considers that the Service Code thereby authorizes, within certain limits, the payment of compensation appropriate to the injury suffered in each individual case.

Having regard to the circumstances of the case, the Tribunal considers that a sum equal to 50 per cent of nine months of the Applicant's salary would provide adequate compensation for the injury which she has suffered, and orders that this sum should be paid to her by the Respondent over and above what is provided for in paragraph V above.

VII. For these reasons, the Tribunal orders that:

(1) The termination of the Applicant's employment shall be deemed to have taken place by mutual agreement on 22 July 1966;

(2) The Respondent shall pay the Applicant the sums specified in paragraphs V and VI above;

(3) The other pleas of the Applicant are rejected.

(*Signatures*)

Suzanne BASTID
Vice-President, presiding

Francisco A. FORTEZA
Member

Francis T. P. PLIMPTON
Member

Jean HARDY
Executive Secretary

Geneva, 15 April 1971

STATEMENT OF MR. VINCENT MUTUALE

I have participated in the consideration of the case and in the preparation of the judgement, which I should have signed with the other members of the Tribunal if I had not been obliged to leave Geneva.

(*Signature*)
Vincent MUTUALE

Geneva, 8 April 1971

Judgement No. 144

(Original: English)

Case No. 141: Samaan

Against: **The Secretary-General of the United Nations**

Request by a former staff member of the United Nations Emergency Force for payment of repatriation travel that was not undertaken.

Contention by the Respondent that the Tribunal is not competent on the grounds that the UNEF Staff Regulations for Local Employees excluded the application of the United Nations Staff Regulations and Rules and that the Applicant was not a staff member of the United Nations or an "other person" entitled to seek remedy before the Tribunal.—Non-existence of the internal appeals procedure provided for under

article XXXIX of the UNEF Staff Regulations for Local Employees.—The Respondent acknowledged the right of the Applicant to an appeal procedure and nominated the Joint Appeals Board as the form for such appeal in accordance with the Staff Rules.—No express or implied exclusion of access to the Tribunal can be inferred from a letter invoked by the Respondent.—Right of staff members of international organizations to have recourse to a judicial or arbitral remedy for settlement of their disputes.—Advisory opinion of the International Court of Justice.—Advisory character of the report of the Joint Appeals Board.—Reference to an advisory body as a final recourse does not ensure the judicial or arbitral remedy to which the staff member is entitled.—Right of the Applicant to a complete appeal procedure.—Competence of the Tribunal.

Consideration of the merits of the case.—Article XVIII, paragraph 6, of the UNEF Staff Regulations for Local Employees.—For travel expense to be reimbursed, the travel costs must actually have been incurred.—Article XVIII, paragraph 7, of the UNEF Staff Regulations for Local Employees.—Proof, based on the reimbursement procedure, that travel must be completed before it becomes reimbursable.—The request is rejected.

Subsidiary requests.—The requests are not receivable, as the pleas were not submitted to the joint appeals body.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton; Mr. Zenon Rossides; the Lord Crook, Vice-President, alternate member;

Whereas, on 15 December 1970, Farid Abdalla Samaan, a former staff member of the United Nations Emergency Force, hereinafter called UNEF, filed an application requesting the Tribunal to order:

"(*a*) Payment to the equivalent time, from the period I arrived Pyreas-Greece, to the date I was paid my salary and part of my travelling fare i.e. from 12 July 1967, to 30 September 1968.

"(*b*) The travelling fare from Pyreas-Cairo, according to the UNEF Staff Regulations Article XVIII para. 6.

"(*c*) A compensation which I will leave to the Tribunal to estimate the degree of injury and sufferings, according to Article 9 Para I of the United Nations Administrative Tribunal's Statute.";

Whereas the application also contained a request for the calling of witnesses and for the production of documents;

Whereas the Respondent filed his answer on 12 February 1971;

Whereas in his answer the Respondent requests the Tribunal to take a preliminary decision declaring that the Applicant is not covered by the terms of article 2, paragraph 2 of the Statute of the Tribunal or alternatively, should the Tribunal assume jurisdiction *ratione personae*, to find that (i) the Applicant's pleas (*a*) and (*c*) are not receivable under article 7, paragraph 1 of the Statute of the Tribunal and, on the merits, that (ii) the Applicant's plea (*b*) is not well founded;

Whereas, on 3 March 1971, the Applicant filed written observations in which he submitted to the Tribunal's better judgement as to the possible light the calling of witnesses and the production of documents might shed on the facts of the case;

Whereas the facts in the case are as follows:

The Applicant, a national of the United Arab Republic, was locally recruited in Cairo in 1961 for employment as a Finance Clerk with UNEF in Gaza. Upon the withdrawal of UNEF and the outbreak of hostilities in June 1967, he was separated from the service and travelled with his wife, a Greek national, to Haifa, Israel, and then to Piraeus, Greece, where they arrived on 12 July 1967. The Applicant's wife went to Cairo on 19 July 1967 in order to settle their affairs and returned to Greece on 2 August 1967. On 16 August 1967 the Applicant submitted to the "Claims Department" of the United Nations various claims, including a request for $114 for travel expenses from Gaza to Piraeus for himself and his wife. Payment of this claim was made to the Applicant on 30 September 1968. On 25 March 1969 the Applicant submitted to the Chief of the Field Operations Service of the United Nations two further claims, one of which was stated as follows:

> "In accordance with Article XVIII Para. 6 [of the UNEF Staff Regulations for Local Employees], I should have been paid until the place where I was recruited i.e. Cairo, Egypt, and as I was only been paid until Greece. That was due to my illness and being feeble at that time, I remained in Greece to gain strength, but, as a matter of fact, my wife who was with me, went to Cairo on the 19 July 1967, which was shortly after we arrived to Greece. So two ticket 3rd class Touristic Pyrea-Alexandria and Alexandria-Cairo amount to US $105.60."

On 25 July 1969 the Chief of the Field Operations Service informed the Applicant that his claim had been disapproved by the Office of the Controller on the following ground:

> "Mr. Saaman's travel ended in Greece. Accordingly, for the purpose of paragraph 6 of Article XVIII of the UNEF Staff Regulations—Local Employees, Greece in his case is the place which he wished to go to on separation. Mr. Saaman has been reimbursed for travel expenses Gaza-Haifa-Greece. Therefore his claim for repatriation travel from Greece to the U.A.R. cannot be entertained."

The Applicant having in the meantime requested the Secretary-General "to grant [him] leave to bring [his] case before the United Nations Administrative Tribunal", the Chief of Staff Services, Office of Personnel, informed him in a letter dated 19 August 1969 that "before submitting [his] case to that body, [he] must first go to the Joint Appeals Board". On 20 August 1969 the Applicant submitted to the Joint Appeals Board a letter of appeal against the decision communicated to him on 25 July 1969. On 30 September 1969 the Secretary of the Board requested from the Director of Personnel a ruling on the question whether, in view of the dissolution of UNEF and the unavailability of the recourse procedure provided in article XXXIX of the UNEF Staff Regulations for Local Employees, the Applicant might file on appeal with the Joint Appeals Board at Headquarters. On 5 November 1969 the Chief of Staff Services wrote to the Applicant:

> "After a careful consideration of your case, the Office of Personnel has decided to make an exception in your case and reimburse you the expenses you will incur upon your return to Cairo provided that your trip commences within three months."

The Applicant rejected the condition attached to that offer and maintained his appeal. On 19 January 1970 the Chief of Staff Services wrote to him that:

"... should you insist in proceeding with your appeal I would recommend to the Director of Personnel that he allow you to file your appeal with the JAB at Headquarters, since we have no administrative procedures for considering your appeal under Article XXXIX of the UNEF Regulations."

The Applicant having expressed his intention to proceed with his appeal, the Director of Personnel informed him on 17 February 1970 that:

"... the Secretary-General has agreed to refer this matter to the Joint Appeals Board at United Nations Headquarters under Staff Rule 111.4(*b*). By referring this matter to the Joint Appeals Board, the Secretary-General in no way prejudges any decsion which might be taken by the Board regarding their competence to entertain or regarding the receivability of the appeal under Staff Rule 111.3."

The Joint Appeals Board submitted its report on 27 August 1970. The concluding section of the report read as follows:

"Conclusions and recommendations

"33. The Board finds that the respondent fulfilled his obligations under article XVIII, paragraph 6, of the UNEF Staff Regulations for Local Employees, which governs the appellant's entitlements to travel expenses, when he reimbursed the appellant for travel expenses incurred in travelling from Gaza to Piraeus, Greece. The Board recommends, however, that the respondent, in the spirit of his offer to make an exception in this case, make an *ex gratia* payment to the appellant as reimbursement for the expense of the travel undertaken by the appellant's wife on his behalf shortly after their arrival in Greece. The *ex gratia* payment should cover the cost of one ticket, by the most direct and economical route and mode of transportation, from Piraeus to Cairo."

On 18 September 1970, the Director of Personnel informed the Applicant that the Secretary-General had taken the following decisions concerning the appeal:

"The Secretary-General had re-examined your complaint in the light of the Board's report and has decided to accept the Board's conclusion that the Secretary-General had fulfilled his obligations under Article XVIII paragraph 6 of the UNEF regulations when he reimbursed you for travel expenses incurred in travelling from Gaza to Piraeus, Greece. The Secretary-General has also decided, however, to authorize the payment to you of $52.80, as reimbursement of the cost of travel claimed by you in respect of your wife's travel from Piraeus to Cairo."

On 15 December 1970, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. As to the competence of the Tribunal:

(*a*) The Respondent himself agreed explicitly to submit the dispute to the Joint Appeals Board under Staff Rule 111.4 (*b*), thus bringing it under the provisions of the Staff Regulations and Rules of the United Nations, including those providing access to the Administrative Tribunal. He made no reservation as to the right of appeal to the Tribunal, which is implied in any recourse to the Board;

(*b*) The jurisdiction of the Joint Appeals Board having been firmly established, that of the Tribunal, as an appellate forum, cannot be denied;

(*c*) Having assimilated the Applicant to staff members of the Secretariat in the first phase of the dispute, the Respondent is now estopped from denying the Applicant access to the Tribunal;

(*d*) The reasons which led the Tribunal to declare itself competent in Judgements Nos. 57 and 70 apply *a fortiori* to the case;

(*e*) It is inconsistent with the principles of the Charter and the purposes of the United Nations for the Administration to exert itself in order to deny a judicial hearing, the only one available, to a staff member seeking redress.

2. As to the merits of the case:

(*a*) The Applicant is entitled to payment of the cost of travel to Cairo, his place of recruitment, even though the journey has not been made: He was unable to continue his journey because he had no means to travel, through the fault of the Administration; furthermore, under the practice at UNEF a staff member on separation was paid travel expenses for him and his dependants prior to his departure and not after his arrival at destination;

(*b*) Any intention the Applicant might have to establish himself in Greece would be subject to his first settling his affairs in Egypt;

(*c*) The Staff Regulations and Rules of the United Nations, relied on by the Respondent, are not applicable to UNEF employees;

(*d*) The treatment of the Applicant was discriminatory and contrary to the spirit of the Charter.

Whereas the Respondent's principal contentions are:

1. As to the competence of the Tribunal:

(*a*) The Applicant has no *locus standi* before the Tribunal. By virtue of his contract, which is governed by the UNEF Staff Regulations for Local Employees issued by the Commander of UNEF under the authority vested in him by article 19 (*c*) of the UNEF Regulations issued by the Secretary-General pursuant to General Assembly resolution 1001 (ES-I) of 7 November 1956, he is excluded from claiming any benefit attaching to the status of a staff member of the United Nations, including Staff Regulation 11.2 which provides for access to the Administrative Tribunal;

(*b*) The fact of barring UNEF local employees from access to the Tribunal does not involve a denial of due process to them since the internal appeals procedure envisaged under article XXXIX of the UNEF Staff Regulations for Local Employees was intended to guarantee a fair examination and adjudication of the disputes concerning their conditions of service;

(*c*) The substitute *ad hoc* procedure established in the case of the Applicant provided a quasi-judicial review of his claim which was reasonably consistent with the appeals and standards envisaged in the UNEF Staff Regulations for Local Employees.

2. As to the receivability of pleas (*a*) and (*c*): These pleas are not receivable as neither of the requirements laid down in article 7, paragraph 1 of the Statute of the Tribunal has been fulfilled.

3. As to the merits of the case:

(*a*) Since the Applicant has ended his travel in Greece although he was offered by the Respondent the opportunity to proceed to Cairo (his place of recruitment), Greece must be deemed to be the place where he wished to go on separation at UNEF expense;

(*b*) That interpretation is sanctioned by a long-standing United Nations practice which operates as a secondary residual system providing clarification on any matter relating to the several personnel regulations developed by the organs of the Organization;

(*c*) The Applicant's refusal to proceed with his return trip more than two years after separation resulted in the loss of his entitlement.

The Tribunal, having deliberated from 5 to 16 April 1971, now pronounces the following judgement:

I. The Respondent contests the competence of the Tribunal on the grounds that according to the letter of appointment the Applicant's terms and conditions of employment were governed by the UNEF Staff Regulations for Local Employees, which excluded the application of the United Nations Staff Regulations and Rules including the right of access to the Administrative Tribunal under Staff Regulation 11.2, and that the Applicant was not a staff member of the United Nations or an "other person" entitled to seek remedy before the Administrative Tribunal under article 2 of the Statute of the Tribunal.

II. The Tribunal observes that article XXXIX of the UNEF Staff Regulations for Local Employees provided for an internal appeals procedure and that such procedure could not be established in this case owing to the termination of UNEF.

The Tribunal notes that, in reply to a letter from the Applicant requesting that the Secretary-General "grant [him] leave to bring [his] case before the United Nations Administrative Tribunal", the Chief of Staff Services, Office of Personnel, informed the Applicant on 19 August 1969 that "before submitting [his] case to that body, [he] must first go to the Joint Appeals Board". Furthermore, in a letter dated 19 January 1970, the Chief of Staff Services wrote to the Applicant:

> "... I would recommend to the Director of Personnel that he allow you to file your appeal with the JAB at Headquarters, since we have no administrative procedures for considering your appeal under Article XXXIX of the UNEF Regulations".

Again on 17 February 1970, the Director of Personnel informed the Applicant that "the Secretary-General has agreed to refer this matter to the Joint Appeals Board at United Nations Headquarters under Staff Rule 111.4 (*b*)".

In the Tribunal's view, the effect of these communications was that the Respondent acknowledged the right of the Applicant to an appeal procedure and nominated the Joint Appeals Board as the forum for such appeal in accordance with the Staff Rules.

III The Respondent relies on the following sentence in the letter from the Director of Personnel dated 17 February 1970:

> "... By referring this matter to the Joint Appeals Board, the Secretary-General in no way prejudges any decision which might be taken by the Board regarding their competence to entertain or regarding the receivability of the appeal under Staff Rule 111.3"

to establish that the Board was intended to provide an exclusive substitute *ad hoc* procedure for the one envisaged by the UNEF Staff Regulations for Local Employees.

The Tribunal is unable to read any such limitation in the words cited above. It appears to the Tribunal that these words were intended merely to confirm the right of the Joint Appeals Board to determine its competence or the receivability of the appeal. In fact, the Joint Appeals Board received the appeal and decided the case on its merits.

The Tribunal reaches the conclusion that no express or implied exclusion of access to the Administrative Tribunal can be inferred from the letter cited above.

IV. The Respondent further argues that since an appeal procedure comparable to the one envisaged under the UNEF Staff Regulations for Local Employees had been provided in the forum of the Joint Appeals Board, a further appeal to the Tribunal is not open or available to the Applicant. The validity of this contention rests on the nature of the proceedings before the Joint Appeals Board. The right of staff members of international organizations to have recourse to a judicial or arbitral remedy for settlement of their disputes has been well recognized. In its advisory opinion dated 13 July 1954, the International Court of Justice stated as follows:

> "It would, in the opinion of the Court, 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."

V. From the fact that the Secretary-General agreed to refer the matter to the Joint Appeals Board *under Staff Rule 111.4* (b), the Tribunal infers that the report of the Joint Appeals Board was intended to be advisory in character. In Judgement No. 70 the Tribunal observed:

> "The reference to the internal procedure applied by the United Nations clearly indicated that the Appeals Board should remain a purely administrative and advisory body. Thus the importance and necessity of further jurisdictional appeal was maintained . . . "

It appears to the Tribunal that reference to an advisory body like the Joint Appeals Board as a final recourse does not ensure the judicial or arbitral remedy to which the staff member is entitled.

The Tribunal is of the view that from the Respondent's recognition of the Applicant's right to an appeal procedure under the UNEF Staff Regulations for Local Employees and from the reference of the dispute to the Joint Appeals Board under Staff Rule 111.4 (*b*), the necessary implication arises that the Applicant will have a right of recourse to a complete appeal procedure, including access to the Administrative Tribunal following such reference.

VI. The Tribunal therefore decides that it is competent to deal with the application.

VII. The Applicant's claim for cost of travel from Greece to Cairo, the place where he was recruited, is based on a misreading of article XVIII of the UNEF Staff Regulations for Local Employees, paragraph 6 of which reads as follows:

> "Should a staff member on separation wish to go any place outside the area in which the UNEF office is located other than the place from which he was recruited, the travel expense to be borne by UNEF shall not

exceed the maximum amount that would have been payable on the basis of return transportation to the place of recruitment."

It should be recallled that after the termination of UNEF, the Respondent did pay the Applicant's travel expenses from Gaza, where he had been employed, to the place where the Applicant chose to go, namely, Greece. In addition, the Respondent paid the travel expenses of the Applicant's wife from Greece to Cairo, where she went to settle his affairs.

Now the Applicant claims that he was entitled to the maximum amount that would have been payable on the basis of return transportation to Cairo, the place of his recruitment, whether or not he had incurred such expenditure or had travelled to Cairo, and although in fact he has not travelled to Cairo and has shown no intention of doing so. If the rule had so intended, it would have categorically stated that a staff member on separation shall be paid the cost of return transportation to the place of recruitment. Paragraph 6 of article XVIII of the UNEF Staff Regulations for Local Employees merely provides that if a staff member on separation goes to a place other than the place where he was recruited, the travel expense to be borne by UNEF is limited to the maximum amount that would have been payable for his return transportation to the place of recruitment. The words "travel expense to be borne" would indicate that the travel costs must actually have been incurred, and there is no indication that a staff member can be paid for travel not performed.

VIII. The Tribunal also notes that paragraph 7 of article XVIII of the UNEF Staff Regulations for Local Employees places on the staff member the responsibility for submitting claims for travel expenses immediately upon completion of travel. This is a clear indication that travel must be completed before it becomes reimbursable. Since travel to Cairo was neither performed nor intended to be performed by the Applicant, the question of reimbursement does not arise.

IX. The claim is therefore baseless.

X. The Applicant has requested the Tribunal to order:

"(*a*) Payment to the equivalent time, from the period I arrived Pyreas-Greece, to the date I was paid my salary and part of my travelling fare i.e. from 12 July 1967, to 30 September 1968.

"...

"(*c*) A compensation which I will leave to the Tribunal to estimate the degree of injury and sufferings, according to Article 9 Para I of the United Nations Administrative Tribunal's Statute.".

Neither of these pleas was submitted to the joint appeals body constituted in this case. The requests are therefore not receivable under article 7, paragraph 1 of the Statute of the Tribunal.

XI. The application is rejected.

(*Signatures*)

R. VENKATARAMAN
President

Zenon ROSSIDES
Member

Francis T. P. PLIMPTON
Member

Jean HARDY
Executive Secretary

Geneva, 16 April 1971

STATEMENT BY THE LORD CROOK

I have participated in the consideration of the case and in the drafting of the judgement and I would have signed the judgement with other members had I not been obliged to leave Geneva earlier.

(*Signature*)
CROOK

Geneva, 15 April 1971.

Judgement No. 145

(*Original: English*)

Case No. 149: de Bonel *Against*: **The Secretary-General of the United Nations**

Request for payment of termination indemnity to a former staff member whose fixed-term appointment was not renewed.

Since separation as a result of the expiration of a fixed-term appointment is not regarded as termination, a claim under the Staff Regulations and Rules does not arise.—The Applicant's letter of appointment restricts her claims to those available under the Staff Regulations and Rules and pertinent administrative instructions.—Claim based on a reference to national law in the Field Administration Handbook.—The Field Administration Handbook is not binding in nature as is the Administrative Manual.—In the absence of any stipulation regarding the applicability of the local law which would create a contractual obligation between the Administration and the staff, the claim based on local law fails.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Zenon Rossides;

Whereas on 15 October 1970 the Tribunal, at the reqeust of Mrs. Maruja de Bonel, a former staff member of the United Nations and the Applicant herein, extended to 3 January 1971 the time-limit for filing an application to the Tribunal;

Whereas, at the Applicant's request and with the Respondent's agreement, the President of the Tribunal extended successively to 15 February 1971 and to 15 May 1971 the time-limit for filing an application;

Whereas the Applicant filed the application on 17 May 1971;

Whereas the pleas of the application request the Tribunal "to declare that the Applicant is entitled to termination indemnity to be paid by the Administration";

Whereas the Respondent filed his answer on 23 July 1971;

Whereas the facts in the case are as follows: