

against the Applicant and sees no merit in his allegations that the Respondent exercised his power to terminate the Applicant's employment in an arbitrary and capricious manner and that his case involved a miscarriage of justice.

For the foregoing reasons, the Tribunal, after examining all pleas of the Applicant, rejects the application in its entirety.

(Signatures)

Suzanne BASTID
President

Endre USTOR
Vice-President

New York, 21 November 1980

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Judgement No. 268

(Original: English)

Case No. 239:
Mendez

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

Request of a staff member of the United Nations Development Programme (UNDP) to be given the benefit of the language incentive scheme.

The Tribunal is not competent to make orders of general application.—Consideration of the Applicant's individual case.—General Assembly resolution 2480 B (XXIII) and Administrative Instruction ST/AI/207.—Question whether the Applicant is in the category of staff "subject to geographical distribution".—General principle embodied in Article 101, paragraph 3, of the Charter.—Consideration of the evolution of the practice of the Organization.—General Assembly resolution 153 (II).—Study of the problem by a Committee of Experts and by the Secretary-General.—General Assembly resolution 1852 (XVII).—Conclusion of the Tribunal that the expression in question has developed into a term of art associated with the system of desirable ranges.—Consideration of the travaux préparatoires leading to the adoption of General Assembly resolution 2480 B (XXIII).—At the time of the adoption of that resolution, the General Assembly was fully aware that the UNDP staff did not belong to the class of staff "subject to geographical distribution".—Applicant's contention that the Secretary-General did not consult the staff of UNDP before submitting his proposals to the General Assembly.—Contention rejected.—Applicant's contention complaining of unjustifiable discrimination.—Meaning of the principle of equality.—Contention rejected.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; Mr. Endre Ustor, Vice-President; Mr. Herbert Reis; Mr. Arnold Kean, alternate member;

Whereas at the request of Ruben P. Mendez, a staff member of the United Nations

Development Programme, hereinafter called UNDP, the President of the Tribunal, with the agreement of the Respondent, extended to 30 April 1979 the time-limit for the filing of an application to the Tribunal;

Whereas, on 30 April 1979, the Applicant filed an application in which he requested the Tribunal:

“ . . . to order the application of the steps envisaged in General Assembly resolution 2480 B (XXIII) of 21 December 1968 . . . to UNDP staff in the P-1 to D-2 categories.”

Whereas the Respondent filed his answer on 1 July 1980;

Whereas the Applicant filed written observations on 27 January 1981;

Whereas the facts in the case are as follows:

On 21 December 1968 the General Assembly adopted resolution 2480 B (XXIII) by which it requested the Secretary-General, “with a view to ensuring a linguistic balance”, to take the following steps:

“ . . .

“(b) From 1 January 1972:

“(i) All promotions from one grade to another, from P-1 to D-2 inclusive, for staff subject to geographical distribution will be conditional upon adequate and confirmed knowledge of a second language; nevertheless, the Secretary-General may authorize the promotion of the staff members specified above who do not fulfil that condition if he deems it necessary for the proper functioning of the Secretariat; the Secretary-General shall indicate what action has been taken in this respect in his annual report to the General Assembly on personnel questions;

“(ii) Adequate and confirmed knowledge of a second language will permit more rapid passage through the steps within each grade, from P-1 to D-2 inclusive, for the same staff, in this case the interval between steps being ten months instead of twelve; a reduction by the same proportion will be applied for grades where the interval between each step is at present more than twelve months;”

On 21 December 1971 the Assembly, through its resolution 2888 (XXVI), incorporated the language incentive scheme into the Staff Regulations by amending annex I, paragraph 4 thereof to read:

“Annex I, paragraph 4

“Subject to satisfactory service, salary increments within the levels set forth in paragraph 3 of the present annex shall be awarded annually, except that any increment above step IV of the Principal Officer level shall be preceded by two years at the previous step. The Secretary-General is authorized to reduce the interval between salary increments to ten months and twenty months, respectively, in the case of staff subject to geographical distribution who have an adequate and confirmed knowledge of a second official language of the United Nations.”

On 23 December 1971 the Director of Personnel issued Administrative Instruction ST/AI/207 to lay down the conditions of application of the language incentives; paragraphs 5 and 6 of the Instruction read:

“5. Staff members subject to geographic distribution are those who were appointed under the 100 series of staff rules for a year or more, or whose service for less than one year is extended to one year or more, and who are assigned to any of the following offices: the Offices of the Secretary-General; the Departments of Political and Security Council Affairs, Economic and Social Affairs (including the regional economic commissions and the United Nations Economic and Social Office at Beirut), Trusteeship and Non-Self-Governing Territories; the Offices of Public Information, Conference Services, General Services, the United Nations Office at Geneva and the secretariats of the United Nations Conference on Trade and Development, United Nations Industrial Development Organization and United Nations Joint Staff Pension Board.

“6. The resolution does not apply to staff members:

“(a) Who are appointed to posts with special language requirements up to and including the Senior Officer (P-5) level;

“(b) Who are appointed specifically for service with a mission;

“(c) Who are appointed, after interagency consultation, to posts financed on an interagency basis;

“(d) Who have been authorized exceptionally to retain their status as permanent residents in a country other than that of their nationality;

“(e) Who are seconded away from one of the offices, departments or secretariats mentioned in paragraph 5, for the period of their secondment;

“(f) Who are on special leave with partial pay or without pay for a month or more, for the period of special leave;

“(g) Who are detailed or assigned to technical assistance projects under rule 200.1.”

On 3 July 1973 the Applicant, in a memorandum to the Director of the UNDP Division of Personnel, asked to be given the benefit of an accelerated step increase under General Assembly resolution 2480 B (XXIII) on the following basis:

“(a) According to the above-noted Resolution, with effect from 1 January 1972, Professional staff proficient in more than one official language of the United Nations shall be granted step increases every ten months instead of every twelve.

“(b) On 31 October 1972, I completed ten months in step 4 of the First Officer (P-4) level and had established my proficiency in two official languages besides English, as confirmed by language proficiency certificates awarded by the United Nations. . . .”;

he added:

“I understand that the UNDP has not been applying the provisions of the Resolution to its staff, presumably because it was excluded by the United Nations Office of Personnel from the list of units of the United Nations covered by the Resolution. I see nothing in the Resolution, however, which shows that the General Assembly intended to exclude UNDP staff. In fact, it appears to me that UNDP staff clearly meet the Resolution’s criterion for eligibility, *viz.* they are subject to geographical distribution. I also understand that the Resolution has been incorporated into the Staff Regulations of the United Nations, which apply to UNDP staff.”

On 23 October 1973 the Chief of the Administration Branch of the UNDP Division of Personnel replied in part:

“The terms of the resolution do not apply to UNDP staff nor to staff of UNITAR because neither of these two organizations are subject to geographical distribution provisions of Staff Rule 104.5. This interpretation was given by the Director of Personnel, United Nations, in his memorandum of 8 October 1971 to the Heads of all UN departments. At that time he stated that the staff subject to geographical distribution are those in the professional category and above who are appointed under the 100 Series of Staff Rules for a year or more and who are assigned to the Secretariat of the United Nations, New York, the United Nations office at Geneva, and the Secretariats of UNCTAD, UNIDO, the Regional Economic Commissions, and the Joint Staff Pension Board and the UN Staff Pension Committee.

“Exceptions would be those:

“(a) who are appointed to posts up to the Senior Officer (P-5) inclusive level with special language requirements;

“(b) who are appointed specifically for service with a mission;

“(c) who are appointed, after inter-agency consultation, to a post financed on an inter-agency basis;

“(d) who have been authorized exceptionally to retain their status as permanent residents in the U.S.A.;

“(e) who are seconded away from one of these offices, for the period of their secondment;

“(f) who are on special leave without pay for a month or more, for the period of special leave.”

On 21 November 1973 the Applicant requested the Secretary-General to review the administrative decision of UNDP denying him an accelerated step increase; he stated *inter alia*:

“2. This position does not seem to be legally tenable, nor is it consistent with the principle of equality among the staff. That UNDP staff are subject to geographical distribution is evident from

“(a) the fact that they are subject to Article 101 (3) of the Charter;

“(b) the fact that they are subject to the Staff Regulations, which make no exceptions as regards the application of Regulation 4.2 or paragraph 4 of Annex I (as amended by resolution 2888 (XXVI)) to UNDP staff;

“(c) operative paragraph 2 of General Assembly resolution 1852 (XVII); and

“(d) paragraph 60 of the Annex to General Assembly resolution 2688 (XXV).

“The position of the UN Director of Personnel, moreover, by denying UNDP staff certain benefits available to staff of other operationally-oriented UN programmes such as UNCTAD and UNIDO, leads to inequality among staff of the United Nations.

“3. There are no indications, either in the language of resolution 2480 B (XXIII) or other related resolutions, that evince even vaguely an intent on the part of the General Assembly to exclude UNDP staff from the benefits of that resolution on the grounds of geographical distribution or on any other grounds. The only conclusion legally warranted by its terms therefore is that UNDP staff, including

myself, are entitled to its benefits. Even if there had been some room for interpretation of that decision, it should have been interpreted by the UN Director of Personnel in favor of equality among the staff rather than the contrary. Not only would such an interpretation have been more reasonable, but it would also have coincided with that which is called for by all other relevant considerations.”

In a reply dated 28 November 1973 the Assistant Secretary-General for Personnel Services advised the Applicant as follows:

“ . . .

“You seem to be under the impression that it was the Secretary-General who has taken the decision with regard to the application of General Assembly Resolution 2480 B (XXIII) of 21 December 1968. The Secretary-General does not legislate for the General Assembly while the opposite is the case. You may not have seen a copy of Administrative Instruction ST/AI/207 which was issued on the instructions of the Secretary-General pursuant to the General Assembly Resolution. . . .

“I would call your attention to the fact that an appeal to the Joint Appeals Board lies only against an administrative decision by the Secretary-General which is alleged to have violated a staff member’s terms of appointment or relevant provisions of the Staff Regulations and Rules. This does not seem to exist in your present case since the Secretary-General has taken no decision which has in any way violated either your terms of appointment or any of the provisions of the Staff Regulations and Rules. I would therefore suggest that you reflect on this matter very carefully before you decide to proceed further with your appeal.

“In view of the aforesaid, I regret that the Secretary-General sees no basis for meeting your request which was turned down at an earlier date by UNDP.”

On 27 December 1973 the Applicant lodged an appeal with the Joint Appeals Board, which submitted its report on 25 July 1975. The conclusions and recommendations of the Board read as follows:

“*Conclusions and recommendations.*

“34. The Board finds that the expression ‘staff subject to geographical distribution’ in paragraph 4 of Annex I to the Staff Regulations means ‘staff in posts subject to geographical distribution’, reported by the Secretary-General to the General Assembly for purposes of the application of the system of desirable ranges of posts. The Board finds further that the staff of the UNDP, not being counted among ‘staff in posts subject to geographical distribution’ for these purposes, are not entitled to the benefits of the accelerated salary increments provided in paragraph 4 of Annex I. Accordingly, the Board makes no recommendation in support of this appeal.”

On 8 September 1975 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General, having taken note of the Board’s report, had decided to maintain the administrative decision appealed against. On 30 April 1979 the Applicant filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The expression “‘staff subject to geographical distribution’” in General Assembly resolution 2480 B (XXIII) and in paragraph 4 of annex I to the Staff Regulations cannot be interpreted as excluding UNDP staff. In the absence of any specific statements of intent to give it a particular meaning or to exclude UNDP, that expression must be given

its ordinary meaning, i.e. *all* staff of the United Nations in the professional category and above, excluding only staff in posts with special language requirements.

2. UNDP staff form a part of the United Nations Secretariat. The fact that the Secretary-General chose, in a report, to use the term "regular Secretariat" and that the General Assembly subsequently adopted a language incentive scheme does not prove that the intent of the Assembly was to exclude UNDP staff.

3. Administrative Instruction ST/AI/207 is inconclusive as to the Administration's view on the status of UNDP staff since UNDP is mentioned neither on the list of those eligible nor on the list of those ineligible.

4. The fact that the UNDP Governing Council has not allocated funds for the application of language incentives to UNDP staff cannot be construed as legally determinative of the non-existence or lack of validity of an obligation of the Organization.

5. The General Assembly's failure to comment on the Secretary-General's proposal to the twenty-ninth session to broaden the scope of the language incentive scheme (as he then understood it) favours the Applicant's position much more than that of the Administration.

6. To the extent that UNDP staff were not consulted on any intention to exclude them from the benefits of the scheme, they were deprived of due process.

7. The manner in which the Administration has applied the General Assembly's decisions on language incentives has resulted in unjustifiable discrimination.

Whereas the Respondent's principal contentions are:

1. The expression "staff subject to geographical distribution" excludes UNDP staff insofar as UNDP staff are not subject to the system of geographical distribution established by the General Assembly:

(a) In the general practice of the United Nations that expression excludes UNDP, UNICEF and other such subsidiary organs not funded from the regular budget;

(b) In the context of the language incentive scheme the expression "staff subject to geographical distribution" must be given the meaning ordinarily attributed to it in United Nations practice:

(i) The legislative history of the language incentive scheme makes it clear that the General Assembly had intended the term "staff subject to geographical distribution" to have its ordinary meaning in the practice of the United Nations and accordingly to provide language incentives only for those staff members reported to the General Assembly for the purposes of the system of desirable ranges of posts. From the outset the problem of linguistic balance had been approached as directly related to the system of desirable ranges of posts;

(ii) Generally accepted rules of interpretation support the conclusion that the term cannot properly be given an interpretation other than its ordinary meaning in the practice of the United Nations;

(iii) The term was used consistently throughout the process of adopting the language incentive scheme and thereafter for its implementation.

2. There was no failure to consult with the staff.

3. UNDP staff are considered as United Nations staff but subject to the authority of the Administrator of UNDP. As resolution 2480 B (XXIII) is not applicable to UNDP

staff, the Secretary-General and the Administrator of UNDP were not authorized to apply the language incentive scheme to UNDP staff without the clear and explicit approval of the General Assembly.

4. There was no violation of the application of the principle of equality.

The Tribunal, having deliberated from 29 April to 8 May 1981, now pronounces the following judgement:

I. The Applicant requests the Tribunal "to order the application of the steps envisaged in General Assembly resolution 2480 B (XXIII) of 21 December 1968 . . . to UNDP staff in the P-1 to D-2 categories."

II. The Tribunal had already occasion to observe that, while under its Statute it is competent to hear and pass judgement upon applications submitted in individual cases, it has not been given competence to make orders *erga omnes* which are in the nature of a staff regulation or rule (Judgement No. 237, *Powell*).

III. The Tribunal will therefore consider the Applicant's request as one which is directed against the administrative decision of the Secretary-General accepting the unfavourable conclusions reached by the Joint Appeals Board in the Applicant's individual case.

IV. The Applicant in 1973 requested orally and in writing that he be given the benefit of accelerated salary increments as provided for in the second sentence of paragraph 4 of annex I to the Staff Regulations and in the General Assembly resolution upon which this Regulation is based. His request was denied on the basis of Administrative Instruction ST/AI/207. This Instruction, issued by the Director of Personnel on 23 December 1971 for the implementation of General Assembly resolution 2480 B (XXIII), listed the categories of staff covered by the expression "staff subject to geographical distribution". By not including the staff of UNDP in the list, the Administrative Instruction in effect excluded that category of staff from the accelerated salary increments.

V. In Judgement No. 237 (*Powell*) the Tribunal noted that

" . . . under Article 97 of the Charter the Secretary-General is the chief administrative officer of the Organization. Under Article 101 the staff shall be appointed by the Secretary-General under regulations established by the General Assembly. The Staff Regulations of the United Nations state under the title 'Scope and purpose' that 'the Secretary-General, as the Chief Administrative Officer, shall provide and enforce such staff rules consistent with these principles *as he considers necessary*'. [Emphasis added.] Thus the Secretary-General has discretion in framing the Staff Rules and in applying the Staff Regulations. In the exercise of these functions, the Secretary-General issues administrative orders and information circulars which the Tribunal has held to have the same force and effect as the Staff Rules unless inconsistent with the Staff Regulations."

The Joint Appeals Board rejected the Applicant's implicit contention that Administrative Instruction ST/AI/207 was inconsistent with General Assembly resolution 2480 B (XXIII) as incorporated in paragraph 4 of annex I to the Staff Regulations. It is essentially the same issue which the Applicant raises before the Tribunal.

VI. General Assembly resolution 2480 B (XXIII) provides that an accelerated salary increment is due to "staff subject to geographical distribution". According to the Applicant this expression in the context "must be given its ordinary meaning, i.e., *all* staff

of the United Nations in the professional category and above, excluding only staff in posts with special language requirements". According to the Respondent the meaning of the expression is that which it has acquired in the practice of the United Nations, i.e., "staff in posts which are subject to the system of desirable range of posts".

If the Applicant's interpretation is valid then he, as a member of the professional staff of UNDP, is entitled to the language incentives introduced by the resolution as incorporated in paragraph 4 of annex I to the Staff Regulations and implemented by Administrative Instruction ST/AI/207; if the Respondent's interpretation is the right one, then the Applicant is not so entitled.

VII. The starting point for solving the question must be Article 101, paragraph 3 of the Charter which reads:

"The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible."

This provision, which has been incorporated with slight changes into Staff Regulation 4.2, does not make any distinction between the different categories of staff; it applies equally to the professional category, to the general service, to staff in posts with special language requirements, etc.

This is not in dispute between the parties as it is, indeed, explicitly pointed out in General Assembly resolution 1852 (XVII) of 19 December 1962, dealing with the geographical distribution of the staff of the Secretariat, that "in the recruitment of all staff, due regard shall be paid to securing as wide a geographical distribution as possible".

VIII. The parties are in agreement that the expression "staff subject to geographical distribution" cannot be equated to "all staff"; both are of the view that certain categories of the staff are not included in this expression. The difference between them lies in the identification of the categories excluded.

While the Applicant asserts that only the general service staff and the language staff do not belong to the class of "staff subject to geographical distribution", the Respondent holds that still other categories—and among them the UNDP staff—belong to the excluded class.

IX. It follows from the foregoing that the meaning of the phrase in question cannot be explained merely on the basis of the plain meaning of the words as the Applicant contends. His way of interpretation also contains elements—the exclusion of the general service and language staff—which do not derive from the general principle embodied in Article 101, paragraph 3 of the Charter but have evolved in the practice of the Organization. It is therefore necessary to look into the history of this practice as far as it is relevant for the purposes of the present case.

X. The implementation of the principle embodied in Article 101, paragraph 3, of the Charter has been a continual concern of the General Assembly and of the Secretariat. As early as 15 November 1947 the General Assembly requested, in its resolution 153 (II), the Secretary-General:

"to take all practicable steps to ensure the improvement of the present geographical distribution of the staff, including the issuance of such rules and regulations as may be necessary to comply with the principles of the Charter . . ."

Stated simply, the aim of the General Assembly was—and still is—to find a formula for translating the principle of the Charter into practice. This aim has led to the establishment of a “desirable range of posts” to which each Member State may be entitled on the basis of continually changing methods of calculation. Closely connected with this was the recognition that, with respect to certain categories of staff, the application of the system of “desirable ranges of posts” was not practical. It became necessary to identify these categories, i.e., to determine which categories of staff should be subject to the application of the system and which should not.

XI. When this problem was studied by a Committee of Experts and by the Secretary-General in 1962, a list of categories of staff was established which were regarded as outside the scope of application of the desirable ranges. These included staff in posts which have special language requirements, staff of the Registry of the International Court of Justice, of UNICEF, of the High Commissioner for Refugees, etc.

Concerning the staff of the Technical Assistance Board and of the Special Fund (the predecessors of UNDP), the Committee of Experts agreed that they should be included in the United Nations staff for the purpose of the application of the “desirable ranges” formula. The Secretary-General, however, held and reported to the General Assembly that:

“... it would be in the interest of these programmes to avoid binding them to a rigid formula even on the basis of contributions. With the relatively small numbers involved, the importance of technical competence and the restrictions on freedom of choice which already exist, serious consequences could result from the rigidity in administration and restriction in choice of staff that a formula could introduce. If this view is accepted, the Acting Secretary-General would propose to review periodically the geographical balance of these staffs in consultation with the executive heads of the programmes and to report annually to the General Assembly on their progress in further improving the geographical distribution of their staffs vis-à-vis the criterion of contributions which he has suggested.” (A/5270.)

XII. In the General Assembly the view of the Secretary-General prevailed. On the basis of his report the General Assembly adopted resolution 1852 (XVII) on 19 December 1962. In paragraph 1 (b) of the operative part of that resolution, the Assembly stated that:

“In the Secretariat proper, an equitable geographical distribution should take into account the fact of membership, Members’ contributions and their populations as outlined in the Secretary-General’s report . . .”

By a separate paragraph in the operative part, the Assembly requested the Secretary-General:

“to review periodically the geographical distribution of the staffs of the Technical Assistance Board, the Special Fund and the United Nations Children’s Fund, and to report annually to the General Assembly on this matter.”

Thus the General Assembly made a clear distinction between the application of the geographical distribution formula to the staff of the Secretariat “proper” and the non-application of that formula to the staff of the voluntary programmes.

XIII. Pursuant to that resolution, it has become an established practice for the Secretary-General to include in his annual report on the composition of the Secretariat

statistical tables showing "staff in posts subject to geographical distribution". The staff of the UNDP and subsidiary organs of a similar nature have never been covered by these tables. The statistical information concerning these organs has been submitted separately for the consideration of the General Assembly.

XIV. On the basis of the foregoing the Tribunal accepts the view of the Respondent that in the reports and other materials submitted to the General Assembly and consequently in the practice of the Assembly itself, the expression "staff subject to geographical distribution" or "staff in posts subject to geographical distribution" has developed into a term of art meaning "staff whose posts fall within the scope of geographical distribution according to the system of desirable ranges of posts apportioned to Member States".

XV. This view is supported by the Repertory of Practice of the United Nations Organs according to which:

"While the Charter refers to 'recruiting the staff on as wide a geographical basis as possible' the term 'geographical distribution' has, in the practice of the General Assembly, assumed a more technical meaning, that is to say, the geographical distribution of staff holding posts subject to criteria designed to ensure wide and balanced geographical distribution, and has been related to the question of the criteria by which the 'desirable range of posts' subject to geographical distribution to be attributed to the various Member States is to be computed."

XVI. It remains to be examined whether this applies also specifically to paragraph 4 of annex I to the Staff Regulations and to the General Assembly resolution on which this regulation is based. The Tribunal will therefore turn to the *travaux préparatoires* of resolution 2480 B (XXIII) of 21 December 1968.

XVII. In the discussion preceding the adoption of the resolution the Fifth Committee had before it a report of the Secretary-General dated 25 November 1968 (A/7334) which under the heading "Language incentives" cited the following passage from General Assembly resolution 2359 B (XXII) of 19 December 1967:

"[The General Assembly invites the Secretary-General to take the necessary steps to ensure the early introduction] . . . of a language bonus for staff in the professional category subject to geographical distribution who use two working languages, with the understanding that the institution of a language bonus system will not be implemented before 1969, so that the General Assembly at its twenty-third session may consider a full report to be submitted to it by the Secretary-General on practical measures for the implementation of this system, and of such other incentives as he considers feasible to encourage broad linguistic proficiencies".

The report of the Secretary-General continued:

"Under the terms of this provision, the language bonus is to be available to 'Staff in the professional category subject to geographical distribution'. As is clear from this formula and from the proceedings in the Fifth Committee, the intent of the resolution is to direct the language bonus to those staff members who occupy administrative and substantive posts at professional and higher levels. It thus excludes staff occupying posts which require special language qualifications or which fall *outside the system of geographical distribution*. In support of this limited eligibility, it has been argued that the payment of a language bonus to staff whose salary is already based on their linguistic ability would be neither logical nor justifiable.

Implicit in the resolution is also the view that the immediate purpose to be served by the institution of the language bonus is a more equitable use of the working languages within the regular Secretariat." [Emphasis added.]

XVIII. Attached to that report was an annex containing extracts from a report of the International Civil Service Advisory Board on the question of a language bonus for professional staff. The report of the Advisory Board opposed the introduction of the language bonus on several counts, one of which was that it would cause dissatisfaction among those staff members who, by reason of their occupying a post outside the purview of the system of geographical distribution, would be ineligible for the bonus.

Attached to the same report was an annex of statistical tables. Tables 2–5 dealt with "posts subject to geographical distribution", table 6 with posts having special language requirements, table 7 with staff specifically appointed for mission service and table 8 with the staffs of UNDP and UNICEF.

XIX. It was on the basis of the Secretary-General's report dated 25 November 1968 that resolution 2480 B (XXIII) was adopted. This seems to offer conclusive evidence that the General Assembly, at the time of the adoption of its resolution on 21 December 1968, was fully aware that the UNDP staff did not belong to the class of staff "subject to geographical distribution". The Tribunal therefore holds that paragraph 4 of annex I to the Staff Regulations cannot be interpreted in the sense asserted by the Applicant and finds that the interpretation of this text by Administrative Instruction ST/AI/207 is correct.

XX. The Applicant bases his pleas also on the contention that the Secretary-General, contrary to Staff Regulation 8.2, did not consult the staff of UNDP before submission of his report of 25 November 1968 containing the proposal which led to the adoption of the General Assembly resolution introducing the language incentives.

But the Applicant himself does not deny that staff representatives were involved in the discussion concerning the introduction of the language incentives. An indication that this was the case is contained in paragraph 75 of annex II to the Secretary-General's above-mentioned report, where the view of FICSA representatives is mentioned.

The Tribunal, moreover, cannot uphold the view—implicit in the assertion of the Applicant—that whenever certain categories of staff are granted advantages, then each and every other category has to be specifically asked to assent.

XXI. The Applicant also complains of unjustifiable discrimination on the ground that in respect of the language incentives the general principle of equal treatment was violated to the detriment of the UNDP staff.

According to the Respondent,

"inasmuch as UNDP staff members are distinguished from 'regular' UN staff members in their letters of appointment and under the Staff Rules as well as in regard to the formula for geographical distribution, their being distinguished also for the purpose of language incentive entitlements cannot be deemed a violation of the principle of equality among staff".

The Tribunal accepts this view and recalls the dictum of the ILO Administrative Tribunal in its Judgement No. 391 (*de Los Cobos and Wenger*) according to which "The principle of equality means that those in like case should be treated alike, and that those who are not in like case should not be treated alike".

XXII. The Tribunal observes that by deciding the present case it does not wish to

pass judgement upon the present language incentive system. It notes that the Secretary-General proposed certain changes in the system in 1974 (A/9724, paragraph 30 (b)), including its possible extension to UNDP staff. While this recommendation was not followed by immediate General Assembly action, by its resolution 35/214 of 17 December 1980 the General Assembly requested the International Civil Service Commission "to begin as soon as possible the review of the language incentive scheme of the United Nations which is already on its programme of work." Thus on the basis of the report and recommendations of the ICSC, the General Assembly, the legislative body of the United Nations, may make changes in the system it introduced ten years ago. On the grounds adduced above this cannot be done by this Tribunal by means of an extensive interpretation of the relevant texts.

XXIII. Accordingly the application is rejected.

(Signatures)

Suzanne BASTID
President

Endre USTOR
Vice-President

Herbert REIS
Member

Geneva, 8 May 1981

Arnold KEAN
Alternate Member

Jean HARDY
Executive Secretary

STATEMENT BY MR. ARNOLD KEAN

I reach the same conclusion as my colleagues, relying for the interpretation of General Assembly resolution 2480 B (XXIII) only on the plain meaning of the text itself. The resolution applies only to staff "subject to geographical distribution". I find as a fact that UNDP is not subject to any system of geographical distribution, though the General Assembly receives an annual report on its geographical balance. For this reason I agree that the application fails.

(Signature)
Arnold KEAN

Geneva, 8 May 1981
