or terms of appointment (items (11) to (13)). The remaining matters—items (8) to (10) and (14) to (16)—have already been commented on in connexion with other pleas.

VII. The remaining pleas—(c) 1, (e) 2 and (e) 3—deal with a variety of matters, none of which relates to the Applicant's contract or terms of appointment. They are not within the competence of the Tribunal and are accordingly rejected.

VIII. Since the Applicant's pleas on merits are rejected, his claim for costs also fails.

IX. The application as a whole is accordingly rejected.

*(Signatures)*

Suzanne BASTID  
*Vice-President, presiding*  
Francisco A. FORTEZA  
*Member*  
New York, 11 October 1974

Roger STEVENS  
*Member*  
Jean HARDY  
*Executive Secretary*