

possibly not have received adequate treatment for his symptoms in West Irian". The Tribunal notes that such reimbursement was not permissible under the Staff Rules and was therefore not granted.

VI. Any contention that the Applicant, instead of resigning on the ground of ill-health, should have asked for sick leave, which would presumably have involved his return to an environment which he had found unsupportable (compare the Medical Director's comment in his report of 14 January 1972 quoted in para. IV above), is irrelevant.

VII. The Tribunal holds that the Applicant has established medical grounds for his departure from the duty station and accordingly decides that the application is well-founded, rescinds the contested decision and orders reimbursement to the Applicant of his travel and removal expenses according to the Staff Rules.

(Signatures)

R. VENKATARAMAN
President

Suzanne BASTID
Vice-President

Francis T. P. PLIMPTON
Vice-President

Geneva, 21 April 1976

Francisco A. FORTEZA
Alternate Member

Jean HARDY
Executive Secretary

Judgement No. 209

(Original: French)

Case No. 202:
Corrado

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

Claim of a former technical assistance expert for payment of compensation for losses resulting from a burglary, for loss of professional documents, for extraordinary expenses and hardships and for moral and material injury.

Claims for compensation for losses resulting from a burglary and for loss of professional documents.—Their admissibility.—Claims for compensation for extraordinary expenses and hardships and for moral and material injury.—Their inadmissibility, these claims not having been explicitly submitted to the Respondent and the Joint Appeals Board having made no recommendation concerning them.

Claims for compensation for losses resulting from a burglary and for loss of professional documents.—Staff Rule 206.6.—Limits and conditions set out in Administrative Instruction ST/AI/149.

Claim for compensation for losses resulting from a burglary.—No obligation on the part of the United Nations to obtain insurance for personal effects at the duty station.—Paragraph 3 (a) (ii) of Administrative Instruction ST/AI/149.—Condition relating to the existence of special hazards.—That condition not being fulfilled in this case, conclusion of the Tribunal that the claim cannot be sustained.

Claim for compensation for loss of professional documents from the United Nations warehouse in Conakry.—Dispute concerning the evaluation of compensable damage.—Acknowledgement by the Claims Board that the Applicant should receive compensation for his loss and that the loss of professional documents fell within the category of compensable damage.—Refusal of the Claims Board to decide on

the compensation due in view of the method of evaluating the damage proposed by the Applicant and based on the time spent on the production of the documents.—Responsibility of the Board either to propose another method of evaluation or to call for an expert evaluation.—Conclusion of the Tribunal that the amount of the damage was not assessed completely as a result of an error of law committed by the Board with regard to its competence in that connexion.—Determination by the Tribunal of the obligation still to be discharged by the Respondent.—Application of the limitation of liability provided for in Staff Rule 207.21 (b).—Conclusion of the Tribunal that the compensation should be set at \$2,500, minus the amount of \$400 already awarded to the Applicant, with an interest rate of 6 per cent.

Rejection of the claim for compensation for losses resulting from a burglary.—Award to the Applicant of \$2,100 as compensation for losses not yet compensated which occurred to his prejudice in the United Nations warehouse in Conakry and interest of 6 per cent on that sum.—The other claims are not receivable.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francis T. P. Plimpton, Vice-President; Mr. Francisco A. Forteza;

Whereas, at the request of Giovanni Corrado, a former technical assistance expert of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 16 February 1976 the time-limit for the filing of an application;

Whereas, on 9 February 1976, the Applicant filed an application in the pleas of which he requests:

1. \$8,440 as compensation for the loss of a collection of professional documents;
2. \$176 as compensation for the losses resulting from the burglary of his residence;
3. \$15,000 as compensation for "the extraordinary expenses and hardships which the Administration inflicted on [him] as a result of the hostility and bad faith of its staff";
4. \$30,000 as compensation for all the moral and material injury inflicted on him over a period of years;

Whereas the Respondent filed his answer on 9 March 1976 and filed additional documents on 22 March 1976;

Whereas the Respondent filed additional documents on 22 March 1976;

Whereas the facts in the case are as follows:

The Applicant, an Italian national residing in Canada, entered the service of the United Nations on 4 April 1967 on a one-year appointment as a technical assistance expert (construction engineer) and was assigned to Conakry (Guinea). On 30 September 1967, his residence in Conakry was broken into, and, according to a report drawn up by the local police, personal articles and effects with a total value of \$176 were stolen. On 12 January 1968, the Applicant submitted a claim for compensation in that amount to the Claims Board, which rejected it on 25 September 1968 as it represented a simple case of burglary not compensable under the terms of Administrative Instruction ST/AI/149. On 21 October 1968, the Applicant, who had returned to Canada, wrote to the Resident Representative of UNDP (United Nations Development Programme) in Conakry requesting that the personal effects which he had stored with UNDP be sent to him in Toronto. The UNDP Office in Conakry dispatched one crate and one trunk of personal effects on 6 November 1968, and the Applicant cabled and wrote to the Resident Representative, on 18 and 23 November 1968 respectively, informing him that one crate containing a number of cartons was missing from the consignment received in Toronto and requesting him to carry out the necessary investigations; on

18 November 1968, the Applicant also explained in a letter to the Chief of the Financial and Administrative Management Service, Office of Technical Co-operation, that those cartons contained all the professional documents which he had collected during the course of his long career, that the collection was irreplaceable, and that, if it had been stolen, it would be a very heavy loss to him. On 20 November 1968, the UNDP Office dispatched another crate to the Applicant, who acknowledged its receipt on 28 November 1968. On 7 December 1968, however, the Applicant wrote to the Resident Representative stating that, upon unpacking the recently received consignment, he had noted that three cartons containing personal belongings had been opened and their contents stolen; he said that his entire collection of projects and studies concerning the production of ceramic construction materials had been completely lost and his personal effects had been damaged by humidity and their usefulness reduced by 30 per cent, and he enclosed a list of the stolen articles. On the same day, the Applicant addressed a similar communication to the Chief of the Financial and Administrative Management Service, Office of Technical Co-operation. On 24 December 1968, the Resident Representative informed the latter that the list of personal effects of the Applicant had been mailed directly to the Applicant on 9 November 1968 by another expert, Mr. Cognet. On 28 December 1968, the Administrative Assistant of the UNDP Office explained to the Resident Representative that the effects of the Applicant had been transported from the warehouse to the UNDP Office under the direct supervision of Mr. Cognet and himself and had then been repacked into one big case which was immediately sealed, weighed and transported to the airport, where it was reweighed and turned over to the airline authorities. In notes dated 3 and 10 January 1969, the Traffic Unit informed the Office of Technical Co-operation that it had not insured the shipment since it had not received an itemized valued inventory of the personal effects of the Applicant and that without such an inventory it could take no action. On 10 January 1969, the Resident Representative wrote to the Applicant informing him that, in view of the conditions in which his personal effects had been packed and transported to Conakry airport, a theft would have been impossible and suggesting that he should file a claim with the carriers. On 22 January 1969, the Applicant sent an itemized inventory of all his personal effects dispatched from Conakry to the Financial and Administrative Management Service of the Office of Technical Co-operation, which had requested it. The inventory listed separately the missing items as well as the value of each item except where the documents were concerned, because he was unable to assess their value and left it to the judgement of the Claims Board to do so. On 3 February 1969, the Applicant wrote to the Resident Representative stating that the missing articles had undoubtedly been stolen while his luggage was in the United Nations warehouse at Conakry, since the consignment which had arrived in Toronto had been intact. On 22 April 1969, the Applicant sent an itemized inventory of the personal belongings which had been sent to him on 6 November 1968 to the Financial and Administrative Management Service of the Office of Technical Co-operation; he listed as missing personal effects valued at \$401.51 and professional documents valued at \$9,475. On 7 May 1969, the Applicant sent to the same service an itemized inventory of the personal belongings which had been sent to him on 20 November 1968. On 21 May 1969, the Transportation Section informed the Financial and Administrative Management Service of the Office of Technical Co-operation that, since the United Nations insurance policy only covered shipments while in transit and the Applicant had repeatedly stated that the missing items had been stolen prior to shipment, it was impossible to claim compensation from the insurance company, particularly since the shipments had not been insured because the inventories sent by the Applicant had been prepared after shipment and listed items missing. On 1 July 1969, the Chief of the Administrative Section, Financial and Administrative Management Service, informed the Applicant that, since it was impossible to present a claim to the insurance company, he was referring the matter to the

Claims Board for whatever purpose that might serve. On 2 October 1969, the Applicant wrote to the Chief of the Administrative Section to ask what action had been taken on his claim and pointed out that the United Nations had admitted that it was obliged to insure experts against theft while they were carrying out their duties, since it requested them to provide an itemized inventory of their property. On 4 October 1969, in a letter addressed to the Chairman of the Claims Board, he maintained that the fact that he had been requested to provide an itemized inventory of his property before leaving Montreal and again during his stay in Conakry proved irrefutably that the United Nations must insure the property of an expert from the first shipment to the time when it was returned to the expert. On 17 December 1969, the Claims Board adopted the following recommendation:

“ . . .
“Through error on the part of the UNDP Conakry Office the effects were not insured and for that reason the claim falls within the competence of the Claims Board.

“Mr. Corrado claims \$9,200 for fourteen technical studies (completed by him in 920 hours at \$10.00 per hour) and \$275 for three catalogues, 2 test certificates and an original drawing. The Board agreed that within its frame of reference it cannot recommend compensation for the time spent in the production of the studies and recommends rejection of the claim for \$9,200 and an award of \$50 toward the intrinsic value of the catalogues, etc.

“In respect of the claims in the amount of \$401.51, the Board, after reducing an excessive claim for patent medicines, vitamins, etc. agreed that an award of \$350 would be equitable.

“The Board recommends an award totalling \$400 be granted to Mr. Corrado.”

On 29 March 1970, the Applicant rejected as totally inadequate the award recommended by the Claims Board and asked it to reconsider his case. In a letter dated 15 June 1970, the Applicant was advised that there was no basis for the Claims Board to reconsider its earlier decision and that, if he wished to appeal that decision, he might do so using the procedures prescribed in the Staff Rules applicable to his appointment. On 9 July 1970, in a letter to the Secretary-General, the Applicant requested the Joint Appeals Board to reconsider his claim for compensation for the missing documents and for the effects stolen from his residence in Conakry, and also requested payment of a termination indemnity. On 5 August 1970, the Director of Co-ordination, Office of Personnel, informed the Applicant that he was not entitled to a termination indemnity under the terms of his appointment and that he would receive a separate reply to his appeal against the decision of the Claims Board. On 4 September 1970, the Applicant stated that he was satisfied with the explanation given by the Director of Co-ordination regarding the termination indemnity. On 1 October 1970, the Chief of Staff Services, Office of Personnel, notified the Applicant that his appeal was under study in the Office of the Controller and that the latter would contact him during the second half of the month. On 13 March 1971, the Applicant wrote to the Chief of Staff Services, Office of Personnel, stating that he was still awaiting news with regard to his appeal. On 13 April 1971, the Chairman of the Claims Board informed the Applicant that the Board would reconsider his case on 4 May 1971 and that he would be informed of the Board's decision during the following week. On 2 June 1971, the Secretary of the Claims Board advised the Applicant that the Board had reconsidered the case on 11 May 1971, that it had decided to reaffirm its previous recommendation for an award of \$400, and that it had found no reason to reopen consideration of the claim concerning the burglary. On 14 June 1971, the Applicant wrote to the Secretary-General requesting that, since his appeal had been rejected by the Joint Appeals Board, it should be considered as a last resort by the Tribunal. On 13 August 1971, the Applicant asked the Chief of the

Administrative Section, Financial and Administrative Management Service, whether the Secretary-General had agreed that the case should be submitted to the Tribunal. On 18 August 1971, the Applicant wrote again to the Secretary-General reiterating his request. On 24 September 1971, the Assistant Secretary-General for Personnel Services informed the Applicant, in reply to his letter of 14 June 1971, that the Secretary-General confirmed the decision he had taken on the recommendation of the Claims Board. On 4 October 1971, the Applicant signed the release forms concerning the award of \$400 granted by the Claims Board and returned them to the Administrative Officer of the Financial and Administrative Management Service, Office of Technical Co-operation, who had sent them to him in March 1970; he claimed 6 per cent interest on that amount from 7 December 1968, when he had first appealed, until 24 September 1971, the date on which the Assistant Secretary-General for Personnel Services had advised him that his "final appeal had been rejected". On 8 October 1971, the Administrative Officer informed him that he had made the necessary arrangements for payment of the award, but that the Organization did not pay interest on claims under appeal. In the meantime, on 5 October 1971, the Administrative Officer, acknowledging receipt of his letter of 13 August 1971, had informed the Applicant that the matter had been referred to the appropriate office for action. On 9 October 1971, the Applicant replied that the letter of 5 October 1971 completely contradicted the tenor of the letter of the Assistant Secretary-General for Personnel Services dated 24 September 1971 and asked that the release forms be returned to him. On 20 October 1971, the Administrative Officer informed the Applicant that the necessary arrangements had been made for payment of the award of \$400 and that the release forms could not be returned to him; he made it clear that his letter of 5 October 1971 had merely been the standard printed acknowledgement which did not imply the reopening of the case. On 7 November 1971, the Applicant wrote to the Assistant Secretary-General for Personnel Services to protest against the refusal to submit his case to the Tribunal. On 17 December 1971, the Assistant Secretary-General replied that, since the Applicant had not received a reply from the Secretary-General to his letter of 9 July 1970, he should have brought the matter before the Joint Appeals Board within the prescribed time-limit and that, since he had failed to do so and had not obtained the Secretary-General's agreement to submit an application directly to the Tribunal, his case should be considered closed. On 24 January 1972, in a further letter to the Assistant Secretary-General, the Applicant contested the validity of the reasons invoked to justify the Secretary-General's refusal to take action on his request. On 3 February 1972, the Chief of Staff Services, Office of Personnel, replied to the Applicant stating that he was entitled to refer the matter to the Joint Appeals Board and to ask it to authorize extension of the statutory time-limit. On 12 February 1972, the Applicant sent the Chief of Staff Services, Office of Personnel, a copy of a letter sent on the same date to the Chairman of the Joint Appeals Board requesting extension of the statutory time-limit. On 27 October 1972, since he had not received a reply to his request, the Applicant wrote to the Secretary-General to ask him to intervene. On 14 November 1972, referring to the Applicant's communication dated 27 October 1972, the Secretary of the Joint Appeals Board informed him that his letter of 12 February 1972 had not reached the Secretariat of the Board but that the copy addressed to the Chief of Staff Services, Office of Personnel, had been found, and that the Board would consider the question of the admissibility of his appeal a few days later. On 21 November 1972, the Board concluded that the appeal concerning the award of \$400 was admissible and decided to postpone its decision on the admissibility of the claim concerning the burglary. On 26 February 1975, the Board submitted its report, in which it declared admissible the appeal concerning the burglary, confirmed its previous decision on the admissibility of the appeal concerning the award of \$400 and adopted the following conclusions and recommendations on the substance:

*"Conclusions and recommendations**"As to the appeal in connexion with the burglary*

"78. The Board finds that under the terms of the appellant's appointment the Organization was not obligated to indemnify him for the loss of his personal property suffered as a result of a burglary of his dwelling in Conakry.

"79. The Board makes no recommendation in support of this appeal.

"As to the appeal concerning the Claims Board's award of \$400

"80. The Board finds that under the circumstances, the appellant's negligence in failing to exercise reasonable prudence in order to prevent the loss of his unique set of professional documents is sufficient to absolve the Organization from any liability to the appellant for the loss thereof.

"81. The Board makes no recommendation in support of this appeal."

The Alternate Member elected by the Staff dissented from the conclusion and recommendation in paragraphs 80 and 81 of the Board's report and attached the following dissenting opinion to the report:

"...

"2. I was distressed to find that the combination of administrative negligence and insufficiently clear administrative instructions has retarded the appeals process by approximately three years and that approximately six years have elapsed since the introduction of the claim and the determination of the appeal by the Joint Appeals Board.

"3. In my opinion the issue before the Board has to be considered within the broad context of the Organization's obligations to safeguard the personal property of experts which it engages to carry out its technical assistance programmes. In this connexion it seems to me that the United Nations has an extra responsibility to experts assigned to countries where there is a high theft risk and where no satisfactory commercial insurance exists, as was the case in Conakry in 1967.

"4. The majority, in deciding to make no recommendation in support of Mr. Corrado's appeal concerning the Claims Board award of \$400, considered that the appellant's negligence in failing to exercise reasonable prudence in order to prevent the loss of his unique set of professional documents 'was sufficient to absolve the Organization from any liability to the appellant for the loss thereof'. I do not share this view. I believe that for every charge of neglect against the appellant, there is a corresponding instance of lack of due care by the Administration. For instance, it was found that the appellant did not alert the Resident Representative to the exceptional value of his documents when he requested storage of his personal property at the warehouse in Conakry. But it must be pointed out that the appellant (a) at no time prior to storage was asked for an itemized list of his effects and their value; and (b) never was asked for a waiver in respect of liability in case of loss. If it is argued that under the existing rules the Organization has no legal liability to indemnify the appellant for the loss of his reference works, it is also evident that experts have not been clearly alerted to this aspect and the responsibility for doing so rests on the Organization since experts need their tools for their work. In my opinion the negligence of the appellant was an unfortunate oversight but this oversight cannot remove the responsibility for good administration which the Organization failed to provide not only in Conakry but also in subsequent handling of the case which resulted in undue delays.

"5. In normal circumstances, a warehouse is covered by a general insurance policy against theft, and had this been the case, either the United Nations or the appellant could have at least sought to recover compensation for

the losses from the insurance company. As the United Nations is self-insured, the appellant addressed his case to the Claims Board which assumed responsibility for those items of personal property which have a market value but awarded only \$50.00 towards the 'intrinsic' value of the lost documents. In rejecting the appellant's claim for \$9,200, the Claims Board said that 'within its frame of reference, it [could not] recommend compensation for the time spent in the production of the studies'.

"6. It is evident, however, that the Claims Board, by virtue of its award, in fact accepted liability on behalf of the Organization for the loss of the appellant's property. The Claims Board's only difficulty lay in assessing the value of the manuscripts. While this was not specifically within the terms of reference of the Claims Board, such items, being a necessary part of an expert's tools and required for his job, are not specifically excluded in the circular ST/AI/149. Therefore the Claims Board could have found an alternative way of assessing the value of the lost documents—as, for instance, through an appraisal thereof by a group of experts—instead of the \$50 which was granted and which quite naturally the appellant found to be somewhat of an affront.

"7. In conclusion, as the Organization was responsible for the long delay which cost the appellant much time and effort to bring his case finally to the Appeals Board, and it was responsible for accepting custody of the appellant's personal effects without a clear statement limiting its liability, I recommend that a group of experts in Mr. Corrado's field of work be asked to assess the value of the documents which were lost and the appellant be compensated accordingly. If this is too difficult, I would recommend that the appellant be awarded six months' salary as an equitable sum for the losses he has incurred and the mental suffering caused him."

On 12 June 1975, the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had decided to maintain the decisions to deny his claim for compensation for the loss of personal effects due to the burglary of his residence and to grant him the award of \$400 as compensation for the loss of his effects stored with the UNDP Office in Conakry. On 9 February 1976, the Applicant filed the above-mentioned application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. With regard to the claim for compensation for the loss of professional documents:

(a) The recognized right of experts to bring with them 20 kilogrammes of excess baggage for the transport of books and documents they need to carry out their assignment shows the value and importance which the Administration attaches to the tools of their trade;

(b) It has been proved that the theft was committed while the baggage of the Applicant was in storage at the United Nations warehouse in Conakry;

(c) The option of staff members who are moving to store their baggage without any time-limit or restriction on volume and weight is a facility offered by the Administration, which also undertakes to pack and ship their effects; this is a right and not a favour accorded by the Administration to its staff;

(d) A ridiculous disparity exists between the sum of \$1,500 paid by the Administration to another expert for a single paper prepared in two days and the sum of \$50 which the Administration claims it should pay by way of compensation for the loss of a collection of 25 documents constituting an entire professional capital;

(e) The former provisions limiting the amount of compensable damage are obsolete and cannot be applied unless they are revised.

2. With regard to the claim for compensation for losses resulting from the burglary:

(a) The Administration, having acknowledged the risks faced by staff members stationed at Conakry, now considers Guinea as a dangerous area;

(b) This change in classification was made as a result of a report by Applicant and not as a result of action by the officials concerned;

(c) The officials concerned, through their indifference and negligence, having failed to notify the authorities of the serious dangers faced by staff members, the Administration is under a moral and material obligation to consider the change of classification as retroactive to the date of the burglary.

3. With regard to the claim for compensation for extraordinary expenses and hardships:

(a) The pamphlet on Guinea sent to the Applicant before his departure made no mention of the deplorable living conditions in the country, an omission which, in view of the consequences for those who had to go to that country, should be considered intentional;

(b) The Administration is therefore responsible for the extra expenses incurred by the Applicant;

(c) The Administration has not fulfilled the moral obligation it entered into with regard to the extension of the Applicant's contract and is therefore responsible for his having to go 14 months without employment or accommodation.

Whereas the Respondent's principal contentions are:

1. With regard to the claim for compensation with respect to the burglary:

(a) The burglary does not appear to be a necessary consequence of the performance of official duties. Nor was there any connexion between the premises occupied by the Applicant and the United Nations. Furthermore, the burglary did not result from an unusual occurrence or upheaval at the Applicant's duty station during his term of service. The Applicant is therefore reduced to contending that he was posted to a duty station involving special hazards within the meaning of paragraph 3 (a) (ii) of Administrative Instruction ST/AI/149 by reason of the exceptionally high crime rate allegedly prevailing there. However, this contention has no basis either in fact—because of the difficulties involved in measuring the crime rate statistically—or in law—since to be compensable, the loss must be directly attributable to the performance of official duties;

(b) No provision of the Applicant's terms of appointment obligated the United Nations to insure him against burglary;

(c) The release signed by the Applicant on 4 October 1971 precludes him from claiming compensation with respect to the burglary.

2. With regard to the claim for additional compensation for the loss of documents:

(a) The release signed by the Applicant precludes him from claiming additional compensation;

(b) The amount awarded to the Applicant was sufficient under the relevant provisions of his terms of appointment since, according to the Respondent, the applicable criterion is that of the purely pecuniary cost of the article and since, in addition, the Applicant's behaviour was characterized by a high degree of negligence.

3. The Applicant's other pleas are not receivable inasmuch as they were not submitted beforehand to the Joint Appeals Board or to the Secretary-General.

4. In the event that the application should be found partially or wholly well-founded, the limitation as to the amount of compensation laid down in paragraph 6 (d) of Administrative Instruction ST/AI/149 should be taken into consideration, to-

gether with the fact that the Claims Board has taken no action under paragraph 14 of that Instruction with respect to the Applicant's case.

The Tribunal, having deliberated from 13 to 23 April 1976, now pronounces the following judgement:

I. The application comprises a number of claims for compensation. The first, involving \$176, concerns the loss of certain articles as the result of the burglary at the Applicant's residence at Conakry on 30 September 1967. This claim, having been submitted to the Claims Board, was rejected by that body on 25 September 1968. A second claim relates to the disappearance of certain articles, including a collection of professional documents, deposited at Conakry in a warehouse operated by the United Nations. On 17 December 1969, the Claims Board recommended the payment of \$400 in that connexion. That recommendation was confirmed by the Board on 11 May 1971, and on 24 September 1971 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General was confirming the decision which he had taken on the recommendation of the Claims Board.

In its report of 26 February 1975, the Joint Appeals Board, while acknowledging the receivability of these two claims, decided by a majority not to make any recommendation in support of them, and the Secretary-General decided to uphold the previous decisions. The Tribunal must now deal with those decisions.

II. The application also seeks the granting of \$15,000 as compensation for the "extraordinary expenses and hardships" incurred by the Applicant "as a result of the hostility and bad faith" of Administration personnel, together with \$30,000 as compensation for "all the moral and material injury inflicted 'on him' over a period of years".

The Tribunal notes that these claims are not the subject of a "dispute" between the Applicant and the Respondent, since they have not yet been explicitly submitted to the Respondent, and that the Joint Appeals Board has made no recommendation concerning them. That being the case, the conditions of article 7 of the Statute of the Tribunal have not been fulfilled and the appeal is not receivable in respect of these claims.

III. The claims for compensation for losses resulting from a burglary and from theft from a United Nations warehouse are based on Staff Rule 206.6, which states:

"Project personnel shall be entitled, within the limits and under the terms and conditions established by the Secretary-General, to reasonable compensation in the event of loss or damage to their personal effects, determined to be directly attributable to the performance of official duties on behalf of the United Nations."

At the time when the events in dispute took place, the limits and conditions in question were set out in Administrative Instruction ST/AI/149 of 16 July 1962. The Tribunal must therefore consider the Applicant's claims in relation to these texts.

IV. With regard to the burglary which took place at Conakry, the Tribunal notes that the Rules do not provide for any obligation on the part of the United Nations to obtain insurance for personal effects at the duty station. Furthermore, under paragraph 3 (a) (ii) of the Administrative Instruction, loss of personal effects is deemed to be directly attributable to the performance of official duties when such loss:

"... was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area involving special hazards and occurred as a result of such hazards".

The burglary cannot be considered, of itself, as a "special hazard" of a given area. It is a fairly general hazard in all areas of the world. In order for it to assume the character specified in paragraph 3 (a) (ii) of the Administrative Instruction, very special

circumstances would be required. Regardless of the measures taken subsequently by the Respondent in that connexion, it has not been proved that, at the time of the events in dispute, this condition was actually fulfilled.

The Tribunal therefore concludes that the claim for payment of \$176 cannot be sustained.

V. With regard to the theft allegedly committed while the Applicant's baggage was in the United Nations warehouse at Conakry, the dispute concerns the evaluation of compensable damage. The record of the meeting of the Claims Board held on 17 December 1969 states:

"Mr. Corrado, a UNOTC expert was appointed to Guinea for one year effective 4 April 1967. On 21 February 1968 he departed Conakry on terminal leave. He left his personal effects in the UN Depot in the hope that he would receive a new assignment. The new assignment did not materialize and in October 1968 Mr. Corrado requested the Resident Representative to ship his personal effects to his home address in Canada.

"Mr. Corrado claims that various items were missing upon arrival and expresses the belief that they were stolen by unnamed former colleague(s) in Conakry.

"Through error on the part of the UNDP Conakry Office the effects were not insured and for that reason the claim falls within the competence of the Claims Board.

"Mr. Corrado claims \$9,200 for fourteen technical studies (completed by him in 920 hours at \$10.00 per hour) and \$275 for three catalogues, 2 test certificates and an original drawing. The Board agreed that within its frame of reference it cannot recommend compensation for the time spent in the production of the studies and recommends rejection of the claim for \$9,200 and an award of \$50 towards the intrinsic value of the catalogues, etc.

"In respect of the claims in the amount of \$401.51, the Board, after reducing an excessive claim for patent medicines, vitamins, etc. agreed that an award of \$350 would be equitable.

"The Board recommends an award totalling \$400 be granted to Mr. Corrado."

In transmitting the summary of the recommendation to the Chief of the Administrative Section of the Financial and Administrative Management Service, Office of Technical Co-operation, the Secretary of the Claims Board stated that the Board "agreed that he should receive a compensation for his loss".

VI. The Tribunal notes that, on 22 January 1969, the Applicant addressed to the Chief of the Administrative Section of the Financial and Administrative Management Service, Office of Technical Co-operation, an itemized inventory of the missing articles and an estimate of their value, where possible. The Applicant stated: "As for personal documents, projects, cost analysis, etc., I am unable to assess their value as they are irreplaceable. They represent the work of many months. I leave to the judgement of the Board to determine their value."

On 22 April 1969, the Applicant sent to the same official an evaluation of the lost documents. For some of them (books, catalogues), this evaluation was expressed in figures, while for others (plans, drawings, projects), the Applicant referred to the time which he had spent in preparing them and gave their over-all value at the rate of \$10 per hour. He described the documents as follows:

"The lost documents constituted for my work a valuable and unique collection of model projects and technical data collected over many years and now impossible to reconstitute. Documents which, in fact, are vital to professionals and

specialists in implementing an industrial project, particularly when it is a question of producing low-cost materials.”

On 7 May 1969, the Applicant sent to the same official a new list in which he estimated at 844 hours the time spent in preparing the documents.

VII. The Tribunal notes that the Claims Board acknowledged that the Applicant should receive a compensation for his loss. The Board also recommended, in addition to the compensation for personal effects, an award of \$50 toward the “intrinsic value of the catalogues, etc.”, thereby acknowledging that, apart from the personal effects *stricto sensu*, the loss of the working documents fell within the category of compensable damages. The Board therefore recognized the documents as articles which might “have been reasonably required” by the staff member under the terms of paragraph 6 (a) of Administration Instruction ST/AI/149. On the other hand, the Board did not consider itself able to compensate the Applicant for the damage suffered as a result of the disappearance of the documents prepared by him, because “within its frame of reference it cannot recommend compensation for the time spent in the production of the studies”.

The Tribunal notes that the Board did not reject the claim for compensation as unfounded under the terms of the Rules and the Administrative Instruction. The Board did not refer to any conduct on the part of the Applicant which would cause the Respondent to be absolved from liability. Its argument for declining to decide on the compensation due was based solely on the method of evaluating the damage proposed by the Applicant.

The Tribunal considers that it was the responsibility of the Board either to propose another method of evaluation, or to call for an expert valuation. There was no provision in the Administrative Instruction which limited the Board’s competence to propose the basis for the settlement of the matter if it considered it should contest an evaluation based on the time spent in preparing a document and if it considered that the intrinsic value could be assessed in some other way. Indeed, under the terms of paragraph 14 of the Administrative Instruction, the Board was obligated to forward a recommendation in the event that compensation was not possible according to the terms of the Administrative Instruction itself.

VIII. The Tribunal concludes that the amount of the damages was not assessed completely as a result of an error of law committed by the Board with regard to its competence in that connexion.

Accordingly, the Respondent’s decision, based on the Board’s recommendation, did not take the full loss suffered into consideration in determining the amount of compensation due. Consequently, it is for the Tribunal to determine the obligation still to be discharged by the Respondent.

IX. The Applicant assessed the time spent in preparing the documents allegedly stolen from him first at 920 hours and subsequently at 844 hours. Assuming that these assessments are accepted, it would be possible to make a determination of the compensation on the basis of the salary which the Applicant would have received from the United Nations for those hours of work. This procedure would result in a figure higher than the \$1,000 maximum set in paragraph 6 (d) of the Administrative Instruction in effect at the time of the events in dispute. But at that time, under paragraph 14 of the Instruction, the Board already had the power to recommend “reasonable” compensation if the maxima prescribed in the Instruction would cause the staff member “unusual hardship” or would result in a clearly unreasonable situation.

In any event, the Tribunal observes that the lost documents were transported from Canada to Conakry and that the Applicant was contemplating having them transported to a new duty station. That being the case, the Applicant had implicitly agreed that

the maximum amount of the insurance compensation which could be awarded to him in the event of loss in transit was \$2,500, as provided in Rule 207.21 (b).

In the absence of an agreement by the parties on a direct evaluation procedure, the Tribunal considers it reasonable in the present case to apply this limitation of liability in respect of a loss compensation for which is recognized to be the responsibility of the Respondent.

X. The Tribunal reaches the conclusion that reasonable compensation for all the property of the Applicant removed from the United Nations warehouse at Conakry should be set at \$2,500, less the amount of \$400 already awarded to the Applicant.

XI. Since more than seven years have elapsed since the Applicant suffered the loss in question, the Tribunal deems it justified to award interest at the rate of 6 per cent as from 12 February 1972, the date on which the matter was submitted to the Joint Appeals Board following lengthy delays attributable mainly to the conduct of the Respondent.

XII. For the above reasons, the Tribunal decides:

(1) To reject the claim for compensation for the damage resulting from the burglary;

(2) To award \$2,100 as compensation for losses not yet compensated which occurred to the prejudice of the Applicant in the United Nations warehouse in Conakry;

(3) To award interest of 6 per cent on the sum referred to in paragraph (2) above, to be calculated from 12 February 1972 until the date of payment;

(4) To declare the other claims not receivable.

(Signatures)

Suzanne BASTID
Vice-President, presiding
Francis T. P. PLIMPTON
Vice-President
Geneva, 23 April 1976

Francisco FORTEZA
Member
Jean HARDY
Executive Secretary

Judgement No. 210

(Original: English)

Case No. 200:
Reid

Against: The Secretary-General
of the United Nations

Dismissal for misconduct of a staff member holding a permanent appointment.

Request for rescission of the decision to dismiss the Applicant for unsatisfactory conduct.—Contention of the Applicant that the Secretary-General did a wrongful act in deciding to dismiss him despite the unanimous recommendations of the Joint Disciplinary Committee and the Joint Appeals Board.—Staff Regulation 10.2 and Staff Rule 110.3 (b).—Wide discretion of the Secretary-General to determine and define what constitutes unsatisfactory conduct.—That view supported by the legislative history of the