

**Judgement No. 363***(Original: English)***Case No. 353:  
de Franchis****Against: The Secretary-General  
of the International  
Maritime Organization**

*Request by a former staff member of IMO to declare null and void his periodic report, to order the Respondent to grant him a five-year contract and to pay him compensation for the injuries sustained.—Request for preliminary measures: production of various documents.*

*Conclusion of the Joint Appeals Board that the Applicant's periodic report was vitiated by procedural deficiencies.—Recommendation that the report be replaced by two reports to be prepared by the same supervisor.—Recommendation accepted.*

*Necessity to determine exactly the question before the Tribunal, especially in the presence of multiple pleas.—Conclusion that the contested decision consists in the Respondent's refusal to entrust the preparation of new periodic reports to a person other than the supervisor who was the author of the report declared null and void.—Consideration of the receivability of the appeal.—Conclusion that the appeal is receivable inasmuch as not all the Applicant's pleas were accepted by the Joint Appeals Board.—The Tribunal holds that a fair and impartial assessment of performance is an essential right of all staff members.—Conclusion that, in the light of the Board's findings on the inconsistencies in the report and of the strained relationship between the Applicant and his supervisor, the drafting of the new reports should have been entrusted to another person.—Finding that the decision to entrust this task to the supervisor seriously affected the Applicant's right to have his performance assessed impartially and entailed the responsibility of the Administration.*

*Award of compensation of three months' net base salary at the rate applicable on the date of separation.—All other pleas, including the preliminary pleas, rejected.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Herbert Reis, Vice-President, presiding; Mr. Luis de Posadas Montero; Mr. Ahmed Osman;

Whereas at the request of Francesco de Franchis, a former staff member of the International Maritime Organization, hereinafter referred to as IMO, the President of the Tribunal, with the agreement of the Respondent, extended to 22 May 1985 the time-limit for the filing of an application to the Tribunal;

Whereas on 19 April 1985, the Applicant filed an application that did not fulfil the formal requirements of Article 7 of the Rules of the Tribunal;

Whereas on 21 May 1985 the Applicant filed a corrected application in which he requested the Tribunal:

*"As to procedure:*

*"1. To hold oral proceedings.*

*"2. To hear as witness the Chairman pro tempore of the Staff Committee and the Chairman of the Joint Appeals Board . . .*

*"3. To order the Respondent to reconstruct the personal file of the Applicant, whose papers are now scattered in different offices of the Administrative Division; and, furthermore, that the said personal file be reconstructed according to the principles followed in the United Nations family, including the numbering of the papers contained and a log indicating when and by whom the papers were taken away.*

"4. To order the Respondent to produce the memorandum from the supervisor dated 16 January 1984 (not yet seen by the applicant, but mentioned by the Chairman of the Joint Appeals Board on 9 October 1984) whereby he recommends an 18-24 months contract subject to renewal.

"5. To order the Respondent to produce copy of the written reply by the Director of the Technical Cooperation of IMO on the basis of the advice given by the supervisor according to which the prospected Escap Guidelines were 'most unwelcome and likely to create serious problems for Imco and eventually for the Governments concerned', as contained in the memorandum of 2 February 1985 to the Senior Deputy Director of the Technical Cooperation Division . . .

"6. To order the Respondent to produce the request to the Supervisor from the Personnel Section of Imo to prepare a periodic report on the applicant for the period 1.12.1980-30.11.1983.

"7. To order the Respondent to produce—if it was made in written form—the request from the Secretary-General to the Supervisor asking for clarifications as to the reasons for the difference between periodic report on Mr. de Franchis 1 February 1978 to 30 November 1980 and the more recent report for the period between 1 December 1980 to 30 November 1983, as referred to by the supervisor in his memorandum to the Secretary-General of 27 March 1984 . . .

"8. To order the Respondent to produce the routing slip existing in the personal file of the Applicant by the hand of the supervisor where he states that—having spoken to the Secretary-General—he asks the Personnel Section to place his memorandum of 4 August 1983 to the Applicant on security arrangements on the Applicant's personal file . . .

"9. To order the Respondent to produce all job descriptions of the applicant and in particular that of 1972 (presumably November).

*"As to substance:*

"1. To declare null and void the periodic report 1.12.1980—30.11.1983 because based on fraudulent misrepresentation of facts for the purpose of reaching deliberately biased conclusions and ratings.

"2. To order the Respondent to grant the Applicant a five year contract less the period of extension already obtained (27 June 1984—15 September 1985), or in default of it, to pay compensation amounting to the net salary which the Applicant would have earned if he had received a five-year contract.

"3. To pay compensation for the pain and suffering inflicted to the Applicant which have brought about a medically documented grave depression, in the sum of 100.000 dollars . . .

"4. To pay compensation for destruction of career, for loss of prospect of employment elsewhere, for deliberate discredit, defamation and humiliation in the sum of 100.000 dollars.

"5. To order that the Respondent addresses to each of the States members of IMO and of the international and non-governmental organizations with which IMO maintains relations, an individual letter stating that the Applicant has at all times shown loyalty, competence, efficiency and integrity during the period of his employment with Imo and that the contested report was vitiated by fraudulent misrepresentation of facts for the purpose of reaching deliberately biased conclusions and ratings.

"6. To declare that:

“(a) the Board has erred in law, logic and fact in refusing to draw the only possible conclusion from its own findings, namely that the contested report was vitiated by fraudulent misrepresentation of facts for the purpose of reaching deliberately biased conclusions and ratings . . .

“(b) to declare vitiated by legal, logical and moral aberration the whole of recommendations contained in paragraphs 8.2 (a), (b) and (c) of the Board’s Report . . . and the relevant decision of 23 January of the Secretary-General of 23 January 1985 in that: (i) in recommending the preparation of the two new reports in lieu of the contested one, the Board has deliberately omitted to recommend that the supervisor should take due account of the findings of the Board; (ii) the whole system of recommendations assumes a total freedom moral and legal of the supervisor to come to whatever ratings and conclusions he likes whereby the result of the new reports may, in the Board’s declared conception, bring about the same situation or, (iii) even a less favourable one to the applicant’s; positions which seem too difficult to reconcile with common sense and, in any case, with the very purpose of the periodic reporting system as proclaimed by Board in the previous page of its own report, namely ‘to arrive at the most objective possible assessment of the staff member’s performance’ . . . ;

“(c) to declare in violation of the due process of law the recommendation of the Board contained in par. 8.2 (a), (and the relevant decision of the Secretary-General of 23 January 1985) whereby the preparation of the two new reports—in lieu of the contested one—be entrusted to the ‘same supervisor inspite of the ascertained situation of friction and dissident’ [sic] between the supervisor and the Applicant emphasized by the Board several times in the most unequivocal terms . . . ;

“(d) to declare that the Board has erred in law and in fact in disregarding altogether or minimizing the weight of evidence of fundamental importance submitted by the Applicant;

“(e) that the Board has erred in law and in fact in disregarding altogether the question of the gradual but steady erosion of the Applicant’s assignments and the impressive documentary evidence submitted by him and the grave situation of professional underemployment in the Legal Office;

“(f) that the Board has erred in law and in fact in disregarding completely the grave responsibilities of the Respondent who—being fully aware of the grave situation of maladministration existing in the Legal Office, having received a memorandum from the Applicant on 21 July 1983 . . . , being aware of his dedication to the UN and developing countries—failed to protect the Applicant as moral and legal considerations would have suggested;

“(g) that the Board erred in law and in fact in disregarding or failing to draw the inevitable conclusions from the exceptionally grave behaviour of the Respondent who—being very well aware of the supervisor’s recommendation to grant the Applicant an 18-24 months contract subject to renewal contained in his memorandum of 16 January 1984—deliberately withheld such a vital information to an anguished Applicant who in writing and verbally had been asking to be informed whether his contract would be renewed . . . ;

“(h) that the Joint Appeals Board has not proceeded to a fair review of the issues before it, as prescribed by rule 111.1 (j) of Imo Staff Regulations and Rules.

“7. That, in deciding this case, the Tribunal takes due account of its previous judgements and of the rules and doctrines therein enunciated and in particular to the Cipolla doctrine, and of judgements, 122, 143, 184, 223, 225, 290 and 444.”

Whereas on 16 December 1985, 8 July 1985 and 15 January 1986 the Applicant requested the President of the Tribunal for permission to submit additional written statements or additional documents pursuant to Article 10 of the Rules of the Tribunal;

Whereas on 30 January 1986 the Acting President of the Tribunal called upon the Applicant to submit additional written statements or additional documents pursuant to Article 10 of the Rules of the Tribunal, not later than 15 February 1986;

Whereas the Respondent filed his answer on 31 January 1986;

Whereas the Applicant filed additional documents pursuant to Article 10 of the Rules of the Tribunal on 12 February 1986;

Whereas on 13 March 1986 the Respondent requested the President of the Tribunal for permission to submit an additional written statement and additional documents pursuant to Article 10 of the Rules of the Tribunal;

Whereas the Applicant filed written observations on 2 April 1986;

Whereas on 7 April 1986 the Acting President of the Tribunal granted the Respondent's request to submit an additional written statement and additional documents pursuant to Article 10 of the Rules of the Tribunal, not later than 25 April 1986;

Whereas on 7 April 1986 the Acting President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas on 24 April 1986 the Respondent submitted an additional written statement pursuant to Article 10 of the Rules of the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the IMO on 27 June 1970 as a Legal Officer. He was initially offered a two-year fixed-term appointment at the P-4 Step I level that was extended for further fixed-term periods of two years and five years. On 10 October 1978 he was promoted to the P-5 level and his title was changed to Senior Legal Officer. On 7 January 1979 his appointment was extended for a further fixed-term period of five years. On 14 November 1980 the Secretary-General informed all staff members of the IMO that he had designated the Applicant, “hitherto Senior Legal Officer, Legal Office, LED [Legal Affairs and External Relations Division] as Assistant Director, Legal Office with immediate effect”.

On 8 December 1983 the Head, Personnel Section asked the Director of the Legal Affairs and External Relations Division to prepare the Applicant's performance evaluation report, hereinafter referred to as “periodic report”. On 9 December 1983 he requested the Director's recommendation on the renewal of the Applicant's appointment, which was due to expire on 26 June 1984. In a reply dated 16 January 1984, the Director of the Legal Affairs and External Relations Division explained that since the Applicant was not at the time sufficiently contributing to the work of his division, and was being assigned new functions, he would only recommend an eighteen month to two years extension.

On 16 January 1984 the Director of the Legal Affairs and External Relations Division prepared a periodic report to evaluate the Applicant's services for the period 1 December 1980 to 30 November 1983. The Applicant was described as “a staff member who maintains only a minimum standard (of

work actually produced)". The Director of the Legal Affairs and External Relations Division, who was the Applicant's supervisor, signed the report as first and second reporting officer.

In a memorandum dated 27 January 1984 addressed to the Head, Personnel Section, the Applicant contested the periodic report and requested the Director to provide "detailed reasons for each of the sections to justify his shocking conclusions". In a further memorandum dated 22 February 1984 addressed to the Head, Personnel Section, the Applicant stated that he had been informed by the Secretary-General that his periodic report would be reviewed. However, since he had received no new reports, his memorandum of 27 January 1984 should be considered as the "letter" provided for in Rule 111.2 of the Staff Regulations and Rules, requesting the review of an administrative decision.

On 24 February 1984 the Applicant requested the Secretary-General to review the periodic report "and in particular: (a) to declare null and void my periodic report 1.12.80-30.11.83 as prepared by the first reporting officer; (b) to order that a new periodic report for the same period reinstating [him] in exactly the same position, ratings and assessment as the previous one (1.2.78-30.11.80) (and, indeed all the previous ones for the last thirteen years) be prepared".

On 12 March 1984 the Applicant asked the Secretary-General to be removed from the Director of the Legal Affairs and External Relations Division's supervision "as soon as possible". He set forth a series of topics of work which he could perform in order that the Secretary-General be given an opportunity to assess his work.

On 16 March 1984 the Applicant addressed a memorandum to the Secretary-General and to the Chairman of the Staff Committee. According to the Applicant, on the previous day, the Chef de Cabinet had made a series of proposals concerning the Applicant's conditions of employment. The Applicant expressed his views thereon, reiterated his concern about working under the Director, Legal Affairs and External Relations Division's supervision and referred to the possibility of the non-renewal of his appointment.

At the Secretary-General's request, on 27 March 1984 the Director of the Legal Affairs and External Relations Division explained the reasons "for the difference between Periodic Reports on Mr. de Franchis for the periods 1 February 1978 to 30 November 1980 and the more recent report for the period between 1 December 1980 to 30 November 1983". On the same date, he informed the Secretary-General of the Applicant's responsibilities in the Legal Office.

There ensued an exchange of correspondence and a series of negotiations between the Applicant, the Chair of the IMO Staff Committee and the Secretary-General with a view to reaching a compromise solution to the Applicant's problems, including the terms of the renewal of the Applicant's appointment. On 10 April 1984 the Applicant asked the Secretary-General to consider a renewal of his appointment "for the *minimum* period necessary for [him] to attain early retirement benefit and medical coverage (presently any date after 5 September 1985, say, 15 September 1985), without any expectancy of renewal which, in any case, [he had] no intention to ask". The Secretary-General agreed to the Applicant's request and asked that the necessary action "be taken accordingly". The Applicant's appointment was thus extended from 27 June 1984 to 15 September 1985.

On 24 April 1984 the Applicant lodged an appeal with the Joint Appeals Board.

The Joint Appeals Board adopted its report on 5 February 1985. Its recommendations read as follows:

*“Conclusions of the Board*

“7.1 For the purpose of the appeals procedure, as established in Article XI of the Staff Regulations and Rules 111.1 and 111.2 of the Staff Rules, the periodic report of the Applicant (covering a period from 1 November 1980 to 30 November 1983) was considered as an administrative decision.

“7.2 Although there were serious doubts regarding the ultimate possibility for the Secretary-General of declaring the report ‘null and void’, and also about the meaning and implications of such a decision, the appeal was considered receivable.

“7.3 The particular request for recommendation made by the Applicant in his appeal, related to a possible inquiry into the organization of the Legal Office, was considered as falling beyond the scope of the Board’s competence.

“7.4 The Board concluded that the Applicant’s periodic report was vitiated by deficiencies in the procedure applied, which did not conform with the relevant IMO Circular (PER/G/72/190) issued on 21 February 1972 that regulates periodic reports on staff members.

“7.5 Deficiencies in the procedure applicable to the contested periodic report revealed that the above-mentioned circular was both out of date and not applied in a uniform way throughout the Organization.

“7.6 It was quite evident to the Board that the periodic report in question represented one of the concluding stages in a slow and steady process of deterioration in the relations between the Applicant and his supervisor, and the culmination of a situation of friction and dissent that built up during a rather long period preceding the report and particularly during the second part of 1983.

“7.7 The examination of the written evidence and the study of the oral evidence collected by the Board showed an exceptionally high amount of contradictions and inconsistencies. In addition, the case had been obscured by the fact that it was mainly based on subjective opinions and judgements, single sided opinions, allegations and counter allegations with often little reference or real relevance to facts.

“7.8 The Board considered particularly surprising the total absence of direct discussions, as from July 1983 (or at the latest from early September), between the Applicant and his supervisor concerning the various aspects covered by the periodic report, and especially the fact that there had not been a word exchanged between them regarding the report after it had been established, although discussion of an unfavorable report is obviously at the core of the reporting system regulated by the relevant circular. This absence of discussion also contributed to add to the obscurity of the case. The Board believed that more open and frank discussions could have prevented the case altogether.

“7.9 Although it was not for the Board to express an opinion concerning the Applicant’s ability to perform his duties, the Board was of the opinion that the report prepared by the supervisor showed inconsistencies and that there was clear evidence that in spite of covering a period of

three years, the report was based on performance related to the last five months without any reference to this fact.

"7.10 The Board however was unable to accept the Applicant's plea that the report was based on fraudulent misrepresentation of facts with the intention of reaching biased conclusions and ratings.

"7.11 In general, the procedural deficiencies and differences that were observed in the application of the 1972 circular were of such a nature that they could be detrimental to the very purpose of the periodic reporting system, which is to arrive at the most objective possible assessment of the staff member's performance.

*"Recommendations of the Board*

"8.1 Having failed to establish that the contested periodic report was based on fraudulent misrepresentation of facts or dictated by improper motives, the Board agreed not to recommend that such periodic report be declared null and void for these reasons.

"8.2 Noting however that the procedure laid down by the relevant 1972 circular (PER/G/72/190) was not followed for the contested periodic report, and moreover that the report contained inconsistencies that could not be dissociated from a wider context, the study of which had led the Board to believe that the Applicant may have suffered some prejudice, the Board recommends to the Secretary-General:

"(a) that, taking into account the proper reporting procedure, the supervisor be invited to substitute the contested report by a report covering the period 1 November 1980 to 30 November 1982 in order to comply with paragraph 3 of the above-mentioned circular, and another report covering the period 1 December 1982 until 30 November 1983 in order to comply with the established practice of preparing a report six months prior to the expiry of a fixed-term appointment;

"(b) if the above recommendation is accepted and enforced and leads to a more favorable situation for the Applicant, to draw whatever conclusions and to take whatever action may be considered appropriate;

"(c) that failing the acceptance or enforcement of the recommendation in (a) or if this recommendation is enforced but leads to the same or a less favorable situation for the Applicant, to instruct that the conclusions and recommendations of this Board be attached to the Applicant's appropriate report which should then be read in conjunction with these conclusions and recommendations as a single document.

"8.3 The Board further recommends that the procedure regarding periodic reports be reviewed and, to this effect, that a new circular be issued taking into account the changes introduced in the structure of the Organization and the acquired experience, with clear instructions that this circular should be strictly and uniformly enforced. The Board also recommends that consideration should be given to the establishment of an appropriate machinery dealing with contestations by supervisees in order to avoid a systematic recourse to the Joint Appeals Board. In addition, the Board recommends the study of a new format of periodic report to allow for the inclusion, in the same document, of the observations that the supervisee may consider necessary.

"8.4 As far as compensation is concerned, the Board considers that it is unable to make a positive recommendation at this stage but recommends

to the Secretary-General to consider such action depending on the developments ensuing from the option made with regard to the recommendations proposed in the above paragraph 8.2.

“8.5 The Board finally recommends that as soon as possible both the Applicant and his supervisor be invited to resume direct discussions in order to facilitate any steps which may be taken in the future.”

In a memorandum dated 23 January 1985 addressed to the Deputy Director, Administrative Division, the Secretary-General stated in part:

“In view of the administrative error in requesting a periodic report covering a three-year period, I have decided to accept the recommendation in paragraph 8.2 (a) of the report of the Board. The Administrative Division is accordingly instructed to remove from Mr. de Franchis' personnel file the periodic report in question covering the period from 1 November 1980 to 30 November 1983. This report shall then become null and void. The Administrative Division is instructed further to issue two periodic report forms to the Director, Legal Affairs and External Relations Division, requesting him to prepare new reports, the first covering the two-year period from 1 November 1980 to 30 November 1982 and the second the period from 1 December 1982 until 30 November 1983 . . .”

On 29 January 1985 the Applicant asked the Secretary-General that, if new reports were prepared, they should be prepared by the third reporting officer, and not by the Applicant's supervisor, because then “such reports would be liable to be challenged once again . . .”. In a reply dated 7 February 1985, the Secretary-General stated that he would maintain his decision to accept the recommendation of the JAB with respect to the preparation of the periodic reports. As regards the renewal of the Applicant's appointment beyond 15 September 1985, the Secretary-General noted that the extension granted until that date had been granted at the Applicant's request. However, he would consider a further extension and take a decision “well in time”.

On 8 February 1985 the Applicant informed the Secretary-General that he would file an appeal with the Administrative Tribunal of the United Nations.

On 12 February 1985, the Director, Legal Affairs and External Relations Division prepared new periodic reports to evaluate the Applicant's services during the periods 1 December 1980 to 30 November 1982 and 1 December 1982 to 30 November 1983 respectively. The Secretary-General signed the reports as third reporting officer. The Applicant was described as a “staff member who maintains a good standard of efficiency in respect of work actually accomplished” and as a “staff member who maintains only a minimum standard and is sometimes unsatisfactory”, respectively.

On 20 February 1985 the Secretary-General asked the Applicant for a clarification as to what decision he would contest before the Administrative Tribunal, since he [the Secretary-General] had accepted the recommendations of the JAB. In a reply dated 27 February 1985, the Applicant stated that he was contesting the Secretary-General's decision “to entrust the same supervisor with the preparation of new reports”.

On 21 May 1985 the Applicant filed the application referred to above. Whereas the Applicant's principal contentions are:

1. The Applicant's performance evaluation report for the period 1 December 1980 to 30 November 1983 was based on fraudulent misrepresentation of facts and therefore contained deliberately biased conclusions and ratings.



2. The composition of the JAB that considered the Applicant's case was likely to lead to injustice.

3. The JAB erred in law and fact in refusing to draw the only possible conclusion, namely that the contested report was vitiated by fraudulent misrepresentation of facts.

4. The Applicant was deprived of due process of law when the JAB recommended that his new reports be prepared by the same supervisor whose decision was challenged by the Applicant.

5. The JAB did not proceed to a fair review of the issues before it, as prescribed by Rule 111.1 (j) of the IMO Staff Regulations and Rules.

Whereas the Respondent's principal contentions are:

1. There is no evidence that the periodic report evaluating the Applicant's services during 1 December 1980 to 30 November 1983 as prepared by the Applicant's supervisor was motivated by improper considerations or based on misrepresentation of facts.

2. The Secretary-General acted properly when he requested the Applicant's supervisor to prepare new periodic reports for the Applicant, following the finding by the JAB that the reports should be prepared every two years and not three years as had been done in the Applicant's case.

3. The Secretary-General made reasonable endeavours to accommodate the Applicant's requests in all matters related to the renewal of his appointment. The renewal of the Applicant's appointment in June 1984 until 15 September 1985 was in accordance with the express wishes of the Applicant and the decision to grant him a six month extension in September 1985 to assess his ability to produce satisfactory work did not violate any of the Applicant's rights.

The Tribunal, having deliberated from 28 April to 16 May 1986, now pronounces the following judgement.

I. The first point to which the Tribunal turned its attention was that of the exact determination of the question that lies before it. The Tribunal being a body to which staff members or former staff members resort in order to appeal against the decisions or the absence of decisions by the Secretary-General, it follows that it is essential to determine clearly the contested administrative decision from which stems the right of the Applicant to appear before it, the more so when the profusion of the pleas might prove misleading as to that issue, as in the present instance.

II. In that context, the Tribunal noted that the contested decision that is the origin of the case is the decision dated 7 February 1985 by which the Secretary-General of IMO turned down the request of the Applicant to entrust a person other than his supervisor with the task of preparing the periodic reports that would replace the one declared "null and void" by the Secretary-General.

III. Having established this point, the Tribunal went on to decide whether the appeal was receivable. The issue of receivability was not raised by the parties in their submissions but, nevertheless, the Tribunal found it pertinent to examine this point, inasmuch as a hasty approach to the matter might lead to the conclusion that the appeal was not receivable. Indeed, taking into consideration that the request put forward by the Applicant to the JAB was to declare his periodic report null and void, it would appear to follow that, this request having been upheld by the JAB and subsequently implemented by the Secretary-General, the Applicant had obtained what he pleaded for, and a recourse to the Tribunal would have no grounds. In accordance with this line of

thought, paragraph 2 of Article 7 of the Statute could be considered applicable to the present case, and the Applicant, who had seen his claim upheld by the JAB and the report he had challenged declared null and void by the Secretary-General, could be considered debarred from coming before the Tribunal.

IV. The Tribunal does not adopt this approach. It observes that the challenged report was declared null and void only because it evaluated the Applicant's services for a wider period of time than that contemplated by the regulations. Thus, the Applicant's pleas before the JAB have not been wholly accepted, since they sought the annulment of the report on other grounds. Consequently, inasmuch as the Applicant's request has met with a partial refusal, the provisions of Article 7 of the Statute do not preclude the possibility of the Applicant coming before the Tribunal.

V. Having dealt with this preliminary matter, the Tribunal turns its attention to the merits of the case. It notes that the JAB recommended the writing of a new report but by the same supervisor, notwithstanding repeated assertions by the Applicant that that supervisor, his superior, had long been prejudiced against him; the Secretary-General acted on the Board's recommendation and assigned the writing of the report to the same, possibly prejudiced supervisor. The task of the Tribunal is therefore to determine whether the decision of the Secretary-General to follow the JAB's advice and again entrust the drafting of the new reports on the Applicant's performance to his supervisor, in spite of the existing circumstances, was consistent with the Applicant's rights as a staff member.

VI. In this respect, the Tribunal has borne in mind that a fair and impartial assessment of performance must be considered an essential right of all staff members and that, consequently, the Administration should not spare any means to secure unimpeachable reports. In that context, any steps of the Administration that could lead to an assessment of a staff member's performance that would be reasonably open to challenge may constitute a breach of the staff member's right to have his performance assessed in an absolutely impartial way. In this case, the Applicant's supervisor had been responsible for preparing a report that, even if declared null and void exclusively on account of having exceeded the normal periods of service that reports should cover, was also severely criticized by the JAB as containing "an exceptionally high amount of contradictions and inconsistencies" and depicted as representing "one of the concluding stages in a slow and steady process of deterioration in . . . relations".

VII. Given these exceptional circumstances, the Tribunal concludes that the drafting of the new reports should have been entrusted to another person, that the JAB erred in recommending the contrary, and that the Secretary-General equally erred in following the JAB's advice.

VIII. It is therefore the Tribunal's view that, given the record of this case, to have the Applicant's performance assessed by an official with whom there existed such an extremely strained relationship seriously affected the Applicant's right to have his performance assessed in an impartial way, and it thus entails responsibility for the Administration.

IX. Accordingly, the Tribunal orders the Respondent to pay to the Applicant three months net base salary at the rate accruing to him on the date of his separation from service.

X. The Applicant also asks the Tribunal to order the Respondent to grant him a five year contract or in default to pay him compensation. In this respect,

the Tribunal notes that inasmuch as the point "sub judice" is the decision of the Secretary-General to entrust the new report to the same official that had drafted the previous one that was annulled, it cannot consider such a plea.

XI. All other pleas, including the preliminary pleas, are rejected.

(Signatures)

Herbert REIS

*Vice-President, presiding*

Luis M. de POSADAS MONTERO

*Member*

Geneva, 16 May 1986

Ahmed OSMAN

*Member*

R. Maria VICIEN-MILBURN

*Executive Secretary*

## Judgement No. 364

(Original: English)

**Case No. 349:**  
**Marazzi**

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

*Request by a former staff member of UNCTAD for the rescission of the decision not to include her name in the Promotion Register and not to implement her promotion after her name was included in the Register; request for compensation.—Request for preliminary measures: production of the personal status file.*

*Recommendation of the Joint Appeals Board to carry out a review of the Applicant's situation after obtaining an opinion of the Legal Counsel on the legal provisions governing the implementation of promotions of staff members whose names have been included in the Promotion Registers.*

*Request for preliminary measures rejected.*

*Applicant's complaint about ill-treatment at the time of her recruitment in 1973.—Ruling that the complaint is time-barred.—Applicant's pleas against the decision not to include her name in the Promotion Register and not to implement her promotion after it was included in the Register.—Consideration of the circumstances of the case.—Memorandum addressed by the Assistant Secretary-General for Personnel Services to the Appointment and Promotion Board after the finding of the Panel to Investigate Allegations of Disciplinary Treatment that the Applicant had been discriminated against on the ground of her sex.—Tribunal's finding that the memorandum, which attempted to influence the Board, was an interference with the integrity of the Board and prejudiced the Applicant's right to an objective and autonomous consideration of the question of her promotion.—Question of the legality of the failure to promote the Applicant after her name was included in the Promotion Register.—The Tribunal holds that the inclusion of a staff member's name in the Register does not give rise to any entitlement for promotion.—Legitimate nature of taking into consideration the views of a department, but not of the practice by which a department may ask that preference be given to all individuals for whom it recommended promotion in preference to all those whom the Appointment and Promotion Board included in the Register on its own initiative.—Finding that the facts of the case suggest the existence of prejudice against the Applicant.—The Tribunal notes that subsequently the Applicant was promoted and shortly thereafter resigned.*

*Award of compensation of two months' net base salary at the rate applicable at the time of separation.—All other pleas rejected.*