

conferred no assurance in this respect and in any event could not affect the precise wording of the contract itself. The Applicant's claim for further compensation is therefore rejected.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Member

Zenon ROSSIDES
Member

Jean HARDY
Executive Secretary

New York, 6 October 1971

Judgement No. 150

(Original: French)

Case No. 151:
Irani

Against: The Secretary-General
of the United Nations

Non-renewal of the fixed-term contract of an OPEX officer.

Argument by the Respondent that the Applicant was an OPEX officer, not a staff member of the United Nations Secretariat and therefore outside the jurisdiction of the Tribunal.—Establishment of the juridical status of the Applicant as an OPEX officer by a combination of three agreements.—The parties had been concerned to provide for the settlement of any disputes that might arise between them.—Successive versions of the clause relating to the settlement of disputes in the contract between the United Nations and the Applicant.—Although the final text leaves a wide margin of discretion to the Organization, the latter undertook to provide for the intervention of an independent, decision-making authority.—Part played in the case by the Joint Appeals Board.—The final decision was taken by the Secretary-General, a party to the dispute, not by the Joint Appeals Board.—Principle according to which any decision taken by the Secretary-General on the advice of the Board can be appealed to the Tribunal, which is competent to take a decision binding on the parties.—Consideration of the question whether the legal relationship between the Applicant and the Respondent falls outside the Tribunal's competence.—Situation of OPEX officers.—Importance of the contractual link with the United Nations.—Analogies between the contractual law between the Organization and an OPEX officer and the law applicable to staff members of the Secretariat.—Applicability of the body of rules governing the international civil service in solving juridical problems relating to disputes that may arise concerning the contract between the Organization and an OPEX officer.—The approach taken by the Tribunal in its Judgements Nos. 96 and 106 should be applied to the present case.—Advisory opinion of the International Court of Justice.—Judgements Nos. 11 and 122 of the ILO Administrative Tribunal.—All staff members of international organizations have the right to resort to an impartial decision-making body.—The United Nations has recognized this principle for the benefit of OPEX officers.—The Joint Appeals Board was limited in this case to its advisory role.—In the absence of any other provisions established by the Respondent for settlement of the dispute, unless the Tribunal was competent in the present case, the Applicant would not have the safeguard of some appeals procedure.—Reference to Judgement No. 149.—Competence of the Tribunal.

Consideration of the request on the merits.—The Respondent was not under any obligation to extend the Applicant's contract.—Circumstances which allowed the Applicant to think that his contract would be renewed with retroactive effect.—Reasonable compensation granted the Applicant by the Respondent.

Related requests.—The requests are inadmissible, as they were not the subject of recommendations by the Joint Appeals Board.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francis T. P. Plimpton; Mr. Vincent Mutuale;

Whereas on 28 April 1970 Henri G. Irani, a former expert recruited under the OPEX (Provision of Operational, Executive and Administrative Personnel) Programme, filed an application concerning the non-renewal of his contract;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, in accordance with paragraph 10 of that article, the Executive Secretary of the Tribunal returned it to the Applicant and requested him to make the necessary corrections not later than 30 November 1970;

Whereas on 16 April 1971 the Tribunal, at the request of the Applicant, extended to 15 May 1971 the time-limit for the filing of the application;

Whereas the Applicant, after making the necessary corrections, again filed the application on 3 May 1971;

Whereas the pleas of the application are as follows:

“(a) I request the Tribunal to ask the Office of Personnel to supply it with:

“1. The questionnaire it sent to Mali in 1966 on the progress and end of my mission and, in particular, the reply of the Government of Mali, and also, the 1967-1968 Mali assistance programme in which the transport post was included;

“2. The complete correspondence exchanged in 1967 and 1968 on the extension of my contract until the end of 1968. (The representative of the Office of Personnel did not show these documents to the Joint Appeals Board) but I have copies of them which I showed to the Board;

“3. To request Mr. Gleboff, former Director of Operations, to testify on developments which occurred while he was in Bamako in 1967 to discuss the 1968 Mali assistance programme;

“4. To request His Excellency Mr. Traoré, Ambassador of Mali to New York, and particularly the Consul, Mr. Dao Zana, who was then Head of the Statistical Service and who had agreed to the suggestion of the Malian Technical Assistance Commission (*Commission Malienne de l'Assistance Technique*) that the arrival of a statistical expert should be postponed and the transport expert's assignment extended. . . Mr. Tirolien and Mr. Sumerdjian, United Nations staff members, could give evidence on these facts.

“(b)

“1. I request rescission of the decision to withhold payment of my salary in 1968 even though I had done my work in accordance with my commitments to Mali and the United Nations;

“2. Rescission of the decision not to provide me with a certificate of employment in 1969, which prevented me from obtaining employment;

“3. Rescission of the decision to withhold payment of allowances for assignments I had carried out in due form;

“4. Payment of medical expenses for 1968 and 1969.

“(c) and (d)

“I request payment of my full salary for 1968; 80 per cent of my salary for 1969; travel allowances and medical expenses and 10 per cent interest on the total sum not paid to me in due time. I leave it to the Tribunal to fix the amount of compensation for the injury I have sustained”;

Whereas the application included a request for oral proceedings;

Whereas, on 19 July 1971, the Respondent filed his answer requesting the Tribunal to take a preliminary decision that it is not competent to hear the application;

Whereas, on 6 August 1971, the Applicant filed written observations requesting the Tribunal to:

“(i) Declare its competence under article 2, paragraph 3 of its Statute;

“(ii) Decide to hear the case directly without waiting for the Administration's answer on the merits;

“(iii) Reverse the recommendations of the Joint Appeals Board on the points indicated . . . and allow the application submitted to it”;

Whereas, on the instructions of the President, the Executive Secretary informed the parties on 1 September 1971 that at the present stage of the case oral proceedings were unnecessary but that when the Tribunal had passed judgement on its competence it would, if appropriate, take a decision on the Applicant's request for oral proceedings;

Whereas, at the request of the President, the Respondent filed additional information, observations and documents on 15 September 1971;

Whereas the facts in the case are as follows:

The Applicant joined the United Nations on 27 October 1962 under a two-year contract as transport expert with the United Nations technical assistance mission in Bamako (Mali). On 27 October 1964 his contract was extended to 31 December 1964. With effect from 1 January 1965, it was replaced by three successive one-year contracts under the OPEX Programme, the Applicant's functions and duty station remaining unchanged. On 30 September 1967 the Applicant informed the Chief of the Section for Africa of the Office of Technical Co-operation that the conditions of his assignment were such that he had decided to accept an extension of his contract until December 1968. On 13 October 1967, the Chief of the Section for Africa replied, telling him that no request for an extension of his assignment to Mali had been received by the Office of Technical Co-operation and that in the Mali programme provision for his post had been made for 1967 only. On 20 October 1967, the Minister for Foreign Affairs of Mali requested the Resident Representative of the United Nations Development Programme that the Applicant's contract be extended to December 1968 and that his status be changed

back to that of a technical assistance expert. The Resident Representative, who had forwarded this request with a favourable recommendation to the Chief of the Section for Africa, was informed by the latter, on 6 November 1967, that the Applicant's status could not be changed and that if he obtained an extension of contract it would be as an OPEX expert; the Chief of the Section for Africa added that no provision had been made for the Applicant's post in 1968 and inquired how the Government intended to finance the extension requested. Having been informed of this reply, the Government of Mali suggested, on 14 December 1967, postponing the entry into service of two other experts by four months so as to be able to extend the Applicant's contract by eight months. On 8 January 1968, the Resident Representative informed the Minister for Foreign Affairs of the Government that Headquarters could not agree to the suggestion because the two posts in question were already under active recruitment and that repeated extensions of an expert's services in a given country were incompatible with United Nations Rules and with the spirit of technical assistance. On 26 January 1968, the Resident Representative sent the following cable to the Applicant who, in the meantime, had left Mali for France: "As previously indicated, we repeat that United Nations regrets it is unable to prolong your contract beyond 31 December 1967. See details in letter sent 8 January". On 27 January 1968, the Government of Mali reiterated its request that the Applicant's post should be retained for eight months. On 24 March 1968 the Applicant stated his case in a letter to the Under-Secretary-General for Economic and Social Affairs in which he indicated, *inter alia*, that after receiving the aforementioned cable of 26 January 1968, he had remained in Paris where he had performed certain tasks for the Government of Mali and had then returned to Bamako at the beginning of March, the Government of Mali continuing to pay its share of his salary as an OPEX expert. On 11 April 1968, the Chief of the Section for Africa, on behalf of the Under-Secretary-General, confirmed to the Applicant that his contract had indeed expired on 31 December 1967 and had not been extended. On the same day, the Applicant submitted a claim to the Financial and Administrative Management of the Office of Technical Co-operation for payment of his salary for the month of January 1968 on the ground that it was not until 30 January 1968, when he received the cable of 26 January 1968, that he was informed for the first time that his contract would not be extended. On 26 April 1968, he was told in reply that, prior to his departure for Paris, he had been informed repeatedly that his contract would not be renewed and that the United Nations was therefore unable to make him any payment for 1968. In September 1968, the Applicant sent the Organization a further communication indicating, *inter alia*, that he had left Bamako on 22 July 1968 and claiming payment of his salary from January to August 1968. On 3 March 1969, the Applicant filed an appeal to the Joint Appeals Board claiming payment of his full salary for 1968; by a letter of 13 May 1969 to the Board he claimed his base salary for 1969 as well on the ground that, since the Office of Personnel had refused to complete the employer's certificate required by the French Ministry of Social Affairs, he had been deprived of the allowances to which he was entitled in 1969. On 21 May 1969, on the instructions of the Director of Personnel, the Acting Secretary of the Joint Appeals Board informed him that:

"the machinery to hear and to decide the current dispute between yourself and the Organization provided for in article V of your OPEX contract will take the form of referring the case to the Joint Appeals Board established pursuant to Staff Regulation 11.1 and Staff Rules 111.1-111.4."

The Joint Appeals Board considered the Applicant's case and, on 10 July 1970, submitted its report, which contains the following recommendations:

“Recommendations

“51. Since the decision of the United Nations not to renew the appellant’s appointment beyond 31 December 1967 was not received by the Resident Representative until 6 January 1968 and not conveyed to the appellant until the end of January 1968, and noting that the appellant returned to Mali from his leave on the expectation that continuing negotiations between the Government and the United Nations would result in the extension of his appointment (on one previous occasion he continued working for many months without a contract), the Joint Appeals Board recommends that a payment equivalent to his three months’ salary be made to the appellant and that any other claims made by him in this appeal be rejected.

“52. The failure of the United Nations Technical Assistance Recruitment Service to complete the questionnaire submitted by the appellant, which he indicated was required by the French Government, may have resulted in his experiencing some difficulty in obtaining employment. It is recommended that the Technical Assistance Recruitment Service provide the appellant with a statement referring to his service under the United Nations Programme of technical co-operation.”

On 20 August 1970, the Director of Policy Co-ordination in charge of the Office of Personnel informed the Applicant that the Secretary-General had decided that, as a settlement of the dispute, the Applicant would receive a sum of \$2,617.75, representing the net amount of three months’ additional stipend under the OPEX contract, and a statement referring to his service under the United Nations programme of technical co-operation. On 28 August 1970, the Applicant filed the aforementioned application.

Whereas the Applicant’s principal contentions are:

1. As to the competence of the Tribunal:

(a) The Applicant, who was a staff member of the United Nations Secretariat from October 1962 until the end of December 1965 [1964?], was, according to his OPEX contract, a United Nations officer placed at the disposal of the Government of Mali;

(b) OPEX experts should not be in an inferior position vis-à-vis other United Nations staff members in so far as their own interests are concerned; it would be unjust to refuse them the same guarantees as other staff members;

(c) The Administration, by freely submitting the Applicant’s case to the Joint Appeals Board, implicitly admitted the right of appeal to the Tribunal;

(d) The Administration, which is aware of the Tribunal’s decisions in similar cases (Judgements Nos. 57, 70 and 144), is, in the Applicant’s case, employing delaying tactics prejudicial to the settlement of his case.

2. As to the merits of the case:

(a) The circumstances in which his previous contracts had been concluded allowed the Applicant to expect that his contract would be extended beyond 31 December 1967: in particular, it had sufficed for the Government of Mali to request renewal of the contract for renewal to be granted, and formal signature of the contract often occurred several months after effective entry on duty;

(b) The Chief of the Section for Africa had given the Applicant an oral assurance that his contract would be renewed.

Whereas the Respondent's principal contentions are:

An application by a former OPEX officer concerning his United Nations contract falls outside the Tribunal's jurisdiction as defined in paragraphs 1 and 2 of article 2 of its Statute:

1. As an OPEX officer, the Applicant was not a "staff member of the Secretariat of the United Nations" to whom the Tribunal is open under article 2, paragraph 2, of its Statute.

2. The Applicant's OPEX contract was not a "contract of employment of a staff member of the Secretariat of the United Nations" and is therefore outside the jurisdiction of the Tribunal as defined in article 2, paragraph 1, of the Tribunal's Statute.

3. The submission of the Applicant's case to the Joint Appeals Board pursuant to the dispute settlement clause in the Applicant's contract provides no basis for the Tribunal's competence.

The Tribunal, having deliberated from 27 September to 6 October 1971, now pronounces the following judgement:

I. The application is against a decision taken on 20 August 1970 by the Secretary-General of the United Nations pursuant to the report and recommendations of 10 July 1970 of the Joint Appeals Board.

The Respondent has not submitted arguments on the merits of the case to the Tribunal. He is requesting the Tribunal to pass judgement that it is not competent to hear the case because the Applicant was an OPEX officer, not a staff member of the United Nations Secretariat. In the Respondent's opinion, the dispute was settled by application of article V of the Applicant's contract with the Organization.

II. The Tribunal notes that, having been an expert in Mali under the United Nations technical assistance programme for more than two years, and hence enjoying contracts which placed him under the direct authority of the Organization, the Applicant agreed to a change in his juridical status starting from 1 January 1965. On that date he was transferred to the OPEX Programme and accordingly placed under the direct authority of the Mali Government. His juridical status was established by a combination of three agreements embodying reciprocal relationships:

(1) The Agreement of 9 May 1963 between the United Nations and the Government of the Republic of Mali for the provision of operational, executive and administrative personnel;

(2) A contract between the United Nations and the Applicant;

(3) A contract of employment between the Government of Mali and the Applicant.

III. When establishing this complex system, the parties had been concerned to provide for the settlement of any disputes that might arise between them.

The agreement between the United Nations and Mali provides that, in the last resort, any dispute arising out of the agreement shall be submitted to arbitration. It also provides that any dispute between the Mali Government and any OPEX officer arising out of or relating to his conditions of service shall be submitted to arbitration if it cannot be settled through the good offices of the United Nations. There are provisions ensuring that recourse to arbitration may not be impeded by default of one of the parties.

The contract between the United Nations and the Applicant also contains an article (article V) entitled "Settlement of Disputes". The Tribunal noted that the Applicant's first OPEX contract, concluded in 1965, contained the following clause (article IV):

"Settlement of Disputes"

"The United Nations shall establish arbitration machinery to hear and to decide disputes between itself and the officer in which the latter asserts non-observance of the terms of this contract."

This clause clearly indicated the will to make provision for independent machinery to take decisions in any dispute alleging non-observance of the terms of the contract.

The 1966 (article IV) and 1967 (article V) OPEX contracts contain the following provision under the heading "Settlement of Disputes":

"The Organization shall establish appropriate machinery to hear and to decide disputes between itself and the Officer in which the latter asserts non-observance of the terms of this contract."

The Tribunal recognizes that this wording, the origin of which the Respondent did not see fit to explain, leaves a wide margin of discretion to the Organization. It notes, however, that the machinery established should make it possible to hear and "decide" any dispute between the parties. In this context, the use of the word "decide" means that the Organization undertook to provide for the intervention of an independent, decision-making authority.

IV. The Tribunal notes that at the time the Applicant decided to file his appeal, the Organization had not established the machinery provided for in the contract. Not until over two months after he had put his case to the Joint Appeals Board was the Applicant informed by the Board's Secretary of the decision taken in the matter.

According to the Respondent's answer, the Joint Appeals Board was designated as the settlement machinery referred to in article V of the contract. Allegedly, it "did hear and decide" the dispute.

The Tribunal notes that in her letter of 21 May 1969, the Secretary of the Joint Appeals Board informed the Applicant of the Director of Personnel's decision to refer the case to the Joint Appeals Board on the basis of article V of the contract. The letter also refers to the provisions in the Staff Regulations and Rules whereby the Board is established as a purely advisory body to advise and make recommendations to the Secretary-General.

The Tribunal notes that following consideration of the case, the Joint Appeals Board submitted to the Secretary-General, in the usual form, a report ending with "Considerations and Conclusions" followed by "Recommendations". The Joint Appeals Board followed its normal procedure and there is no reason to think that it considered itself competent to "settle" the case.

The Tribunal notes that the case was again submitted to the Secretary-General, who took his decision on 20 August 1970 after re-examining the complaint in the light of the Board's report. The final decision was, therefore, taken by the Secretary-General, a party to the dispute, not by the Joint Appeals Board. This decision undoubtedly conforms to the Board's recommendations, but it is quite clear from its wording that the Secretary-General did not consider himself bound

by the Board's recommendations. The dispute was not, therefore, the subject of a decision by an independent authority as provided in article V of the contract between the Organization and the Applicant.

V. As a general rule, any decision taken by the Secretary-General on the advice of the Joint Appeals Board can be appealed to the United Nations Administrative Tribunal, which is competent to take a decision binding on the parties. Attention was drawn to this principle in Judgement No. 144 (*Samaan*). In the present case, the Respondent considers that an appeal to the Tribunal would be contrary to the terms of the Tribunal's Statute, according to which the Tribunal is competent "to hear . . . applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations" and is open "to any staff member of the Secretariat of the United Nations even after his employment has ceased". According to the Respondent, since the Applicant was an OPEX officer in the service of the Government of Mali and subject only to the authority of that Government, not a staff member of the Secretariat of the United Nations, a dispute concerning him cannot fall within the Tribunal's competence.

In his final observations the Applicant contested this point of view and the Tribunal must consider whether the legal relationship between the Applicant and the Respondent falls outside the Tribunal's competence.

VI. The OPEX officer category was conceived some 10 years after the Tribunal's statute had been drawn up. Experience gained in technical assistance had shown the importance of building up from within the administrative structures of States recognizing the need for such strengthening. The complexity of the situation envisaged for the international administrator service was fully recognized by the Secretary-General, who wrote in his report of 16 October 1958 (A/C.2/200):

"Under existing technical assistance programmes, . . ., it is difficult to define with precision the relationship to the Government and to the United Nations of experts who are required to perform operational or executive functions, and to distinguish clearly between these and the more customary type of advisory personnel."

The situation of OPEX officers is characterized by the fact that the status of officials of the beneficiary State is necessarily conditioned by the existence of a contract between the person concerned and the United Nations. This contract establishes the officer's functions and stipulates that they may be changed only with the approval of the Organization. It is concluded for a limited time and stipulates the conditions in which it may be terminated.

Secondly, the contract lists the various benefits to be provided by the Organization. In addition to a supplementary stipend, there is a list of approximately 15 allowances or benefits to which the officer is entitled and which are "generally the same as those applicable to its staff members in the category of project personnel".

Thirdly, the contract defines the officer's status: responsible to the Government, he enjoys immunities which the Organization may, if necessary, waive. He must "conduct himself . . . with the fullest regard for the aims of the Organization and in a manner befitting his status under this contract".

The Agreement of 9 May 1963 between the Government of Mali and the United Nations recognizes the "special international status" attaching to officers made available to Mali and states that the assistance provided the Government is

in furtherance of the purposes of the United Nations and that the officers shall not be required "to perform any function incompatible with such special international status or with the purposes of the United Nations".

Thus, there is no question but that the contractual link with the United Nations is an important, if not essential, element determining the consent of a person who agrees to become an OPEX officer. Furthermore, the length of service with the State depends on the length of the contract with the United Nations.

It follows that although the Applicant's contract with the Organization is not a contract of employment in the usual sense of the word, it is a contract for a specific professional activity in the civil service of a State. The contract includes clauses which are found directly or by reference in the customary contracts of staff members of the Secretariat of the Organization. In other words, the contractual law between the Organization and the person concerned is, to a large extent, analogous in substance to the law applicable to staff members of the Secretariat and often the same texts are, in fact, applicable.

The Tribunal notes, moreover, that under article II, paragraph 6 of the contract concluded between the Applicant and the United Nations,

"The benefits (other than stipend) mentioned in this article shall be provided by the Organization under terms, conditions and definitions generally the same as those applicable to its staff members in the category of project personnel, and as may be determined by the Organization."

Article VII, paragraph 3, provides:

"While the Officer does not have the status of an official or a staff member of the Organization, any relevant matter for which no provision is made in the contract shall be settled according to the administrative practices of the Organization."

These provisions show clearly that the administrative situation of an OPEX officer is, in many respects, comparable to that of a staff member of the Secretariat.

Accordingly, any disputes that may arise concerning the contract between the Organization and an OPEX officer relate to juridical problems which must be settled by application of the body of rules applicable to the international civil service, even though in his professional work the OPEX officer comes under the authority of a State.

VII. The Respondent classifies the contract signed between the Organization and the OPEX officer as a "service-hiring contract". He maintains that this contract must be distinguished from the contract of employment which binds every staff member to the Organization and concludes from this that the Tribunal is not competent to hear disputes relating to it.

The question is not whether the Tribunal may be competent to hear cases relating to any service-hiring contract whatsoever concluded by the Organization, but whether, bearing in mind the provisions of the contract of an OPEX officer, disputes that might arise relating to it fall within the competence of the Tribunal.

In several cases, the Tribunal decided that it was competent to hear applications alleging non-observance of "terms of appointment" of staff members of the

Secretariat of the United Nations even though the Applicant had never been a staff member of the Secretariat (Judgements No. 96: *Camargo* and No. 106: *Vasseur*). The same approach should be admitted in the present case, which concerns a dispute relating to the conditions in which the contract between the OPEX officer and the Organization was terminated and the financial obligations devolving on the Organization by virtue of the contract.

VIII. In its advisory opinion of 13 July 1954, the International Court of Justice stated that "judicial or arbitral remedy . . . for the settlement of any disputes" which may arise between the United Nations and its staff was enjoined by "the expressed aim of the Charter to promote freedom and justice for individuals".

The right to resort to an impartial decision-making body was affirmed for the benefit of all staff members of international organizations by the Administrative Tribunal of the International Labour Organisation (Judgement No. 11: *Desgranges*). In its judgement No. 122 (*Chadsey*), that Tribunal stated:

"While the Staff Regulations of any organisation are, as a whole, applicable only to those categories of persons expressly specified therein, some of their provisions are merely the translation into written form of general principles of international civil service law; these principles correspond at the present time to such evident needs and are recognized so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently may not lawfully be ignored in individual contracts. This applies in particular to the principle that any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure."

The United Nations has recognized this principle for the benefit of OPEX officers by inserting clauses relating to "settlement of disputes" in their contracts.

IX. By agreeing to submit the case to the Joint Appeals Board without extending the latter's competence beyond that laid down in the Staff Rules and Regulations, the Respondent limited the Board to its advisory role. In the circumstances, and in the absence of any other provisions established by the Respondent for settlement of the dispute, unless the United Nations Administrative Tribunal was competent in the present case, the safeguard of some appeals procedure for the benefit of the Applicant would not exist and article V of the contract between the Applicant and the Organization would not be respected.

The Tribunal notes moreover that in a dispute relating to a contract concluded between an OPEX officer and the International Civil Aviation Organization, the parties did not contest the Tribunal's competence (Judgement No. 149: *Mirza*).

As to the provisions put forward by the Respondent to affirm that the Applicant does not have the status of a staff member of the Organization, their main purpose is to emphasize the situation of the Applicant as an employee of the Government of Mali and subject to its authority and cannot be interpreted as depriving the Applicant of his rights under his contract with the Organization, including the right to resort to the Tribunal on the basis of article V of his contract.

Accordingly, the Tribunal declares itself competent to pass judgement on the application filed against the decision taken by the Secretary-General on the recommendation by the Joint Appeals Board.

X. Since the Respondent did not see fit to submit any observations on the merits of the case, the Tribunal has considered the Applicant's requests. The Tribunal decides that the circumstances of the case do not justify oral proceedings or the hearing of witnesses.

The Tribunal notes that the Applicant's contract expired on 31 December 1967. As early as October 1967, the Chief of the Section for Africa in the Office of Technical Co-operation told the Applicant, who had informed him that he would be prepared to accept an extension of his contract until December 1968, that in the Mali programme provision for his post had been made for 1967 only. In the following weeks, the Government of Mali expressed the desire to retain the Applicant's services, but the United Nations consistently maintained its position to the effect that it was not possible to renew the Applicant's OPEX contract or to grant him another contract. The Resident Representative's cable of 26 January 1968, as well as the letter of 11 April 1968 sent to the Applicant by the Chief of the Section for Africa on behalf of the Under-Secretary-General for Economic and Social Affairs, confirmed to the Applicant that his contract had expired. Thus, no authority competent to bind the Respondent entered into a commitment to renew the contract between the United Nations and the Applicant, which was the necessary condition for extension of the Applicant's functions as an OPEX officer with the Government of Mali.

The Tribunal is unable, therefore, to agree that the Respondent was under an obligation to extend the Applicant's contract.

However, delay in concluding previous contracts, together with the fact that it was not until the beginning of 1968 that the Respondent definitively confirmed his unwillingness to accede to the requests of the Government of Mali, allowed the Applicant to think, for some time, that his contract would be renewed with retroactive effect. In the opinion of the Tribunal, the granting by the Respondent of a sum representing three months' net stipend from the Organization was reasonable compensation for the Applicant. The contract having expired, the request for the 1968 salary and 80 per cent of the 1969 salary cannot be based on any obligation of the Respondent and must be rejected.

As for the requests concerning mission allowances and medical expenses, it appears that they were not the subject of recommendations by the Joint Appeals Board. Accordingly, they are inadmissible.

XI. For these reasons,

- (1) the Tribunal declares itself competent to hear the application;
- (2) The application is rejected.

(Signatures)

S. BASTID
Vice-President, presiding
Francis T. P. PLIMPTON
Member

Vincent MUTUALE
Member
Jean HARDY
Executive Secretary

New York, 6 October 1971
