
ADMINISTRATIVE TRIBUNAL

Judgement No. 378

Cases No. 364: Bohn	Against: The United Nations
365: Coeytaux	Joint Staff Pension
366: Vouillemont	Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, President; Mr. Endre Ustor;
Mr. Roger Pinto;

Whereas, on 17 October 1985, Mrs. Patricia Christian Grenfell Bohn, the recipient of a retirement pension paid by the United Nations Joint Staff Pension Fund, filed an application dated 13 October 1985, the pleas of which read as follows:

"MAY IT PLEASE the presiding member to agree to the holding of oral proceedings in this case.

AND MAY IT PLEASE the Tribunal:

1. To declare itself competent in this case;
2. To declare and judge the application receivable;
3. To order the rescission of the decision of the United Nations Joint Staff Pension Board to uphold the Secretary's decision to reduce the amount of the Applicant's pension in local currency, with effect from 1 January 1985;
4. Accordingly, to order payment to the Applicant by the Fund, with effect from 1 January 1985, of the amount of her pension in local currency, not affected by the reduction referred to in paragraph 4 [3] above and periodically adjusted to take account of changes in the cost of living in the country where she lives, whenever the amount in question is applicable under the two-track pension adjustment system,

minus any such payments that may have been made for periods subsequent to 31 December 1984;

5. To order the Respondent to furnish the documents referred to in paragraphs 38 and 42 of the explanatory statement and to permit the Applicant's counsel to respond within the time-limit that the Tribunal sees fit to set;
6. To award the Applicant, as costs, a sum payable by the Respondent, assessed at the time of the submission of this application at three thousand United States dollars, subject to adjustment upon completion of the proceedings."

Whereas, on the same day, Mr. Pierre H. Coeytaux and Mrs. Françoise Vouillemont, likewise recipients of retirement pensions paid by the United Nations Joint Staff Pension Fund, filed applications containing the same pleas;

Whereas the Respondent filed its answer on 29 August 1986 and supplemented it on 23 October 1986;

Whereas the Applicant filed written observations on 6 October 1986 and supplemented them on 31 October 1986;

Whereas, on 7 October 1986, Mr. Christophe Gorski filed an application for intervention in the case under article 19, paragraph 2, and article 7, paragraph 7, of the Rules of the Tribunal;

Whereas, on 4 November 1986, the Tribunal heard the parties at a public session in the course of which the Applicants and the Respondent furnished additional information;

Whereas, at the request of the Tribunal, the Respondent produced additional documents and information on 17 October 1986, 7 November 1986 and 28 November 1986;

Whereas, at the request of the Tribunal, the Applicants submitted additional observations on 15 November 1986, 24 November 1986 and 1 December 1986, in which they commented on the documents produced by the Respondent;

Whereas the facts in the case are as follows:

The Applicants, Mrs. Patricia Christian Grenfell Bohn, Mr. Pierre H. Coeytaux and Mrs. Françoise Vouillemont, are the recipients of retirement pensions paid by the United Nations Joint Staff Pension Fund.

The Applicants having submitted the required proof of their country of residence, the pensions they receive are subject to the adjustment applied to their pensions calculated in local currency according to the adjustment system adopted by the United Nations General Assembly in its resolution 33/120 of 19 December 1978. That resolution provided that each beneficiary would be entitled, on the date when the new system entered into force, to the greater of the following two amounts:

"(a) One in United States dollars, which will be adjusted periodically to reflect changes in the United States Consumer Price Index;

(b) The other in local currency, which will be adjusted periodically to reflect changes in the Consumer Price Index in the beneficiary's country of residence." (A/33/9, annex V, para. 3)

In its resolution 35/215 of 17 December 1980, the General Assembly modified the aforementioned adjustment system. The modifications served, inter alia "to increase the initial entitlement in local currency when the recipient resides in a country where the cost of living is substantially higher than that which was reflected in the pensionable remuneration used to determine his basic dollar entitlement under the Regulations". To that end, "a cost-of-living differential factor" would be applied "to a portion of his final average remuneration" (A/35/9, annex V, para. 3). The cost-of-living differential factor was based on the differences between the post adjustments in the various headquarters cities.

In its report to the General Assembly, the Pension Board noted that certain members of the Board had

"... expressed reservations on the use of the post adjustment system for the purpose of measuring the cost-of-living differences in the countries of residence of pensioners", in particular because it "did not reflect income tax as an item of expenditure" (A/35/9, para. 37).

Nevertheless, the Board, in its report, "agreed with the International Civil Service Commission (ICSC) that the post adjustment system would have to be used initially" because a further

delay in the implementation of the new system pending the elaboration of a special index "would be detrimental to the interests of a substantial group of pensioners and future retirees in high-cost countries". (Ibid., para. 38).

In its report to the General Assembly of 8 December 1980, the Advisory Committee on Administrative and Budgetary Questions observed in that connection:

"The Advisory Committee is of the view that the elaboration of a special index for pensioners, which is a complex matter that cannot be resolved overnight, should not stand in the way of the proposed changes in pensionable remuneration. At the same time the Committee recommends that the General Assembly should request ICSC to give high priority to the elaboration of the special index, including the impact of national taxation." (A/35/720, para. 33)

In its resolution 35/215 of 17 December 1980, the General Assembly decided, inter alia:

"... to revise the pension adjustment system contained in General Assembly resolution 33/120 of 19 December 1978, with effect from 1 January 1981, in accordance with the recommendations of the United Nations Joint Staff Pension Board contained in section IV.C of its report to the Assembly for 1980 and in annex V thereto;"

In addition,

"At its 99th plenary meeting, on 17 December 1980, the General Assembly, on the recommendation of the Fifth Committee, took note of the recommendations of the Advisory Committee on Administrative and Budgetary Questions in paragraph 33 of its report and requested the International Civil Service Commission, in co-operation with the United Nations Joint Staff Pension Board, to give high priority to the elaboration of a special index for pensioners, including the impact of national taxation, and to report thereon to the Assembly at its thirty-sixth session." (General Assembly decision 35/447)

In 1981 ICSC began studies with a view to the elaboration of a special index. At its twenty-ninth session, held in Geneva, the Pension Board considered the progress made in the elaboration of the index. In its resolution 36/233 of 18 December 1981, the General Assembly requested ICSC "to give high priority" to the completion of a study on

"the elaboration of a special index for pensioners, in collaboration with the United Nations Joint Staff Pension Board, in accordance with General Assembly decision 35/447 of 17 December 1980; ..."

In its report to the General Assembly at its thirty-seventh session, the Board informed the Assembly that at its thirtieth session it had considered the recommendations of ICSC to implement the first stage of the application of a special index for pensioners. The Board "expressed agreement with the scheme proposed by ICSC and with the procedures recommended for its implementation", which were reproduced in annex X to the report.

The Board noted that ICSC, having decided that

"the pensions of all retirees regardless of the date of retirement, in countries where the cost-of-living differential factors were applied, would be recalculated in accordance with the recommendations to be made to the General Assembly at its thirty-seventh session",

had also "agreed that the details of such application should be determined by the Board" (A/37/9, para. 67).

In those circumstances, the Board recommended that the procedures outlined in section C of annex X to the Board's report should be followed "to implement the application of the special index to existing pensioners (i.e., to those whose benefits became payable prior to 1 January 1983) and to effect a transition from the provisions of the previous system to the revised system of cost-of-living differential factors" (Ibid., para. 68).

The Board emphasized that "delays in the implementation of the scheme recommended by ICSC and by the Board would be inevitable because of the need to establish accurately the tax rates prevailing in the countries which might be affected". (Ibid., para. 69).

The General Assembly, in its resolution 37/126 of 17 December 1982, approved

"1. ... the procedure for adjusting cost-of-living differential factors applicable to retirees from the Professional and higher categories where those factors are applied and where the rates of taxation are zero or lower than those implicit in the amounts of base pensions provided under the United Nations staff pension scheme; ..." (Section I)

Moreover, on the same day, the General Assembly, in its resolution 37/131, amended

"... with effect from 1 January 1983 ... without retroactive effect ... the pension adjustment system in accordance with annexes IX and X to the Board's report;"

The procedure described in section I, paragraph 1, of General Assembly resolution 37/126 of 17 December 1982, mentioned above, concerns the first stage of the study undertaken by ICSC, in co-operation with the Pension Board, pursuant to General Assembly decision 35/447, on the elaboration of a special index for pensioners, including the impact of national taxation. In 1983 the ICSC secretariat and the Board worked on the second stage of the study, which relates to the elaboration of a comprehensive special index for pensioners reflecting the expenditure of pensioners.

The Board suggested that the first of the two alternatives proposed by ICSC in its report to the General Assembly should be chosen. The first alternative reads as follows:

"A comparison of the rates of national taxation with those applicable at the base of the system (New York) would be undertaken only for countries where the application of the special index resulted in an increase in the pensions of retirees in those countries under the currently applicable scheme. In instances where pensions of retirees from the United Nations system were not taxed or were taxed at rates substantially lower than those applicable at the base of the system, downward adjustments to the cost-of-living differential factors would be made". (A/38/32, para. 15)

After considering the reports of ICSC and the Pension Board, the General Assembly, in its resolution 38/232 of 20 December 1983, approved "the development of the special index for pensioners as recommended by the Commission in paragraph 15 (a) of its report;"

Accordingly, in 1984, the Secretary of the Pension Board proceeded to analyse the impact of national taxation in individual countries where upward cost-of-living differential factors had been applied under the existing pension adjustment system. He found that "of all the pensioners who may be affected by section I, paragraph 1, of Assembly resolution 37/126, 82 per cent reside in [Austria, France, Switzerland and the United Kingdom]" (A/39/9, para. 114).

In its report to the General Assembly at its thirty-ninth session, the Board observed that the analysis conducted by the Secretary had established that downward adjustments were warranted for pensioners residing in Austria, France and Switzerland but were not applicable to pensioners residing in the United Kingdom, because the rates of taxation there were higher than staff assessment rates.

Since time-consuming detailed calculations on a month-by-month basis would be required before the exact amounts of overpayment to individual pensioners (in Austria, France and Switzerland) could be determined, the Board concluded that to attempt to recover those amounts for the periods 1 January 1983-31 December 1984 would not be cost-effective (Ibid., paras. 115, 116).

The Board accordingly recommended to the General Assembly that it should "amend section C, paragraph (d) of the procedures in annex X to the Board's report to the thirty-seventh session [in 1982] so as to specify that

'no retroactive adjustment will be made for the period between the date entitlement began and 31 December 1984, but the reduced local currency amount will become effective from 1 January 1985'". (Ibid., para. 117)

The Assembly endorsed that amendment in resolution 39/246 of 18 December 1984 in the following terms:

"V

SPECIAL INDEX FOR PENSIONERS

Decides that the procedures applicable to existing pensioners as set out in section C, paragraph (d), of annex X to the report of the United Nations Joint Staff Pension Board to the General Assembly at its thirty-seventh session shall be amended so that no retroactive adjustment will be made for the period between the date entitlement began and 31 December 1984, but the reduced local currency amount will become effective from 1 January 1985;"

On 21 December 1984 the Applicants received their benefit statements for January 1985, in which the Secretary of the Board indicated:

- "1. Your local currency amount has been reduced as of 1 January 1985 due to the application of the special index for pensioners as approved by the General Assembly at its 37th

and 39th sessions. The amount of the dollar track is not affected by this special index."

In a letter dated 13 February 1985, the Applicants Mrs. Bohn and Mrs. Vouillemont requested a review of the Fund's decision to apply the aforementioned reduction. The Applicant Coeytaux made a similar request in a letter dated 20 February 1985. After an exchange of correspondence between the Secretary of the Board and the Applicants, those letters were regarded as constituting the notice in writing provided for in rule K.5 of the United Nations Joint Staff Pension Fund.

At its 162nd meeting, held from 25 to 28 June 1985, the Standing Committee decided to uphold the decision by the Secretary of the Board on the ground that the Secretary was constrained to adopt such a decision pursuant to section V of United Nations General Assembly resolution 39/246 of 18 December 1984. In a letter dated 8 July 1985 the Secretary informed the Applicants of the decision adopted by the Standing Committee on behalf of the Board.

On 17 October 1985 the Applicants filed with the Tribunal the aforementioned applications.

Whereas the Applicants' principal contentions are:

1. The contested decisions were taken in violation of article 26 of the Pension Fund Regulations.

2. The decision implementing an amendment to the pension adjustment system that was unfavourable to the Applicants was taken after they had completed their period of contributory service and therefore entails a violation of their acquired rights in the sense given to that concept in the judgements of the Tribunal.

3. The decision entails a violation of the principle of equality in that the procedure leading, where necessary, to a pension reduction has not been applied in the same manner to all pensioners living in countries where differential factors were previously applied.

4. In calculating the reduction, the Respondent violated the procedure set forth in annex X to the Board's report to the General Assembly at its thirty-seventh session.

Whereas the Respondent's principal contentions are:

1. The Tribunal lacks competence, as the Applicants suffered no measurable damages due to the contested action.
2. The Tribunal lacks jurisdiction over the pension adjustment system, which is not part of the Regulations of the Fund.
3. The pension adjustment system is also not part of the Fund's Administrative Rules.
4. The contested decision was adopted by the United Nations General Assembly, not by the Secretary of the Board.
5. The adoption of the special index for pensioners did not violate article 26 of the Regulations of the Fund.
6. The adoption of the special index for pensioners did not violate acquired rights.

The Tribunal, having deliberated from 13 October 1986 to 7 November 1986 in New York and from 1 December to 5 December 1986 in London, now pronounces the following judgement:

I. Since the applications submitted in cases Nos. 364, 365 and 366 relate to the same measures and contain the same pleas, the Tribunal orders the joinder of these cases.

II. The individual who applied to intervene is a participant in the United Nations Joint Staff Pension Fund. He has rights which may be affected by the Tribunal's judgement. The Tribunal decides that this application for intervention is receivable.

III. The facts are not in dispute. The Tribunal will refer to them to the extent necessary for the application of the existing law.

IV. Each Applicant, at the time of his or her retirement, received a letter from the Secretary of the Board of the United Nations Joint Staff Pension Fund (hereinafter referred to as the Fund). This letter, after stating how the pension is calculated, contains the following in paragraph 3, the same wording being used for each Applicant:

"Under the system of pension adjustments approved by the General Assembly, your benefit has been established in the currency of your country of residence at the rate of ... per year. Your benefit in US dollars and in local currency will be adjusted periodically according to the movement of the Consumer Price Indices of the United States and your country of residence, respectively. You will be paid the greater of these two amounts determined at the quarterly adjustment date."

V. Following the adoption of resolution 39/246 of 18 December 1984, each Applicant was notified by the Secretary of the Board on 21 December 1984 of the amount of his or her monthly pension established "in accordance with the Regulations and Rules of the United Nations Joint Staff Pension Fund and the pension adjustment system approved by the General Assembly".

That communication contained the following footnote:

"1. Your local currency amount has been reduced as of 1 January 1985 due to the application of the special index for pensioners as approved by the General Assembly at its 37th and 39th sessions. The amount of the dollar track is not affected by this special index ..."

VI. The Applicants, invoking various legal grounds, requested the Secretary of the Board to review the aforesaid decision. After several exchanges of correspondence, the Standing Committee, acting on behalf of the Pension Board, confirmed the Secretary's decision.

The latter notified each Applicant of this confirmation on 8 July 1985. The Applicants then brought the case before the Tribunal.

VII. At the outset, the Respondent challenges the Tribunal's competence. He recognizes that, under article 2, paragraph 3, of the Statute of the Tribunal and article 48 (b) of the Regulations of the Fund, the Tribunal is empowered to settle any dispute as to whether it has competence. On this point, under the terms of article 48 (c) of the Regulations of the Fund, the decision of the Tribunal is final and without appeal.

VIII. The Respondent invokes the following arguments, based on the text, in support of his plea:

- Article 48 (a) of the Regulations of the Fund, which provides that:

"Applications alleging non-observance of these Regulations arising out of the decision of the Board may be submitted directly to the United Nations Administrative Tribunal";

- Article 2, paragraph 1, of the Statute of the Tribunal, which limits its competence to applications alleging non-observance of contracts of employment or terms of appointment of staff members and specifies that these terms include, according to the English text on which the Respondent bases its argument, "the staff pension regulations"; the French text reads: "... y compris les dispositions du règlement des pensions du personnel";

- The reading of chapter VIII of the Rules of the Tribunal:

"Applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund";

- Article 1, paragraph 1, of the Special Agreement of 23 September 1955 between the United Nations and UNESCO extending the jurisdiction of the Tribunal to UNESCO, with respect to applications by staff members "alleging non-observance of the Regulations" of the Fund, which provides that:

"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 the Regulations of the Fund."

All Special Agreements contain an identical clause.

Consequently, for the Respondent, the competence of the Tribunal is limited to the non-observance of the Regulations of the Fund and does not extend to the pension adjustment system, which is not part of its Regulations.

IX. Like the Administrative Tribunal of the International Labour Organisation (ILO), the United Nations Administrative Tribunal is a tribunal of limited jurisdiction and not of general jurisdiction. The International Court of Justice has defined the competence of the ILO Administrative Tribunal in its Advisory Opinion of 23 October 1956 (Judgements of the Administrative Tribunal of the International Labour Organisation, upon complaints made against the United Nations

Educational, Scientific and Cultural Organization; ICJ, Reports of Judgements, Advisory Opinions and Orders, 1956, p. 77).

The Statute of the ILO Administrative Tribunal might appear restrictive. Indeed, in article II, paragraph 5, it provides that:

"The Tribunal shall ... be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations ..." (emphasis added).

The Court, however, refused to attach to this provision "any purely formal meaning". It held that, in order for the Tribunal to have jurisdiction, "it is sufficient to find that the claims set out in the complaint are, by their nature such as to fall within the framework of Article II, paragraph 5, of the Statute of the Tribunal ..." (Ibid., p. 88) (emphasis added).

X. The International Court of Justice was asked to determine whether an Administrative Memorandum from the Director-General of UNESCO, which was not, however, part of the Staff Regulations, could be considered as falling within the terms of article II, paragraph 5, of the Statute of the ILO Administrative Tribunal, which refers to the "provisions of the Staff Regulations". The Court observes that "... the Administrative Memorandum was related to the application of the Staff Regulations" (Ibid., p. 96). It declares, therefore, as had been stated by the ILO Tribunal in its judgement, that what was involved was "a 'dispute concerning the interpretation and application of the Staff Regulations and Rules of the defendant Organisation' and that, in consequence, the Tribunal was justified in confirming its jurisdiction" (Ibid., p. 97).

XI. The International Court of Justice concludes its opinion with relevant reflections on the extent of the competence conferred upon the Administrative Tribunal - although the Tribunal is, in the Court's view, an international tribunal. It emphasizes the following point:

"However, the question submitted to the Tribunal was not a dispute between States. It was a controversy between Unesco and one of its officials. The arguments, deduced from the sovereignty of States, which might have been invoked in

favour of a restrictive interpretation of provisions governing the jurisdiction of a tribunal adjudicating between States are not relevant to a situation in which a tribunal is called upon to adjudicate upon a complaint of an official against an international organization" (Ibid.).

XII. The Tribunal also took into account the fact that, if it accepted the Respondent's argument concerning its competence, the Applicants would be deprived of the possibility of submitting their claims to a jurisdictional procedure. As the Court stated in its 1954 Advisory Opinion:

"It would ... hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them" (Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion of 13 July 1954: ICJ Reports 1954, p. 57).

XIII. In the present case, which concerns the pension adjustment system, the Tribunal finds, in the words of the International Court of Justice, that this system "is related to" the Regulations of the Fund. This relationship to the Regulations of the Fund is confirmed, firstly, by the inclusion of the pension adjustment system in annex III to the Regulations and Rules of the Fund. It is implicitly affirmed by the Fund itself, in the letter addressed by the Secretary of the Board to each staff member upon his or her separation from service defining the pension benefits to which the staff member is entitled (para. IV above).

Moreover, the Tribunal recognized, in its Judgements No. 1982, Harpignies (1974)) and No. 228, Rivet (1977)) that the pension adjustment system falls within its competence.

XIV. For the foregoing reasons, the Tribunal declares that it is competent.

XV. The Respondent had raised two objections concerning the receivability of the application: one based on the "general" nature of the decision taken by the Secretary of the Board, the other based

on the lack of "measurable damage" resulting from the contested decision.

XVI. Each Applicant appealed against an individual decision affecting him or her. The Respondent, however, maintains that the decisions by the Secretary of the Board are "of a general character". The Tribunal cannot follow this argument. The applications are not directed against decisions "of a general nature" which the Applicants are asking to have rescinded. Hence the jurisprudence of the Tribunal as stated in Judgement No. 328, Cuvillier, para. VII and Judgement No. 329, Longerich, para. V is not applicable. The Tribunal therefore rejects this first objection to the receivability of the application.

XVII. The Respondent also maintained that the decision impugned was in reality a decision of the General Assembly, which the Respondent had merely implemented. The Tribunal deems this objection is unfounded. Were it to be accepted, it would deprive staff members and pensioners of any possibility of recourse.

XVIII. The second objection raised claims that the Applicants did not suffer any damage. However, the Respondent withdrew this objection during the oral proceedings. The Tribunal takes official cognizance of that fact.

XIX. The Applicants argued that the contested decisions of 8 July 1985 in their individual cases are null and void. They allege that the procedure required by article 49 of the Regulations of the Fund was not followed when the Board submitted its recommendations to the General Assembly for modifications of the pension adjustment system.

The Tribunal cannot accept this argument. On the one hand, the proposed modifications did not involve an amendment to the Regulations. Furthermore, the Fund's procedure for preparing and adopting its proposals and recommendations to be submitted to the General Assembly is an internal matter. Any irregularities alleged at this stage, of which the Applicants have furnished no proof, do not affect the resolutions adopted by the General Assembly.

XX. The Applicants also maintained that the contested decisions were vitiated by another procedural flaw arising in connection with the implementation of General Assembly resolution 39/246. They contend that in calculating the special index for pensioners the Respondent did not follow the procedure set out in annex X to the Board's report to the General Assembly (A/37/9). The Applicants allege that this constitutes a substantial procedural flaw.

XXI. The Tribunal notes that during the oral proceedings the Respondent stated that if a mistake had been made, which he denied, the issue could have been submitted to the Standing Committee, where it would have been considered and any mistake corrected. That procedure is available to any Applicant.

The Tribunal considers that, even admitting that such a procedural flaw existed, it was not substantial. It therefore rejects the Applicant's plea based on the violation of the procedure laid down in annex X to the Board's report to the General Assembly.

XXII. The Tribunal must now determine whether the changes in the pension adjustment system have violated the rights of the Applicants.

XXIII. The parties recognize that the pension adjustment system is a benefit to which the participants in the Fund are entitled and of which they may not be deprived.

XXIV. The Tribunal holds that this concurrence of views by the parties is juridically sound. There is indeed an obligation on the part of the Fund to maintain a pension adjustment system which takes account of changes in the cost of living.

On the basis of the Fund's conclusions, the General Assembly decided, in 1960, that such an adjustment system should be established (resolution 1561 (XV) of 18 December 1960, para. 6). Pending the adoption of a "permanent system of adjustment", the General Assembly established an interim adjustment (resolution 1799 (XVII) of 11 December 1962). In 1965 the General Assembly adopted a system of adjustment of "benefits" in respect of cost-of-living changes to replace that temporary system (resolution 2122 (XX) of

21 December 1965). For nearly 25 years, a benefit adjustment system has been in force. Every staff member entering the service of a member organization of the Fund who acquires the status of participant may consider the adjustment system as part of his or her terms of appointment. The right to benefits granted to participants in the Fund includes this system.

This right to benefits in respect of cost-of-living changes is mentioned in the letter sent by the Secretary of the Board to each participant upon his or her retirement.

The Tribunal holds that this constitutes an obligation of the Fund. The Fund, in its written statement and in its oral arguments, strongly affirmed that it accepted this obligation and intended to respect it.

XXV. The agreement of the parties on the principle of the obligation ends when it comes to determining the scope of that obligation.

XXVI. The Applicants argue that in order to do so, a distinction must be drawn between two periods. During the first period, between the date when the staff member became a participant in the Fund and that of his or her separation, changes adversely affecting participants could be made in the pension adjustment system, at least for the future and without retroactivity. On the other hand, during the period beginning on the date of separation, unfavourable modifications in the pension adjustment system would no longer be applicable to them.

XXVII. The Applicants justify this distinction by invoking the jurisprudence established by the Tribunal with respect to acquired rights. The Tribunal's judgement, however, is not based thereon. It is not relevant to this case.

XXVIII. The Tribunal holds, and indeed even the Respondent admits, that the right to the adjustment of pension benefits based on cost-of-living changes and the Fund's corresponding obligation arise when the staff member acquires the status of participant in the

Fund. This right and this obligation continue to exist as long as the participant is receiving a retirement pension.

XXIX. In line with the Tribunal's judgement in the Harpignies case (No. 182 (1974)), the Respondent fully recognized in his explanatory statements that:

"Beneficiaries of the Fund are nevertheless entitled as of right to a meaningful, reasonable pension adjustment system that provides to them an adequate measure of protection from cost-of-living changes occurring after their retirement".

("Les participants au fonds doivent néanmoins bénéficier, comme droit, d'un système d'ajustement des pensions effectif et raisonnable qui leur apporte une protection adéquate contre les variations du coût de la vie se produisant après leur retraite.")

XXX. At the same time the Respondent maintains that the pension adjustment system may be modified periodically, without retroactivity, in order to take account of a change in the circumstances which determine the adjustment of benefits in the light of cost-of-living changes. He admits that the exercise of a certain degree of discretionary power in taking such measures does not justify an abuse of this power.

XXXI. The Tribunal agrees with this argument. It holds that the revisions in the pension adjustment system are applicable without retroactivity to all beneficiaries of retirement pensions. These modifications must not be arbitrary. They must be reasonable and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members. They may not be used for purposes other than the protection of the purchasing power of retired staff members - nor with greater reason can they be allowed to result in forfeiture or deprivation.

XXXII. The Tribunal will therefore apply these criteria to the modifications contested by the Applicants.

XXXIII. The Applicants contest the special index for pensioners which takes into account the rate of taxation in each country of residence compared with the rates applicable at the base of the system (New York). They acknowledge, however, that it is not, in itself, unreasonable to take into account the impact of taxes on pensions.

The arguments of the Applicants are based essentially on a denunciation of the injustices, including inequalities, of the pension system in general. They provide no evidence that taking the impact of taxes into account constitutes an injustice in itself.

XXXIV. The objections raised by the Applicants with regard to the methods and results of the Fund's calculations do not affect the validity of the special index. There are internal procedures for correcting any mistakes that may be found.

XXXV. The Tribunal finds that no right of the Applicants has been violated by the contested decisions. Accordingly, the Applicants' claim that article 26 of the Regulations of the Fund was violated is extraneous to the issue and irrelevant.

XXXVI. The Applicants asked the Tribunal to order the Respondent to pay costs. Since their applications have been rejected, the Tribunal decides that there are no grounds for acceding to this request.

XXXVII. For the foregoing reasons, the Tribunal:

- Declares itself competent and rejects the objections to receivability raised by the Respondent;
- Rejects the Applicants' requests concerning the rescission of the Board's decisions notified by the Secretary of the Board of the Fund on 8 July 1985;
- Rejects all other requests of the Applicants.

XXXVIII. The application for intervention, declared receivable, is rejected on the merits.

(Signatures)

Samar SEN
President

Endre USTOR
Member

Roger PINTO
Member

London, 5 December 1986

Executive Secretary R. Ma