(*Signatures*)

R. VENKATARAMAN
President

Roger STEVENS
Member

Suzanne BASTID
Vice-President

Jean HARDY
Executive Secretary

New York, 9 October 1975

Judgement No. 206

(Original: French)

Case No. 194: Quéguiner (Reimbursement of medical expenses)

Against: **The Secretary-General of the Inter-Governmental Maritime Consultative Organization**

Request of a staff member of IMCO for rescission of a decision rejecting his claim for reimbursement of medical expenses incurred for a dependant away from the duty station.

IMCO Staff Regulation 6.2.—Entitlement of IMCO staff in London and their dependants to free treatment provided under the United Kingdom National Health Service.—Allegation of the Applicant that the Respondent was at fault in failing to advise him that by virtue of the United Kingdom's membership of the European Economic Community, he was also entitled to free medical treatment in the other countries of the Community.—Inapplicability to the Applicant of the reciprocity provided for in the provisions of the Community with regard to health insurance.—Allegation of the Applicant that since the health insurance coverage available to the staff is defective, his inability to obtain reimbursement for the expenses in dispute results from the negligence of the Respondent.—Health insurance systems arranged by the Secretary-General with a view to supplementing the benefits offered by the National Health Service.—Limits of the existing system.—Difficulty of providing 100 per cent coverage for all possible risks.—Approval of additional funds with a view to giving the staff an opportunity to join a new insurance scheme.—The fact that a sizable number of staff members preferred to remain under the existing system provides evidence that that system was not patently inadequate.—Contention of the Applicant that part of the aforementioned funds was to be used to settle claims in dispute.—Observation of the Tribunal that that contention is not based on any official document.—Principle stated in Judgement No. 182 relating to pension matters.—Application of the same principle by analogy.—Conclusion of the Tribunal that the Applicant's allegation that he has sustained injury as a result of negligence on the part of the Respondent is without foundation.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Zenon Rossides; Mr. Francisco A. Forteza; Mr. Mutuale Tshikankie, alternate member;

Whereas, on 9 December 1974, Jean Quéguiner, a staff member of the Inter-Governmental Maritime Consultative Organization, hereinafter called IMCO, filed an

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

Whereas the Applicant, after making the necessary corrections, again filed the application on 17 January 1975;

Whereas, in the pleas of his application, the Applicant requests the Tribunal:

"(1) To rescind the decision of the Secretary-General of 12 September 1974 rejecting the Applicant's request for compensation;

"This rejection is based on the non-observance of the provisions of Staff Regulation 6 and on the inadequacy of the rules adopted in application of that text;

"(2) To award him therefore compensation equivalent:

"(a) To the medical expenses which were not reimbursed to him, i.e. 1,127 French francs;

"(b) To the sum of one franc as damages for the [moral] injury sustained;

"(c) To a sum of 6,000 French francs to compensate him for the various costs and fees incurred in connexion with this appeal;"

Whereas the Respondent filed his answer on 3 March 1975;

Whereas, on 27 March 1975, the Applicant requested oral proceedings;

Whereas the Applicant submitted written observations on 31 March 1975;

Whereas, on 26 June 1975, the presiding member decided that there would be no oral proceedings;

Whereas the facts in the case are as follows:

The Applicant entered the service of IMCO on 5 May 1968 as Deputy Secretary-General under a fixed-term contract of three years' duration which, on 5 May 1971, was extended for a duration of four years. The letters of appointment specified that under the contract, the Applicant would enjoy the conditions of employment and fundamental rights and would be required to observe the duties and obligations laid down in the Staff Regulations and Staff Rules of the Organization, due account being taken of any subsequent amendments to those texts.

On 20 July 1973, in a memorandum addressed to the Head of the Personnel Section, the Applicant complained that the Administration had failed to advise in good time the staff members, nationals of countries of the European Economic Community, that since 1 January 1973 all nationals of the United Kingdom and of the other Community countries working for an employer in the United Kingdom had been entitled, under the British National Health Service, to free medical treatment for sickness or accident when they were staying temporarily in a Community country; he requested from the Organization the reimbursement of all the medical expenses he had incurred in France since 1 January 1973 for his dependants and added that the French Ministry of Foreign Affairs had been informed and was waiting until he received a reply before intervening in the matter. On 23 July 1973, the Head of the Personnel Section sent the Applicant an interim reply, on which the Applicant commented on 24 July 1973. On 25 July 1973, the Head of the Personnel Section submitted the question to the Secretary-General, who requested the opinion of the Legal Division and obtained information from the British Department of Health and Social Security. In a memorandum dated 26 July 1973 addressed to the Secretary-General, the Applicant reaffirmed that the Organization should have informed staff members in good time of the problems posed by the provisions of the Community in this respect and added that, if the Organization had to embark on lengthy legal discussions on a subject which, from all evidence, it knew nothing about, then he would have no course left open to him but to let the French Ministry of Foreign Affairs go ahead with the legal proceedings that it was already contemplating. On 31 July 1973, the Head of the Legal Division submit-

ted to the Secretary-General a legal opinion whose conclusion was that the Organization was not legally required to inform staff members from countries of the Community of the changes in their entitlements in other countries of the Community by virtue of the United Kingdom's membership of the Community on 1 January 1973. On 1 August 1973 the Secretary-General requested the opinion of the Head of the Administrative Division on the possibility of making the Applicant an *ex gratia* payment. The Head of the Personnel Section informed the Head of the Administrative Division on 14 August 1973 that he had been able to find only two precedents, neither of which appeared to be particularly pertinent in the present case. On 2 October 1973, in a further memorandum to the Secretary-General, the Applicant stated that he would be compelled to claim from the Organization the payment of all the sums which could not be reimbursed to him under the Community agreements; according to him it was the responsibility of the Organization to see that staff members, collectively or individually, should benefit from the best possible scheme of social protection. On 4 October 1973, the Secretary-General informed the Applicant that, on the advice thus far available to him, it did not seem that the Organization had any liability based on the non-performance of a legal duty, that it had been necessary to request information from the United Kingdom Government in order to find out precisely what was the position of members of the IMCO Secretariat who were not nationals of the United Kingdom in regard to participation in the National Insurance Scheme, and that consequently no responsibility for the delay could be imputed to the Organization. On 9 November 1973, the Acting Chairman of the IMCO Staff Association wrote to the Head of the Administrative Division pointing out that there were a number of uncertain points as to the effective coverage of staff members and their dependants in cases of illness or accident and that the coverage for IMCO staff members was not the same as that enjoyed by the personnel of other organizations of the United Nations system. On 12 November 1973, the Head of the Administrative Division replied by making certain preliminary comments, and on 13 November 1973 he pointed out *inter alia* that it had been decided to request the IMCO Assembly for additional funds that might become necessary in the event that new arrangements were made for health insurance coverage. On 15 November 1973, the Secretary-General informed the Assembly that he had received a communication from the Staff Association suggesting that the coverage afforded to the staff in respect of health insurance was inferior to that provided by other sister agencies in the United Nations system, that he had already instituted inquiries in order to verify how far the IMCO arrangements were inferior, if at all, to those of other agencies but that, should it prove necessary to augment the present arrangements, it was probable that additional funds would be required for that purpose in the biennium 1974–1975; the Secretary-General proposed, as an indication only, the insertion in the budget of a sum of $30,000 for each of the years 1974 and 1975. On 20 November 1973, the Administrative, Legal and Financial Committee of the Assembly approved that proposal. On 26 November 1973, the Head of the Personnel Section sent the Acting Chairman of the Staff Association a memorandum explaining in detail the existing arrangements. On 11 December 1973, a staff member complained to the Secretary-General that she had been able to obtain only partial reimbursement of the medical expenses she had incurred; she felt that her case was clear evidence of the insufficient coverage of the existing provisions and requested the Secretary-General to consider a contribution by the Organization towards her medical expenses. On 12 December 1973, the Applicant proposed that, in view of the decision of principle already taken, the staff member in question should receive from the Organization a contribution which, added to the partial reimbursement she had obtained, would provide her with medical coverage similar to that enjoyed by the staff of other organizations. On 19 December 1973, the Head of the Administrative Division informed the Secretary-General that the funds approved by the Assembly had been expressly voted to cover any increase in the

Organization's share of the cost of medical insurance and were not intended to cover individual claims; with regard to the claim of the staff member in question, he pointed out that an inquiry made with UNESCO, WHO, ILO and FAO had established that those organizations would, in similar circumstances, not have made an *ex gratia* payment, that view being also endorsed by the Secretary of the Consultative Committee on Administrative Questions. The same day, the Secretary-General informed the staff member in question that her claim could not be met from funds voted by the Assembly and that an *ex gratia* payment was not justified. On 20 December 1973, the Secretary-General issued a circular in which he interpreted the recent measures taken by the Assembly in connexion with health insurance; according to that circular, the Assembly's decision should not be interpreted as meaning that the funds referred to were available to meet staff members' medical expenses *in toto* and certainly not by any direct settlement by the Organization of staff members' claims; the intention was rather that the funds should be used to make new arrangements for insuring staff members for a certain proportion of their future expenses for private medical treatment, those arrangements to correspond broadly with what was done by the majority of the organizations in the United Nations system for their staff. On 3 January 1974, in a memorandum addressed to the Head of the Administrative Division, the Applicant contested that intepretation, requested that the Organization reimburse 80 per cent of certain medical and pharmaceutical bills, and announced his intention of submitting a detailed report on the matter to the new Secretary-General, who had assumed his post two days earlier. On 15 February 1974, a circular from the Head of the Administrtive Division informed staff members of the new arrangements made in co-operation with the Staff Association; according to those arrangements, staff members could either continue their participation in the existing insurance scheme, that of BUPA (British United Provident Association), or join a scheme established by the Van Breda Company, which was already insuring certain categories of staff members in the United Nations system. On 7 May 1974 the Applicant requested the Secretary-General to propose to the IMCO Council the settlement of his claim and that of the staff member mentioned above, in a total amount of approximately $376; he based his request on Staff Regulation 6.2 and added that the opinions of the other agencies and of the Secretary of the Consultative Committee on Administrative Questions were completely irrelevant. On 16 August 1974 the Applicant requested from the Secretary-General authorization to lay the case directly before the Tribunal. On 12 September 1974, the Secretary-General informed the Applicant that he confirmed the decisions of his predecessor and did not oppose the Applicant's desire to lay the matter directly before the Tribunal. On 9 December 1974 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. In 1973 the Applicant incurred medical expenses in connexion with the illness of his wife and was unable to get them reimbursed through the health insurance scheme covering the IMCO staff (BUPA or the National Health Service).

2. This injury results from a fault on the part of the Organization, in that the latter did not respect its obligations as defined in article VI of the Staff Regulations.

3. The Organization cannot contest the existence of that fault, especially since it implicitly but clearly recognized it by making a tardy improvement in the arrangements for staff coverage and since part of the funds approved by the Assembly were to be used for the settlement of cases in dispute.

Whereas the Respondent's principal contentions are:

1. The application does not disclose any neglect or fault on the part of IMCO in respect of any obligations reasonably arising from Staff Regulation 6.2.

2. The application does not disclose any evidence that any losses suffered by the Applicant arose from or were in any way contributed to by any neglect or fault on the part of IMCO.

3. The Applicant is not entitled to any compensation from IMCO and should bear any expenses incurred by him in presenting his application.

The Tribunal, having deliberated from 25 September to 10 October 1975, now pronounces the following judgement:

I. The Applicant, Deputy Secretary-General of IMCO, requests the Tribunal first, to rescind the decision of the Secretary-General of 12 September 1974 rejecting his request for reimbursement of medical expenses, i.e. 1,127 French francs, incurred in connexion with the illness of his wife during holidays in France in April and July 1973 and second, that it award him compensation equivalent to the injury sustained as a result of the failure to reimburse the aforementioned medical expenses.

II. The Applicant claims to be entitled to that compensation because the IMCO administration allegedly committed a fault in that it did not respect its obligations under Staff Regulation 6.2, according to which:

> "The Secretary-General shall establish a scheme of social security for the staff, including provisions for health protection, sick leave and maternity leave, and reasonable compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the Organization."

III. The Tribunal notes that IMCO staff in London and their dependants are entitled in case of illness to the free treatment provided under the United Kingdom National Health Service. On several occasions (on 20, 24 and 26 July and 2 October 1973), the Applicant requested reimbursement of medical expenses incurred in France by claiming that the IMCO administration had been at fault in failing to advise him that by virtue of the United Kingdom's membership of the European Economic Community he was entitled to free medical treatment not only in the United Kingdom but also in the other countries of the Community as from 1 January 1973. A memorandum from the Head of the Personnel Section dated 12 October 1973—of which the Applicant received a copy—shows on the contrary that an inquiry addressed to the competent British services had revealed that IMCO staff who were not citizens of the United Kingdom and colonies or permanently resident in the United Kingdom could not benefit under the reciprocity provided for in the provisions of the Community with regard to health insurance. The Tribunal therefore endorses the following conclusion of that memorandum:

> "In the circumstances, it would appear that the Organization cannot be blamed for failing to take action with regard to an entitlement which did not exist."

IV. In the present case, the Applicant invokes another argument and contends that the health insurance coverage available to the IMCO staff is defective "because their 'health protection' is not ensured when they are on holiday outside the United Kingdom". He therefore alleges that his inability to obtain reimbursement for the medical expenses claimed results from the negligence of the Secretary-General and the administration's non-performance of its duties.

The Tribunal notes that the Secretary-General has at various times arranged health insurance systems with a view to supplementing the benefits offered by the National Health Service. Thus, the Secretary-General made the necessary arrangements with a private organization, the British United Provident Association (BUPA) for IMCO staff members and their dependants to be covered by group medical insur-

ance and for the Organization to make a substantial contribution to the cost of that cover. The BUPA brochure attached to circular PER/G/73/91 of 24 January 1973 and the memorandum of 26 November 1973 from the Head of the Personnel Section to the Staff Association show that benefits under the BUPA group insurance scheme were payable for treatment for an illness during temporary visits outside the United Kingdom on the same conditions as those applying in that country.

The Tribunal also notes that on 4 May 1973 the Applicant reached the ceiling authorized by BUPA for the reimbursement of medical expenses in his case. The Applicant stresses, however, that BUPA reimburses only very limited amounts, and argues, on the basis of those limits, that the Secretary-General has not fulfilled the obligations with regard to health protection incumbent on him under the Staff Regulations. The Tribunal observes in that connexion that it is difficult, if not impossible, to provide 100 per cent cover for all possible risks in any social security system, although a given system can always be improved.

The Tribunal finds that it is precisely for that purpose that the Secretary-General requested the IMCO Assembly on 15 November 1973 to approve additional funds in the amount of $30,000. The approval of those funds made it possible to give the staff an opportunity either to join the new Van Breda insurance scheme or to remain with BUPA. The fact that a sizable number of staff members preferred to remain under the BUPA system provides evidence that that system was not patently inadequate and that the staff members chose one or the other system according to their personal situation and interests.

V. The Applicant asserts that $2,500 of the $30,000 voted by the IMCO Assembly was to be used to settle claims in dispute, including that of the Applicant. However, several weeks after the Assembly had voted the additional funds, the Secretary-General, in his circular of 20 December 1973, stated in connexion with those funds:

> "The Assembly's decision should not be interpreted as meaning that the funds referred to are available to meet staff members' medical expenses *in toto* and certainly not by any direct settlement by the Organization of staff members' claims."

The Tribunal, for its part, notes that the Applicant's assertion is not based on any official Assembly document relating to the question of the improvement of the health insurance system.

VI. In its judgement No. 182 (*Harpignies*) the Tribunal stated that in pension matters the Respondent would be contractually liable if, through his action or omission, a staff member's participation in the Pension Fund were to lose any practical significance or if the effects of such action or omission were so contrary to general principles of law applicable to pensions as to render the very notion of pension meaningless. The Tribunal considers that in view of the provisions of Staff Regulation 6.2 the same principle applies by analogy to the present case.

VII. Given the circumstances of the case, the Tribunal cannot see in the Respondent's refusal to reimburse the medical expenses incurred by the Applicant an infringement of the Applicant's right to health insurance for which the Respondent could be held liable. The Tribunal therefore concludes that the Applicant's allegations that he has sustained injury as a result of negligence on the part of the Respondent are without foundation.

VIII. For these reasons the application is rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding

MUTUALE TSHIKANKIE
Alternate Member

Zenon ROSSIDES
Member

Jean HARDY
Executive Secretary

Francisco A. FORTEZA
Member

New York, 10 October 1975

Judgement No. 207

(Original: English)

Case No. 199: Squadrilli

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

Request of an American staff member for reimbursement of the difference between the amount he paid in United States federal income tax and the amount which he would have paid if his United Nations earnings had been exempted.

Section 18 (b) *of the Convention on the Privileges and Immunities of the United Nations.—Reservation made by the United States of America when acceding to the Convention.—Staff Regulation 3.3* (f).*—Procedure set forth in circular ST/ADM/SER.A/1741 for the reimbursement to American staff members of the federal income tax paid on United Nations earnings.—Unusually large capital gain realized by the Applicant from sources other than the United Nations.—Income-averaging method.—Use of that method by the Applicant in his notional tax return.—Contention of the Respondent that the income-averaging method may be used for notional tax return purposes provided that the United Nations income is included in the calculations.—Argument based on section 1302 of the Internal Revenue Code.—That section contains no provision as to including income from the United Nations in the averaging process.—Argument of the Respondent that if the United States had acceded to the Convention without reservation it would have provided that income from the United Nations would have to be included in income averaging.—Conjectural character of the argument and its irrelevance to the Applicant.—Analogy with interest on the obligations of United States states and municipalities.—Legal position of the United States if it were to accede to the Convention without reservation.—Memorandum of the Legal Counsel of the United Nations.—Argument of the Respondent that the method used by the Applicant would give him a "double benefit".—Inherent characteristics of any averaging formula.—Rejection of the arguments of the Respondent and decision of the Tribunal that the Applicant is entitled to reimbursement of the amount in dispute.—Award to the Applicant of interest at the rates applicable under the Internal Revenue Code.—Award to the Applicant of the amount in dispute plus interest thereon at the rates specified.*

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza;

Whereas, on 11 July 1975, Alexander E. Squadrilli, a staff member of the United