ADMINISTRATIVE TRIBUNAL

Judgement No. 526

Case No. 569: DEWEY

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; Mr. Ahmed Osman, Second Vice-President;

Whereas, on 9 November 1990, Arthur E. Dewey, a former staff member of the Office of the High Commissioner for Refugees, filed an application, containing the following pleas:

"II. PLEAS

The Applicant respectfully requests the Tribunal to hold:

(a) That the first appointment of Applicant by the UN High Commissioner for Refugees for a period of two years, eight months and nineteen days effective 12 April 1986, was effected in accordance with the letter and spirit of paragraphs 1(a) and 10 of the annex to General Assembly resolution 319(IV) A, dated 3 December 1949 (...) and article 14 of the Statute of the UN High Commissioner for Refugees adopted by the General Assembly by resolution 428(V) on 14 December 1950 (...);

(b) That the extension of the Applicant's appointment by the UN High Commissioner for Refugees for a period of one year effective 1 January 1989, was effected in accordance with the same provisions;

(c) That the second extension of Applicant's appointment by the UN High Commissioner for Refugees for a period of two years effective 1 January 1990, was

effected in accordance with the same provisions;

(d) That assuming the Secretary-General had a consultancy role with regard to the first selection of the Deputy High Commissioner, which the Applicant denies, he had no such role by any stretch of imagination, in regard to the extension of appointment of the same individual as long as the appointment would not extend beyond the term of office of the High Commissioner;

(e) That the belated consultancy role claimed on behalf of the Secretary-General is entirely inconsistent with the High Commissioner's independence and prestige asserted in paragraph 1(a) of the annex to resolution 319(IV) A (...) and with his authority to appoint under paragraph 10 of the said annex;

(f) That having failed to exercise any authority with the High Commissioner regarding the appointment of the Applicant or the subsequent extension of the Applicant's appointment, the Secretary-General is estopped from belatedly and selectively asserting such authority to void the last two-year extension effective 1 January 1990;

(g) That the alleged verbal intervention by the ASG/OHRM [Assistant Secretary-General/Office of Human Resources Management] with the High Commissioner for Refugees confirmed by notes for the file dated 6 January 1989 and 16 March 1989, were belated and gave no indication that this had led to an agreement on the part of the High Commissioner to seek the Secretary-General's approval regarding further extensions of the Applicant's appointment;

(h) That even if one assumes, for the sake of argument, that the High Commissioner should have consulted the Secretary-General regarding the Applicant's first appointment or even regarding his subsequent extensions, the absence of consultation could not nullify an otherwise legitimate extension of appointment offered to and accepted by the Applicant;

(i) That the two-year extension of appointment of the Applicant effective 1 January 1990, was perfectly legitimate and in conformity with the practice which had hitherto been followed by the High Commissioner for Refugees. Consequently, the Applicant was never put on notice that the

extension could be subject to revocation by an independent decision of the Secretary-General;

(j)That the invalidation of the Applicant's legitimate extension of appointment was an unwarranted and arbitrary violation of his terms of appointment under the Statute of the Office of the High Commissioner and the pertinent Staff Regulations and Rules;

(k)That bearing in mind the political exigencies following the resignation of the former High Commissioner, the Applicant in good faith and in the spirit of compromise gave a clear indication that he was willing to accept another assignment in the United Nations to mitigate the injury inflicted on him by the Secretary-General's arbitrary decision, but his gesture was totally ignored and the arbitrary decision was implemented;

(l)That the Secretary-General be ordered to reinstate the Applicant in the United Nations at his level for at least the duration of the revoked extension of appointment;

(m)That alternatively the Applicant be awarded compensation equivalent to at least two years' salary plus compensation for home leave travel expenses which would have accrued to him, plus an amount equivalent to what the United Nations would have paid into his pension plan;

(n)That in view of the arbitrary and humiliating measures taken by the Secretary-General, the Applicant be awarded damages for moral injury;

(o)That the undue and unwarranted delay in handling the Applicant's simple request to present his application directly to the Administrative Tribunal was unjustified bearing in mind staff rule 111.2(m) which provides that: 'In considering an appeal, the panel shall act with the maximum dispatch with a fair review of the issues before it.' The Applicant respectfully submits that the delay on the part of the Administration in finalizing its agreement for direct submission was totally unjustified and violates the spirit of administrative justice. It, therefore, warrants an additional award of compensation to the Applicant for delaying the process of justice."

Whereas the Respondent filed his answer on 22 January 1991;

Whereas the Applicant filed written observations on 25 February 1991;

Whereas, on 1 May 1991, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 7 May 1991, the Tribunal put questions to the Applicant;

Whereas, on 9 May 1991, the Applicant provided an interim answer thereto, and on 24 May 1991, he provided a definitive answer;

Whereas, on 10 May 1991, the Respondent submitted information which clarified a fact in dispute in the case;

Whereas the facts in the case are as follows:

The General-Assembly at its 40th session elected Mr. Jean-Pierre Hocké High Commissioner for Refugees for a statutory three-year term, commencing on 1 January 1986. At the 43rd session, he was re-elected for a second term, commencing on 1 January 1989 and extending to 31 December 1991.

The Applicant entered the service of the Office of the High Commissioner for Refugees on 12 April 1986, as Deputy High Commissioner; he initially received a two-year, eight-month and nineteen-day fixed-term appointment, through 31 December 1988. On 16 December 1988, the Applicant received from the High Commissioner a one-year extension of his appointment, with effect from 1 January 1989 and expiring on 31 December 1989.

In January, February and March 1989, the Assistant Secretary-General, Office of Human Resources Management (OHRM), and the High Commissioner exchanged communications by telephone and written notes and at a meeting, concerning the need for consultations between the High Commissioner and the Secretary-General in appointing the Deputy High Commissioner. The High Commissioner stated that he had no intention of changing the incumbent Deputy at that time and that as to consultation with the Secretary-General, he would act in

accordance with his delegated authority.

On 25 September 1989, the High Commissioner offered the Applicant a further two-year extension of his appointment, with effect from 1 January 1990 and expiring on 31 December 1991. According to the parties, as clarified by the 10 May 1991 letter from the Respondent, the Applicant accepted and signed the letter of appointment on the same date, although the agreed statement of facts on which this case was submitted had previously indicated 20 October 1989, as the date of the Applicant's signature. On 12 October 1989, a Personnel Action Form was issued by the Head, Personnel Service, to implement the appointment.

On 31 October 1989, the High Commissioner resigned effective 1 November 1989. By a cable dated 7 November 1989, the Acting Under-Secretary-General for Administration and Management informed the Applicant that the High Commissioner had been "neither empowered nor authorized" to offer the Applicant a two-year extension of his appointment until 31 December 1991. Accordingly, his appointment would expire on 31 December 1989.

On 15 December 1989, the Applicant wrote to the Secretary-General, stating that he believed he had a "legally constituted contract as ASG [Assistant Secretary-General] for the period 1 January 1990 through 31 December 1991" and that he was "hopeful that offsetting arrangements" could be made to take fully into account "the adverse personal and professional impact" of the decision not to honour his appointment. He stated that he reserved his right to appeal the decision through the appropriate channels. On 29 December 1989, the Assistant Secretary-General, OHRM, acknowledged the Applicant's letter of 15 December and reaffirmed the decision of 7 November 1989. On 30 December 1989, the Applicant requested the Secretary-General to review the decision to deny the Applicant the two-year extension of his appointment.

In a letter dated 20 March 1990, the Assistant Secretary-General, OHRM, informed the Applicant that the administrative decision not to honour his appointment would be maintained.

On 12 April 1990, the Applicant submitted an appeal to the Geneva Joint Appeals Board. On 13 April 1990, he requested the Secretary-General to agree to direct submission of his appeal to the Administrative Tribunal on the ground that the case involved no disputed facts. On 22 May 1990, the Assistant Secretary-General, OHRM, advised the Applicant that the Secretary-General agreed to direct submission "provided that both parties can agree on a stipulated statement of facts". After extensive negotiations such a statement was agreed to on 1 November 1990.

On 9 November 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant should be reinstated within the United Nations at the Assistant Secretary-General level at least for the duration of his revoked appointment;

2. The Applicant should be awarded damages for moral injury and for unreasonable delay in the administrative processing of his case.

Whereas the Respondent's principal contention is:

The High Commissioner was required to consult with the Secretary- General on the appointment of a Deputy High Commissioner. An appointment made without consultation is ineffective. The Applicant must be deemed to have been aware of this requirement and thus cannot rely upon a Letter of Appointment concluded in violation of this requirement.

The Tribunal, having deliberated from 7 to 31 May 1991, now pronounces the following judgement:

I. The Applicant challenges a decision of the Respondent dated 20 March 1990, reaffirming communications to the Applicant dated

7 November and 29 December 1989, the effect of which was to declare invalid a Letter of Appointment signed by the Applicant and the then High Commissioner for Refugees earlier in 1989, purporting to extend from 1 January 1990, until 31 December 1991, the Applicant's appointment. Prior to the disputed Letter of Appointment, the Applicant's fixed-term contract was scheduled to expire on 31 December 1989.

II. The issue in this case is whether the Letter of Appointment purporting to extend the Applicant's term as Deputy High Commissioner for Refugees until 31 December 1991, is valid and thus entitles the Applicant to rely upon it as having established on the part of the Organization a contractual obligation to fulfil its terms.

III. The Office of the High Commissioner for Refugees operates under a statute adopted by the General Assembly in 1950 (resolution 428(V), Annex).

IV. An offer of appointment was made by Mr. Jean-Pierre Hocké, then United Nations High Commissioner for Refugees, to the Applicant by Letter of Appointment dated 10 April 1986, to serve as Deputy High Commissioner in Geneva at the level of Assistant Secretary-General. The offer was for a fixed term of two years, eight months and nineteen days effective 12 April 1986 and expiring on 31 December 1988, the date on which the High Commissioner's own first term would expire.

V. The General Assembly elected Mr. Hocké as High Commissioner for a second term of three years beginning 1 January 1989 and ending 31 December 1991. On 16 December 1988, the High Commissioner offered the Applicant an extension of appointment for one year, effective 1 January 1989 and expiring on 31 December 1989. On the same date the Applicant accepted and signed the new Letter of

Appointment.

VI. On 25 September 1989, Mr. Hocké signed a Letter of Appointment offering the Applicant an extension of his fixed-term appointment for two years, at the same level and with the same title, starting 1 January 1990 and expiring 31 December 1991, the date of the end of the Mr. Hocké's own second term. On the same date the Applicant signed this Letter of Appointment.

VII. On 31 October 1989, Mr. Hocké resigned as High Commissioner, effective the next day. Thereafter, on 7 November 1989, the Acting Under-Secretary-General for Administration and Management advised the Applicant that, as he had been told in an earlier conversation in New York, Mr. Hocké had been neither empowered nor authorized to offer the Applicant an extension of his appointment until 31 December 1991, and that, therefore, his appointment would expire on 31 December 1989.

VIII. The Applicant expressed his disagreement with this in a letter to the Respondent dated 15 December 1989. This was reiterated in a subsequent letter from the Applicant to the Respondent dated 30 December 1989, in which the Applicant asserted, inter alia: "The contract appears to comply in every respect with the appropriate provisions of the UNHCR Statute and therefore should be considered legal and binding".

IX. On 20 March 1990, Mr. Kofi Annan, the Assistant Secretary-General, OHRM, addressed a letter to the Applicant in which he referred to the Applicant's letter to the Secretary-General of 30 December 1989 and stated the following:

> "Although paragraph 14 of the Statute of the Office of the High Commissioner for Refugees states that the High Commissioner 'shall appoint ... a Deputy High Commissioner of a nationality other than his own', paragraph 17 of the same Statute also provides that:

> 'The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest.'

It is evident that the appointment of the Deputy High Commissioner, a high official at the Secretary-General [sic] level, would qualify as a 'matter of mutual interest.' The Deputy may have to act for the High Commissioner, who himself is appointed on the nomination of the Secretary-General, in the absence or disability of the latter. In any event, the Deputy is charged with significant functions to be carried out within and in the name of the Organization.

Furthermore, the staff of the Office, including the Deputy, are staff members of the Organization within the meaning of Article 101 of the UN Charter and subject to the Staff Regulations and Rules. It cannot be assumed that the General Assembly wished to disregard the provisions of the Charter making the Secretary-General responsible for the appointment of staff members. Therefore, the Statute of the Office is to be interpreted consistently with the Charter to preserve the Secretary-General's right to be consulted on relevant matters, including those pertaining to senior appointments.

The former High Commissioner's attention was repeatedly drawn to the necessity of consulting the Secretary-General prior to appointing his Deputy, in accordance with the practice followed in other semi- autonomous organs of the United Nations such as UNDP and UNICEF for appointments at the Under-Secretary-General and Assistant Secretary-General levels. He clearly acted ultravires when he renewed your contract until 31 December 1991, without consulting the Secretary-General and his decision cannot be binding on the Organization.

I regret, therefore, that the decision you challenge must be maintained."

X. In a Note for the File dated 6 January 1989, Mr. Annan had stated the following:

"Following discussions with the Secretary-General's office, I telephoned Mr. Hocké, the High Commissioner for Refugees to advise him that in future the Secretary-General expects to be consulted before the appointment of a Deputy High Commissioner is made. I pointed out to him that the Secretary-General appoints all other Assistant Secretaries-General, including those employed by UNDP, UNICEF and UNFPA. UNHCR has not yet been brought in line with this practice.

At this stage, however, no formal change in the delegated authority is being contemplated.

I also shared with Mr. Hocké the unfortunate impression we have at Headquarters, that Senior U.S. Officials who have aspirations for the Deputy High Commissioner's post, campaign energetically for an aspiring High Commissioner and then expect to be rewarded with the second spot. Mr. Hocké understood the message and advised me that no new appointment was contemplated.

I assume therefore that Mr. Dewey will continue."

XI. High Commissioner Hocké commented on Mr. Annan's Note by a Note of his own, dated 3 February 1989, which said:

"I wish to refer to your Note for the File of 6 January 1989, which has just reached me.

I regret that some of the substance of our brief telephone conversation must have escaped my attention for I do not comprehend the point being made in the second paragraph of the above-mentioned note. Thus I should like to suggest that we take the first opportunity for us to meet so as to clarify this and the other matters raised.

Notwithstanding, I should like to recall that I did state that I had no intention of changing the incumbent of the Deputy High Commissioner's post at the present time. Furthermore, with regard to the first paragraph, I wish to reconfirm that I will act in accordance with the authority delegated to my post.

I should be grateful if you could arrange to share this information with those who received a copy of your Note for the File."

XII. On 16 March 1989, Mr. Annan made a handwritten record of a meeting held on that day with High Commissioner Hocké, stating:

"I met with Mr. Hocké today to discuss the appointment of the Deputy High Commissioner, and in particular the need to consult the SG [Secretary-General], whenever such appointments are being contemplated.

I also brought to his attention paras. ... and ... of OLA's [Office of Legal Affairs] memo of 16 March on the subject. He accepted the position and agreed to consult the SG prior

to such appointments."

XIII. The parties agreed that the question of relevancy of the texts quoted in paragraphs X-XII is to be decided by the Tribunal, the Applicant having taken the position that, even if true, they are irrelevant. As will be seen, the Tribunal finds that the contents of these paragraphs are largely, though not entirely, irrelevant or immaterial to the resolution of the issue in this case.

XIV. What is of cardinal importance in this case is paragraph 14 of the Statute of the Office of the High Commissioner, by which the General Assembly empowered the High Commissioner with respect to the appointment of his Deputy in the following terms: "The High Commissioner shall appoint, for the same term, a Deputy High Commissioner of a nationality other than his own". Also of significance is paragraph 17, which provides that: "The High Commissioner and the Secretary-General shall make appropriate arrangements for liaison and consultation on matters of mutual interest".

XV. The basis for the Respondent's contention as to the invalidity of the Letter of Appointment in dispute is that the High Commissioner was required to consult with the Secretary-General before extending the appointment of his Deputy, but failed to do so. The Tribunal will examine the various aspects of this issue.

XVI. To begin with, it is plain that nothing in the language of paragraph 14 of the UNHCR Statute quoted above imposes any such requirement on the High Commissioner. Paragraph 14 could not be clearer in reserving to the High Commissioner alone the power to appoint his Deputy for a term no longer than that of the appointment of the High Commissioner. Nor is there anything in the language of that paragraph from which such a consultation requirement might reasonably be implied. If the Secretary-General wished that a

consultation requirement be mandated with respect to the appointment of the Deputy High Commissioner, it would have been open to the Secretary- General to propose it to the General Assembly for inclusion in the statute relating to the High Commissioner's Office. (See also paragraph 13 of that Statute.) Were that done, the binding nature of the requirement would be clear to all who might have an interest in the matter. But there is no evidence that this was ever proposed by the Secretary-General, or that any such requirement was ever considered by the General Assembly.

XVII. Indeed, there is no evidence that, before the 1989 incident which gave rise to this appeal, the Secretary-General had sought to be or was consulted, as a matter of practice, by any other High Commissioners for Refugees in connection with the appointment of their deputies. Nor is there evidence that the Applicant was made aware of any agreement for consultation on the appointment of the High Commissioner's Deputy before any of the Applicant's appointments. There are, however, in the file written agreements on other matters of mutual interest which spell out in detail what was agreed upon between the Secretary-General and the High Commissioner, and documents showing routine actions by the Secretary-General approving appointments following receipt of security clearances.

XVIII. The Respondent points to paragraph 17 of the UNHCR Statute as the source of the requirement for consultation. But the language of that paragraph simply instructs the High Commissioner and the Secretary-General to make "appropriate arrangements" for consultation on matters of "mutual interest". This language plainly leaves it open to the High Commissioner and the Secretary-General to agree as to what arrangements, if any, are appropriate for consultation, and also leaves it open to them to agree on when and what matters are of "mutual interest". Neither the Secretary-General nor the High Commissioner is authorized under paragraph 17 to dictate to the other the terms of an agreement under that

paragraph. To be sure, the General Assembly contemplated that agreements between them would be reached, but there is a striking difference between a provision such as paragraph 17 and a provision which would empower one of the parties, in the event of no agreement, to decide what the "appropriate arrangement" is to be, and what is of "mutual interest". Accordingly, the Tribunal finds no basis for inferring from the language of paragraph 17 that, despite paragraph 14, the Secretary-General is empowered to invalidate the appointment of a Deputy High Commissioner solely because of a lack of consultation as to his appointment.

XIX. This is not to say that cogent arguments in support of a request by the Secretary-General for consultation by the High Commissioner regarding the appointment of a Deputy High Commissioner are lacking. Indeed, such arguments are set forth in the Respondent's brief and were apparently presented to Mr. Hocké in the form of a legal memorandum dated 16 March 1989, when the Assistant Secretary-General, OHRM, met with the High Commissioner. As shown by the handwritten note for the file by the Assistant Secretary-General, also dated 16 March 1989, the High Commissioner appears to have agreed to consult in the future. But the Respondent's arguments for an agreement fall far short of establishing that the Respondent had the power to compel an agreement, and it does not inevitably follow that an understanding between the High Commissioner and the Assistant Secretary-General necessarily invalidates a subsequent appointment by the High Commissioner contrary to the understanding.

XX. The Respondent argues that, even after such an agreement, "it would ... be open to the High Commissioner to change his mind and take the position that no consultation is necessary ... . If, however, he did change his mind, Respondent submits that that ... must ... be communicated to the Secretary-General if the appointment of a Deputy without the agreed consultation is to be considered

valid". While the Tribunal accepts the proposition that it would be open to the High Commissioner to change his mind, the Respondent's argument is unacceptable to the extent that it fails to take into account the position of a staff member who received such an appointment without prior knowledge of any limitation on the High Commissioner's authority resulting from such an agreement.

XXI. The Respondent attempts to meet this by arguing that "... having regard for the institutional position of the Deputy High Commissioner ..., [he] must be deemed to have knowledge of the scope of the authority of the High Commissioner. Furthermore, in the normal course of business, this limitation relating specifically to the appointment of a Deputy would have been brought to the Deputy's attention by the High Commissioner".

XXII. But nothing in the agreed statement of facts or the file shows actual knowledge by the Applicant of the facts sought to be imputed to him by the Respondent's assumptions and assertions. Nor is there evidence, such as the exchanges of material in the file relating to agreements on other matters between the High Commissioner and the Secretary-General, that might provide a basis for imputing even constructive knowledge to the Applicant. All that exists here is the handwritten note of 16 March 1989, which Mr. Annan prepared and placed in his own file. If other evidence existed, it should have been included in the agreed statement of facts or the Respondent should have established the pertinent facts before a Joint Appeals Board.

XXIII. In addition to the absence of any evidence as to the foregoing, there is also no evidence as to whether the High Commissioner might reasonably have considered that the communications discussed in paragraphs X-XII above were tantamount to consultation with the Secretary-General, at least insofar as an extension of the Applicant's appointment was concerned. For the

gist of those communications seemed to be an understanding that the Applicant would remain in his post. The High Commissioner might have thought that he was obliged to consult again only should he propose to replace the Applicant. Nor is there any evidence casting light on whether the High Commissioner may have felt himself free to change his mind later about any consultation at all under the then circumstances and free to act instead on the basis of his statutory authority, without any further communication on the point with the Secretary-General, or whether there might have been a plausible reason for his so doing.

XXIV. The Tribunal has great difficulty understanding why, merely on the Respondent's say-so, the Applicant should be charged with knowledge of Mr. Annan's note of 16 March 1989, or with knowledge of whether or not any consultation had actually taken place. The High Commissioner plainly had apparent authority to act as he did, and the Applicant was entitled to rely on that. The Tribunal recalls its jurisprudence in Judgement No. 444, Tortel (1989), paragraphs V-VIII, in which it dealt with a somewhat analogous situation. As the Tribunal indicated in that case, it was entirely reasonable for the applicant to have thought that the high administration official with whom he was dealing spoke with authority when he made a commitment; in such circumstances, the Tribunal was unable to conclude that the applicant had to bear the consequences of any lack of actual authority on the part of that high official. The same principle would apply here even if the Tribunal had found a lack of actual authority.

XXV. There is still another factor in this case which supports the Applicant's position. Despite the fact that serious allegations of impropriety regarding the conduct of the then High Commissioner had been publicized in late September 1989, the High Commissioner continued to retain his office as well as his statutory authority effective until 31 October 1989, at which time he resigned, without

any objection.

XXVI. The foregoing suggests that the decision appealed from, unless rescinded, would penalize the Applicant with respect to allegations of improper conduct for which the Applicant was in no way responsible - for the agreed upon statement of facts is wholly devoid of even the slightest suggestion that the Applicant was involved in any questionable behaviour, far less any wrongdoing.

XXVII. The Tribunal recognizes that the Respondent, in a case such as this, might have valid reasons for terminating a fixed-term appointment in the interest of good administration of the Organization, pursuant to staff regulation 9.1(b). It would, for example, be understandable that a new High Commissioner might wish to be able to designate his or her own Deputy, rather than retain a Deputy to the prior High Commissioner. Indeed, for this reason, it would not be surprising to find in the Letter of Appointment of a Deputy a special condition (which would seem appropriate in view of the "for the same term" clause in paragraph 14 of the governing statute) making it co-terminous with the term of the High Commissioner if the latter ended before the expiration of the Deputy's term. But no such special condition appears in the Applicant's fixed-term appointment, and the Respondent has not purported to invoke article IX of the Staff Regulations or the procedure provided for therein in this case.

XXVIII. For the foregoing reasons, the Tribunal sustains the appeal and holds that the Applicant's appointment from 1 January 1990 to 31 December 1991, was valid and binding and that, therefore, the Respondent acted unlawfully in separating the Applicant from service on 31 December 1989, in the belief that he had no further fixed-term appointment. In these circumstances, the Tribunal rescinds the Respondent's decision of 7 November 1989, which was reaffirmed on 20 March 1990 and which resulted in the Applicant's separation. The

Tribunal orders that the Applicant be reinstated forthwith in the service of the Organization and that he be paid his gross salary (without post adjustment or any other emoluments) from 1 January 1990, until the date of his reinstatement, reduced by his 1990 and 1991 gross earnings from any other service or employment, and also that the Respondent make arrangements to have the Applicant reinstated as a participant in the United Nations Joint Staff Pension Fund effective 1 January 1990, the full costs of such reinstatement to be borne by the Respondent, provided that the Applicant shall contribute (1) a sum equivalent to the withdrawal settlement he received from the Pension Fund, (2) the contribution the Applicant would have paid into the Pension Fund with respect to the period from 1 January 1990, to the date of his reinstatement, and (3) interest on (1) and (2) at the rate charged by the Pension Fund. The Tribunal further orders that the Applicant be placed in such suitable post as may be designated by the Respondent at the level and for the remainder of the term provided for in the Applicant's contract subject, during such remaining period, to all applicable Staff Regulations and Rules.

XXIX. In accordance with Article 9, paragraph 1 of its Statute, it is for the Tribunal to fix the amount of compensation to be paid to the Applicant should the Secretary-General, within 30 days of the notification of the judgement, "decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case". With regard to the injury sustained, the Applicant alleges entitlement to substantially more than two years of net base salary. The Tribunal considers that this is an "exceptional case" justifying the payment of higher compensation because of the extent of the injury to the Applicant when, in disregard of his proposal that his contract be honoured by placing him in another post following the resignation of the High Commissioner, he was abruptly separated from the Organization despite the existence of a valid appointment through 31 December

1991. However, the Tribunal does not agree with all of the Applicant's contentions regarding damages. Accordingly, the Tribunal, finding that two years net base salary would not in this case adequately compensate the Applicant for the injury he has sustained, fixes the compensation to be paid to him as two years of his gross salary (without post adjustment or any other emoluments), reduced by his 1990 and 1991 gross earnings from any other service or employment calculated on the assumption that his present employment continues to 31 December 1991, plus payment to him of an amount equivalent to what the Organization would have contributed on his behalf to the Pension Fund with respect to the period from 1 January 1990, through 31 December 1991, had he continued without any break in the service of the Organization through the latter date.

XXX. The Tribunal has considered the Applicant's various pleas. Taking into account the Respondent's apparent good faith, though mistaken, belief that the absence of consultation per se nullified the Applicant's contract, and the fact that the Tribunal does not find any undue or unwarranted delay, the Tribunal denies the Applicant's pleas except to the extent provided in paragraphs XXVIII and XXIX above.

(Signatures)

Roger PINTO
President

Jerome ACKERMAN
First Vice-President

Ahmed OSMAN
Second Vice-President

Geneva, 31 May 1991

Paul C. SZASZ
Acting Executive Secretary