

disruption in the life of the Applicant at a time when she had to cope with all kinds of hardships and to earn her living in distressing circumstances.

The Tribunal considers that, in addition to the interest for late payment, the Applicant is entitled to receive a sum of \$2,000 by reason of the difficulties she has had to contend with and the costs which she has incurred as a direct result.

X. For the foregoing reasons, the Tribunal decides that:

(1) The Respondent shall pay to the Applicant, as beneficiary under the insurance policy and legal administrator of her two minor children:

(a) Interest for nine months at the rate of 12 per cent per annum on the sum of \$210,000, less \$4,968.96;

(b) Interest on the sum arrived at under (a) above at the rate of 12 per cent per annum for the period from 11 October 1979 to the date of payment in execution of this judgement;

(2) The Respondent shall pay to the Applicant the sum of \$2,000;

(3) All other claims are rejected.

(Signatures)

Suzanne BASTID

Vice-President, presiding

Samar SEN

Vice-President

T. MUTUALE

Member

Geneva, 14 May 1982

Herbert REIS

Alternate Member

Jean HARDY

Executive Secretary

Judgement No. 290

(Original: English)

Case No. 269:
Cipolla

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

Non-renewal of the fixed-term appointment of a technical assistance expert of the Inter-Governmental Maritime Consultative Organization (IMCO).

Contractual status of the Applicant.—Every staff member is entitled to fair treatment from his employer.—Contention of the Respondent that he was unable to renew the contract of the Applicant because the latter's post depended on UNDP funding.—Communications exchanged between IMCO and UNDP.—Rejection of the Respondent's claim that he did not know about the personal difficulties which the Applicant had with UNDP.—IMCO cannot escape such responsibility as devolves on it as the executing agency for

the project in question by simply asserting that it was obliged to carry out the wishes of UNDP.—The Respondent was remiss in not informing the Applicant about the prospects for renewal of his contract.—Lack of circumspection, care and attention on the part of the Respondent in dealing with the Applicant.—Impossibility of upholding the Applicant's request for reinstatement.—Award to the Applicant of 12 months' net base salary as compensation, unless the Respondent offers, and the Applicant accepts, an appointment before 31 July 1982.—The other claims are rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Madame Paul Bastid, Vice-President; Mr. Samar Sen, Vice-President;

Whereas on 15 September 1981 Guillermo Horacio Cipolla, 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:

"... based on grounds of equity and human rights, and in accordance with Article 7 of Chapter III of the Rules, para. 3(a) and (e), the applicant kindly requests the Tribunal to act in the immediate defense of his rights, and, being a case of *force majeure*, to compel IMCO to pay the applicant salaries during the period of time from 31 December 1980 to the present, and subsequently, until the Tribunal arrives at a definite decision. . . .

"In accordance with Article 7, 3(a), the applicant should like to request oral proceedings which would greatly help his case, together with the deposition of a short number of witnesses. However, due to his indigent condition caused by IMCO's treatment, he will not be able to finance his trip to New York or the witnesses' trips. Therefore, he kindly suggests that IMCO pay for the expenses.

"Also, in accordance with Article 7, 3(a), the applicant kindly requests the Tribunal to request from IMCO the following documents:

"(a) Vacancy Notice for the post of 'Assistant Marine Pollution Adviser', Project RLA/72/069, based in Santiago, Chile.

"(b) All exchange of correspondence (copies), including telexes, etc., between the UNDP and IMCO regarding the creation and justification of this post, prior to the nomination of Mr. Ignacio Vergara as Assistant Marine Pollution Adviser.

"(c) Complete text of Project RLA/72/069 as it was before the nomination of Mr. Ignacio Vergara as Marine Pollution Assistant Adviser.

"(d) Professional record of Mr. Ignacio Vergara before he joined IMCO.

"(e) Initial Category and Step of Mr. I. Vergara and full records of any modifications thereafter.

"(f) Terms of reference set out for Mr. I. Vergara's position in its relation to the Marine Pollution Adviser, Mr. Cosh.

"(g) Written records of evidence of joint work between the Marine Pollution Adviser and his Assistant, and, in particular, any records showing their respective dependency relationship.

"(h) Working record with IMCO of Mr. J. A. L. Cosh, Marine Pollution Adviser, showing relevant dates of change of duty station and specific occupation in each case.

“(i) Complete records of all occasions on which the Assistant Marine Pollution Adviser visited Headquarters, and reasons to do so.

“(j) Written statement from IMCO, explaining the reason why the Regional Maritime Adviser, Mr. G. Cipolla, was denied debriefing at Headquarters at the time of his dismissal. Also a complete list of all Advisers of any kind, including consultants, indicating the number of times each of them have debriefed at Headquarters during the last three years.

“(k) Full list of candidates considered for the post of Assistant Marine Pollution Adviser in Chile, their official CVs, and reason for which each one of them was not nominated.

“(l) Complete record of all communications between any UNDP Office, official or dependency, and IMCO, concerning the unrest of U.N. Professionals in Rio de Janeiro and/or in Brazil in which Mr. G. Cipolla was indicated to be the leader by Mr. Ricardo Tichauer, Resident Representative a.i. in Brazil at that time.

“(m) Complete record of all communications between any of the UNDP offices or officials, and IMCO, regarding the cancellation of the post of Regional Maritime Adviser in Rio de Janeiro.

“(n) Date of last day of work for IMCO (effective work) of all four Regional Advisers in Latin America.

“(o) List of all contracts signed by IMCO, regarding professional jobs at Headquarters and/or long term field jobs (more than one year) since June 1980 to date and list of all professional jobs which are being considered to be filled within IMCO in the near future, covering a period of one year from date.

“(p) List of all Professional staff members who have passed the age of 60 and are still at IMCO's service, date permission was granted to continue, special reason invoked and date the contract is expected to end definitely.

“(q) List of all IMCO servants who are approaching the age of 60 whose services are going to continue beyond that age, as well as a list of those who are supposed to retire at the age limit.

“(r) List of all IMCO Professional staff members who are supposed to end their contracts in the near future (i.e. about two years) for any reason other than age.

“(s) List of all present vacancies in the IMCO secretariat for Professional staff.

“(t) List of all new openings presently being considered within the IMCO secretariat for Professional staff as a result of IMCO's expansion or any other reason.

“... .

“In accordance with Article 7, e(b), the applicant states the following:

“1. The decision being contested is the decision made by IMCO's Secretary-General of cutting one of the four posts in the UNDP/IMCO Project RLA/72/069, and in particular the applicant's job in preference to the other three. This decision was made for reasons very different from service and very different from 'the best interest of the United Nations'. The decision was communicated officially to the applicant at very short notice from termination at the time when the contracts of three other newcomers to the Project were either renewed or about to be renewed

(one of them a 'parachutist' to the project illegally nominated due to political influence), and at a time when *no written contract with IMCO was in operation*. That means that there was tacit and biunivocal agreement to continue the contract for another year. In resuming, the decision being contested is vitiated with nullity; it was a *null and void* act by IMCO. In addition, the contract finally to be enforced and which was in fact the dismissal notice of the applicant, never carried the signature of the applicant, who by that time made his thoughts known to IMCO, and in particular denounced the arbitrary actions of IMCO and UNDP.

"2. The applicant has contested the decision made by IMCO on the following grounds:

" . . .

"With reference to Article 7 (c), the obligation that the applicant is invoking is his entitlement arising from the United Nations basic principles, of being FAIRLY TREATED as an individual, as a family man, as a good worker and as a good Professional. . . .

"Paragraph (d) of Article 7 has been covered in Annex 1, Exhibit 7, Chapter 3—'Claims'—i.e. please refer to the relevant part of the Appeal to the Joint Appeals Board,* . . .";

Whereas the Respondent filed his answer on 28 October 1981;

Whereas the Applicant filed written observations on 30 November 1981;

Whereas the Respondent produced additional documents at the request of the Tribunal on 18 March 1982;

Whereas the Applicant submitted additional information and documents on 19, 27 and 28 April 1982;

Whereas the Tribunal heard the parties at a public session held on 28 April 1982;

Whereas the facts in the case are as follows:

The Applicant entered the service of IMCO on 8 May 1970 under a fixed-term appointment of two years as a Technical Officer in the Ship Construction Section. His appointment was renewed in 1972 and 1974, each time for the same duration. In 1975 IMCO established a UNDP-funded post of Regional Maritime Adviser for Latin America and the post was offered to the Applicant on 21 July 1975 by a letter from the Secretary-General reading in part:

"I am pleased to offer you appointment as IMCO Regional Maritime Adviser, Latin America. Your duty station will be Rio de Janeiro, Brazil. The appointment is subject to the provisions of the United Nations Staff Regulations and Staff Rules 200.1 to 212.7 applicable, *mutatis mutandis*, to IMCO Technical Assistance Project Personnel, and to changes which may be duly made in these Regulations and Rules from time to time. A copy of these Staff Regulations and Staff Rules is transmitted herewith.

* "Payment of a termination indemnity relating to the abrupt termination of contract, for payment of damage immediately connected with the removal from Rio de Janeiro.

"Unconditional 'reincorporation to IMCO' or, alternatively, payment of compensation for damages due to loss of earnings (\$US 292,938.75) and to loss of retirement benefits (unspecified) and compensation for 'moral damages, emerging from IMCO's unjustifiable maltreatment of its servant resulting in his decreased personal and professional image in Brazilian, Argentinian and British social, familiar, diplomatic and official circles, and impaired adaptation to a new life' (estimated at \$US 500,000)."

“This offer cancels and supersedes the contract of appointment offered you by letter PER/F/74/192 of 29 April 1974, and that contract is now considered as having been terminated by mutual agreement.

“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.

“The date on which you are required to enter upon your new duties is 5 August 1975. The period of the appointment is for one year. The notice required to terminate it prior to the expiration date shall be as specified in the United Nations Staff Rules referred to above.

“ . . . ”

On 31 July 1975 the Applicant accepted the offer of appointment and agreed to the termination of his existing contract. In 1976, 1977, 1978 and 1979, the Applicant's appointment was extended for one year effective 5 August, the respective dates of the offer and of its acceptance being 27 July and 19 August 1976, 18 August and 15 September 1977, 6 September and 18 September 1978, and 6 July and 11 July 1979. On 26 September 1980 IMCO informed the Applicant by cable that it had received financial authorization to extend his contract—which had expired on 4 August 1980—up to 31 December 1980 and that it was in the process of doing so. By a letter dated 3 October 1980 the Applicant was offered an extension of his appointment from 5 August 1980 through 31 December 1980. On 16 October 1980 he returned the offer of appointment to the Secretary-General in a letter reading:

“ . . . ”

“It is my understanding that you are still considering my situation regarding my contractual status with IMCO, and your final decision on the matter is still pending. Meanwhile, and while awaiting an answer from you, hopefully satisfactory to all parties involved, I return the above-referred contract offer to you, as it is null and void and of no legal force or effect, in particular and *inter alia* being outdated and having been produced unilaterally.”

On 28 October 1980 IMCO cabled the Applicant that, as it had not been able to obtain UNDP funding for his post beyond December 1980, his appointment could not be extended beyond 31 December 1980. The Applicant replied by an appeal of 31 October 1980 to the Secretary-General in which he questioned the legal basis of IMCO's decision on the ground that it neglected a number of relevant factors. On 3 December 1980 the Director of the Technical Co-operation Division informed the Applicant, in reply to this letter of 16 October 1980 that his suggestions and other possibilities had been fully explored but that in spite of strenuous efforts IMCO had been unable to obtain funds for the continuation of the post after 31 December 1980; he added:

“I am sure that you are familiar with the IMCO procedure for contract extension by offer and acceptance. You are kindly requested to sign and return the acceptance in order to regularize your continuing appointment and payment of your emoluments up to 31 December 1980.

“ . . . ”

On 4 December 1980 the Applicant cabled the Secretary-General, in a further reply to IMCO's cable of 28 October 1980, to request IMCO to review its position in the light of the general principles of labour law applicable to his case, pointing out that all his

contracts had been signed by IMCO regardless of the source of funding of the post. On 22 December 1980, in a cable sent to the Director of the Division of Legal Affairs and External Relations, the Applicant stated:

“PLEASE NOTE THAT EYE HAVE ACCEPTED DECISION BY IMCO TO CLOSE OFFICE ON OR ABOUT 31 DECEMBER DEPENDING ON COMPLETION FORMALITIES. HOWEVER BASED ON OUTSTANDING PRINCIPLES MY CONTRACT WITH IMCO WAS TACITLY RENEWED ON 5 AUGUST 1980 FOR A FURTHER PERIOD OF ONE YEAR AS NO FORMAL NOTICE GIVEN AT THE TIME AND THERE WERE TALKS ABOUT RENEWAL UNTIL JULY. IN ADDITION PAYMENTS CONTINUED TO BE FORWARDED WITHOUT CONTRACT AS USUAL WITHIN IMCO. TERMINATION IN DECEMBER CAME ONLY AS SURPRISE AND EYE CONSIDER LATE CONTRACT PROPOSAL BY TCD [TECHNICAL CO-OPERATION DIVISION] UP TILL DECEMBER NULL AND VOID. THEREFORE EYE AM STILL IN IMCO’S HANDS AND CONTINUING PAYMENTS SHOULD IN ALL FAIRNESS BE FORWARDED TO ME IRRESPECTIVE OF MY POSITION AT LEAST THROUGH AUGUST 1981 THUS AVOIDING HARDSHIP AND DAMAGES ON MY SIDE. GRATEFUL YOUR INTERVENTION IN YOUR DOUBLE CHARACTER OF SG IN CHARGE AND LEGAL AFFAIRS TO SETTLE THIS MATTER.”

On 16 January 1981 the Applicant lodged an appeal with the IMCO Joint Appeals Board which submitted its report on 7 May 1981. The Board’s recommendations read as follows:

“Recommendations

“... the majority of the Board recommends that the Appellant receive a termination indemnity calculated in accordance with the applicable Staff Regulations and Rules. The Board recommends that the Appellant’s claim with regard to loss of earnings, loss of retirement benefits and moral damages be rejected.”

On 5 June 1981 the Secretary-General requested the Chairman of the Joint Appeals Board to clarify the Board’s report on the following point:

“I trust I am right in understanding that the Board has not sought to lay down any general principle about the extension of fixed term contracts. Such matters are clearly governed by the applicable Staff Regulations and Rules and will continue to be so governed.

“In particular I have taken note of the considerations outlined by the Board in paragraphs 4.3 and 4.4 of its report regarding the practice followed in renewing the contract of Mr. Cipolla in previous years.

“I trust I am right in understanding that it is only because of the specific circumstances of the present case that the Joint Appeals Board has by a majority concluded that Mr. Cipolla could have reasonably assumed that his situation in 1980 would be formalized later in the same manner as had been done in 1977 and 1978.

“It is thus my understanding that the Joint Appeals Board is not suggesting at all any automatic renewal of fixed term contracts or that in this case any statutory or legal right of renewal for 12 months had accrued but it is making its final recommendation on administrative considerations and also on grounds of equity only in view of the specific circumstances of this case.

“I shall be glad if in the performance of its advisory functions to the Secretary-

General, the Board would kindly favour me with its comments on what I have stated in this note.”

On 9 June 1981 the Chairman of the Joint Appeals Board provided the Secretary-General, on behalf of all members of the Board, with the following clarifications:

“In submitting its recommendation in the case of Mr. Cipolla, it was neither the wish nor the intention of the Board to express any views of a general nature with respect to the application and interpretation of the Staff Regulations and Rules. In particular, the Board recognized that it would not be appropriate for it to seek to lay down any general principles as to the practice to be followed in connexion with the renewal or non-renewal of fixed-term contracts and it endeavoured accordingly to consider the case before it on its own merits and to restrict its observations to the issues presented to the Board.

“In so far as this case is concerned, the Board is pleased to confirm your understanding as stated in your note of 5 June 1981.”

On 11 June 1981 the Secretary-General advised the Applicant that

“In the light of the clarification provided by the Board as to the meaning of their majority recommendation and on the basis of the clear confirmation that the recommendation does not suggest that ‘any statutory or legal right of renewal for 12 months had accrued in this case’, I have decided to accept the recommendation that you be paid an indemnity, on grounds of equity only in view of the specific circumstances of this case.

“Accordingly I have authorized that you be paid, *ex gratia*, an amount equivalent to six months net salary, as applicable on 31 December 1980, which was the date of your separation from IMCO.

“I wish to emphasize that this payment is being made on the clear understanding that you have no legal entitlement to it and that IMCO is under no obligation to pay you such amount.”

On 15 September 1981 the Applicant filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. Contracts are by essence bilateral agreements and IMCO can only be entitled to dissolve them, without agreement by the other party, by offering compensation. As the Joint Appeals Board and the Secretary-General have recognized that the applicable Staff Regulations and Rules are those of IMCO and not those governing UNDP field staff, the Applicant is right in considering himself an IMCO staff member who has acquired the right to stability in his job.

2. The lack of termination notice in due time was equivalent to tacit renewal. In addition, the Secretary-General failed to show convincingly that he did what he had to do in order to save the job of the Applicant or to minimize the impact of his decision from a human point of view. The procedure whereby he obtained a ‘clarification’ of the Board’s report in order to make his own decision appear as that of others is an ideological forgery of which the Applicant did not have any knowledge. Therefore, the Secretary-General not only failed to help the case of a devoted servant but is also doing his best to cause damage by denial of justice.

3. The main problem with the action by IMCO and UNDP has been their omissions

and especially their refusal to treat important matters such as political and personal issues in the light of the general principles of law and human rights. IMCO, in particular, failed to take action (a) to maintain the Applicant in his post when as the Executing Agency it was entitled to have its own opinion in dealing with UNDP, (b) to find alternative solutions or temporary measures in order to help the Applicant economically until a post was available at Headquarters and (c) to carry out its promises to take the Applicant back to Headquarters.

Whereas the Respondent's principal contentions are:

1. The decision not to provide funding for the Applicant's post after 31 December 1980 was not taken by the Secretary-General but by UNDP which had been the funding body for the project from its inception. Nor was the decision of UNDP in any way induced or encouraged by IMCO. After the decision was communicated to him, the Secretary-General himself intervened with the Administrator of UNDP to have this decision reversed.

2. There is no substance in the Applicant's allegation that his appointment was unlawfully terminated or that he is entitled to continue employment by IMCO.

3. There is no justification or reason for the proposition that the Applicant had a tacit contract for 12 months. Therefore the only contract he had with IMCO was that dated 3 October 1980. That was a fixed-term contract ending on 31 December 1980. On termination of that contract, and in the absence of a renewal, the Applicant's service with IMCO came to an end automatically. Nor did the letter of 3 October 1980 constitute a termination of a previous contract, since no such contract existed prior to that date. The decision not to ask the Applicant to leave his post, during the period of negotiation, was taken, in the interest of the Applicant himself, because it was hoped that funding would be obtained from UNDP to continue his post.

4. The Secretary-General made extensive endeavours to obtain continuing funding from UNDP for the Applicant's post. Following the final decision of UNDP, he explored other suggested avenues for obtaining funds to keep the post. The Secretary-General took all these steps not because he considered he was under any legal obligation to do so but because he was of the view that the post was important for the work of IMCO in Latin America. At all events the Applicant had no legal right to another job from IMCO since he accepted a contract which clearly stated that it did not carry any expectancy of renewal or conversion.

The Tribunal, having deliberated from 28 April to 14 May 1982, now pronounces the following judgement:

I. The Applicant entered the service of IMCO on 8 May 1970 under a fixed-term contract for two years which was twice renewed. Before the expiration of the third such contract he accepted the post of Regional Maritime Adviser for Latin America offered by the Respondent. This post was based on funds provided by UNDP. The nature of the appointment was described in the relevant vacancy notice as follows:

"One year fixed-term with possibility of prolongation depending on future decision by the United Nation Development Programme (UNDP) with respect to financing."

The terms of the offer made to the Applicant are given in the first part of the judgement; this offer and its acceptance constituted the contract between the Applicant and the Respondent from 5 August 1975. That contract, with unchanged conditions, was yearly renewed by correspondence between the parties until 4 August 1980.

II. The Applicant asks the Tribunal not to look only at the employment contract signed by the parties but to take into account all surrounding facts, "human relations, social customs and practices and even moral and ethical concepts". On this basis he asks the Tribunal to recognize his expectancy to be retained "in the job as long as his high degree of efficiency was maintained, and the expectancy that any financial constraints would affect less qualified or less senior personnel or personnel holding a different legal status with IMCO".

III. The Tribunal in its jurisprudence has established that the terms and conditions of employment of a staff member with the United Nations may be expressed or implied and may be gathered from correspondence and surrounding facts and circumstances (Judgement No. 95, *Sikand*). This applies also to the relations between IMCO and its staff. In the present case, however, this attitude of the Tribunal cannot change the fact that the Applicant, who served the Respondent for more than 10 years, did not become a holder of a permanent contract.

IV. On 5 August 1975 the Applicant became a member of IMCO's "Project personnel" within the meaning of Staff Rule 200.2(b) as he was recruited specifically to serve with IMCO's project RLA/72/069. This project was originally entitled "IMCO Regional Maritime Adviser for Latin America"; its title was subsequently changed by putting the word "Adviser" in plural. From 5 August 1975 the Applicant's relation to the Respondent was based upon a series of consecutive one-year fixed-term contracts, none of which by the nature of these contracts carried any expectancy of renewal or of conversion to any other type of appointment.

V. Irrespective of the type of contract, a staff member can always expect fair treatment from his employer. This applies particularly to a staff member who had faithfully served for more than a decade to his employer's satisfaction. Such satisfaction was expressed by the Director of the Technical Co-operation Division in a letter of 3 December 1980 to the Applicant and also stressed by the Respondent's representative in the course of the oral proceedings.

VI. The Respondent argues that he handled the Applicant's case in good faith but was unable to renew the Applicant's contract beyond 31 December 1980 because the latter's post was dependent entirely on UNDP funding. UNDP informed the Respondent as early as June 1980 that owing to the reduction of its resources it would be able to provide funds only for three advisers until the middle of 1981.

VII. In 1980 there were four Maritime Regional Advisers for Latin America. (a) The Applicant, who had been in the uninterrupted service of IMCO since 1970 and was appointed to the Latin American project RLA/72/069 in August 1975, was stationed in Rio de Janeiro. (b) In July 1977 a Regional Marine Pollution Adviser (Mr. Cosh) was appointed, based at Santiago (Chile) and transferred to Panama in 1979. (c) In July 1978 an Assistant Marine Pollution Adviser (Mr. Vergara) was appointed to the Santiago Office, and (d) In February 1979 a Maritime Safety Adviser (Mr. Guerola) was appointed and stationed in Bogota (Colombia).

VIII. The Respondent stresses that the decision not to provide funds for the Applicant's post was not taken by IMCO but by UNDP and that he repeatedly intervened with UNDP asking it to continue the funding of all the four posts. He does not accept the findings of the Joint Appeals Board that "the Respondent [had] every opportunity to participate in the decision on assignment termination" and that "in the view of UNDP,

it was clearly for IMCO to decide—or at least to participate in a decision—as to which of the four posts in question would be extended up to the end of 1980 only”.

IX. By a telex dated 26 August 1980 UNDP “proposed” to “reassign” one expert (Mr. Cosh) and stated that it was prepared to extend “with [IMCO’s] concurrence” the contracts of two other experts (Messrs. Guerola and Vergara) and that “Cipolla . . . would therefore terminate assignment end December 1980”. The telex ended with the words: “Kindly confirm your agreement . . .”.

X. After the receipt of this telex the Respondent emphasized the importance of continuing the Latin American project and stated *inter alia* in his telex reply of 3 September 1980 that “there is simply no way in which even best qualified experts in maritime safety and marine pollution can cover equally vital field of naval architecture, dry-docking, ship-repairing and shipbuilding which is an essential component in IMCO’s view of UNDP/IMCO technical advisory services” and that the “proposals contained [in UNDP’s] telex . . . effectively amount to fifty percent reduction in technical advisory services available to Latin American region as a whole”.

XI. In a letter dated 10 September 1980 the Officer-in-Charge of UNDP’s Regional Bureau for Latin America informed IMCO as follows:

“Subject: *RLA/72/069 Regional Maritime Advisers for Latin America*

“Thank you for submitting the project revision document ‘K’ of the above-mentioned project, of which we are enclosing one fully signed copy for your files.

“Please note that according to our cable of 22 August 1980, we can only agree to an extension of three advisers in 1981. We had to take this decision in view of financial constraints due to a decline of the annual ceiling of the Latin American regional IPF from US\$ 14.8 millions in 1980 to US\$ 11.6 millions in 1981.

“In order not to delay the approval of this mandatory revision any further, we adjusted the budget of the project revision accordingly.

“However, in the event that you consider other fields of expertise such as naval architecture, dry-docking, ship-repairing and shipbuilding of a higher priority to Latin America, we are willing to consider the replacement of the present advisers for three advisers in these fields . . .”.

XII. The Respondent in his answer of 14 October 1980 reiterated his request for “the continuation of all of the four posts beyond June 1981” but did not press his view that naval architecture, dry-docking, ship-repairing and shipbuilding (the areas in which the Applicant was employed) was a “vital field” and “an essential component of UNDP/IMCO technical advisory services”.

XIII. In essence the Applicant contends that the actions of both UNDP and IMCO were unfair to him. It was not for UNDP to propose explicitly his dismissal from IMCO because even if UNDP had to reduce its financial support for the project, it was for IMCO to decide which part of the project should be abandoned. Moreover, such a decision should have been based on a proper assessment of the priorities among the different elements of the project and not simply on a choice among the persons working for the project. According to the Applicant, the action of UNDP amounted to corrupt and discriminatory practices, and was not in the interest of the project. The proposal to dismiss him was based partly on unfounded complaints levelled against him by the Resident Representative of UNDP in Brazil and partly on a desire to accommodate another expert who had joined IMCO without a vacancy advertisement on the recommendation of the

Director of the Latin American Bureau of UNDP, one of his relatives. The Applicant contends that the attitude of IMCO was unfair and against the interests of the project it had undertaken. While the Respondent raised the question with UNDP whether he could not maintain all the four posts in question, he did not insist on the continuation of the Applicant's post and on the separation of one of the other experts, who were all junior to him and less experienced; this applied particularly to the protégé of the Director of the Latin American Bureau of UNDP. Moreover, the Applicant's separation meant the giving up of the Rio de Janeiro office, as well as the abandonment of one of the main purposes for which the project was instituted: the advising of and the assistance to Latin American countries in shipbuilding, dry-docking, etc., to increase their participation in the carriage of cargoes generated by foreign trade. It was the Applicant who was employed for this purpose: two of the remaining three experts dealt exclusively with pollution matters and the third with maritime safety.

XIV. The Respondent asserts that he has no evidence to disprove the Applicant's allegations about the reasons UNDP might have had for proposing the non-renewal of his contract. Even if UNDP based its proposal on improper considerations, these should not be laid at IMCO's door and should not be considered to be evidence of evil doing by IMCO. IMCO simply was not aware of the matters about which the Applicant raised complaints against UNDP. The Respondent further states that IMCO was free to employ people with or without previous advertisements and that it is not unusual in the United Nations system to employ people on the basis of recommendations.

XV. The Respondent admits that after the expiration of his contract on 4 August 1980 the Applicant did have a clear expectation for renewal of the contract, but does not accept that this expectation was necessarily for the same period as the previous contract. As UNDP would not finance the post of the Applicant beyond 31 December 1980, the Respondent could not offer the Applicant a contract going further than that date.

XVI. The Tribunal finds that the evidence does not entirely support the position of the Respondent. His claim that he did not know about the personal difficulties the Applicant had with UNDP is not well founded. First, the Secretary-General of IMCO received from the Resident Representative a.i. of UNDP a letter dated 25 August 1980 complaining about the Applicant and secondly, on 11 September 1980 the Secretary-General himself wrote on that letter the following: "I am getting rather concerned about Mr. Cipolla's relations with UNDP. This letter does not please me at all. Would you [Captain Singh] kindly ask Mr. Plaza to write suitably to Mr. Cipolla and obtain his explanations". Mr. Plaza did write a letter to the Applicant as requested but, before the Applicant's explanations—given in a long letter dated 10 October 1980—arrived, he was informed on 26 September 1980 that his contract would not be renewed beyond 31 December 1980.

XVII. The Tribunal holds that IMCO cannot escape such responsibility as devolves on it as the executing agency for the project in question by simply asserting that it was obliged to carry out the wishes of UNDP which had provided the money. The Respondent had every right and every obligation to take up with UNDP with utmost vigour and urgency what he considered to be in the best interests of the project. That such a possibility was clearly open to the Respondent is evident from the terms of the UNDP telex dated 26 August 1980 and the UNDP letter dated 10 September 1980.

XVIII. It is not for the Tribunal to examine whether and how well UNDP on the one hand and IMCO on the other served the interests of the project by abolishing the

Applicant's post and by giving up the Rio de Janeiro office of IMCO, while at the same time maintaining the posts of the three other experts. The Tribunal notes, however, that the Respondent did not submit any proof and did not even assert that this solution was in the best interests of the project and the organization.

XIX. The Applicant strongly contests the view of the Respondent that after expiration of his contract on 4 August 1980 the Applicant could not have an expectation for its renewal for the same period as his previous contracts, i.e., for one year (see paragraph XV above). The Tribunal finds in this respect that the Respondent was obviously remiss in not informing the Applicant before the expiration of his contract on the prospects of its renewal. This would create in the mind of the Applicant an expectation that he would be accorded again a fixed-term contract for another year in the light of the situation in 1977 and 1978 when the letter of renewal reached him after the date of expiration of his contract.

Furthermore, the Tribunal, considering all the circumstances, finds that the Respondent did not proceed in the Applicant's case with such circumspection, care and attention as can be expected from an international organization in personnel questions especially when the separation of a staff member who for more than ten years served the organization to its satisfaction was at issue.

In the first days of September 1980, if not earlier, the Respondent had become aware of the complaints of UNDP against the Applicant and of the personal antagonism behind these complaints. However, the Respondent failed to investigate, before taking a definitive step on the separation of the Applicant, whether the animosity of the UNDP representative and possibly of other UNDP officials against the Applicant did not unduly influence UNDP's unusual proposal in singling out the Applicant for dismissal and not leaving it for IMCO to make its choice among the persons working in the project. It was incumbent on the Respondent to examine whether UNDP's wish to separate the Applicant was not based largely on considerations extraneous to the interests of the project.

XX. Since the Applicant's employment was based on fixed-term contracts, his request for reinstatement cannot be upheld. The Tribunal finds that on account of the Applicant's untimely separation and considering the lack of proper action on the part of the Respondent, the Applicant is entitled to compensation. Accordingly, the Tribunal orders that a sum equivalent to 12 months of his last net base salary be paid to the Applicant by the Respondent. This decision absorbs the offer of an *ex gratia* payment of six months salary made by the Respondent to the Applicant.

XXI. In this context, the Tribunal has noted, especially during the oral proceedings, the Applicant's repeated plea that his aim is not so much to seek financial relief as reinstatement to the post he has been separated from or appointment to any other appropriate post the Respondent could offer him. This is a matter within the discretion of the Respondent and he is free to offer or not a suitable post to the Applicant. However, should the Respondent decide to offer, and the Applicant accept, any appointment before 31 July 1982, the award given in the foregoing paragraph would not be operative.

XXII. All other claims of the Applicant are rejected.

(Signatures)

Endre USTOR
President

Samar SEN
Vice-President

Suzanne BASTID
Vice-President
Geneva, 14 May 1982

Jean HARDY
Executive Secretary

Judgement No. 291

(Original: French)

Case No. 279:
Estabial

Against: The Secretary-General
of the United Nations

Application to submit a case directly to the Tribunal because of a delay in proceedings before the Joint Appeals Board ascribable to the Respondent.

Article 7, paragraph 1, of the Statute of the Tribunal.—Since the second condition for an application to be receivable was not met, the application is not receivable by the Tribunal.—The Administration's answer to the Joint Appeals Board was delayed far too long.—Since the Administration's answer eventually reached the Board, the standard procedure is available to the Applicant.—Question of any damage which the Applicant may have sustained as a result of the excessive delay in submitting an answer.—No decision can be made by the Tribunal concerning the existence of such damage until a ruling is made on the merits of the appeal.—The application is not receivable.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mrs. Paul Bastid, Vice-President, presiding; Mr. Arnold Kean; Mr. Luis de Posadas Montero;

Whereas, on 29 April 1982, Jacques J. Estabial, a staff member of the United Nations, filed an application the pleas of which read as follows:

“... Applicant respectfully requests the Administrative Tribunal to *hold* that Respondent has failed to implement Staff Rule 111.3 with respect to Applicant and that Respondent's failure to meet his obligation under that Rule is such a default that Applicant's appeal may be received by the Administrative Tribunal; to *find* that Respondent has violated Staff Regulation 4 by not considering Applicant for appointment to the post of Director of the Division of Recruitment; and to *order* that appropriate redress be made”.

Whereas the Respondent filed his answer on 18 June 1982;

Whereas the Applicant filed written observations on 11 August 1982;

Whereas the facts in the case are as follows:

The Applicant, a French national, entered the service of the United Nations in May 1953 as a Translator-trainee in the French Translation Section at the P-1 level. After