

XXXVI. For the foregoing reasons, the Tribunal decides:

1. The request to rescind the letter dated 20 April 1982 from the Assistant Secretary-General for Personnel Services is rejected;

2. The request to rescind the report of the Joint Appeals Board of UNIDO dated 1 February 1982 is rejected;

3. The request to rescind the decision of 3 August 1972 and the decision of 19 March 1979, as well as that resulting from the refusal of the Administration, through its silence, to make proposals of posts to the Applicant is not receivable.

4. All other requests are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Arnold KEAN
Vice-President

New York, 19 October 1983

Roger PINTO
Member

Jean HARDY
Executive Secretary

Judgement No. 316

(Original: English)

Case No. 306:
Jazairi

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

Request by a former staff member of the United Nations for compensation for injury to reputation and career prospects, exposure to grave risk and break in service.—Request for preliminary measures: examination of witnesses and production of documents.

The Joint Appeals Board made no recommendation on the complaint concerning an administrative investigation into the Applicant's association with the American University in Beirut while in the employment of the United Nations.—Recommendation of the Board to reimburse the cost of the evacuation of the Applicant's wife from Beirut and of payment of compensation of \$US 1,000 for the failure to consider whether the circumstances warranted the Applicant's evacuation.—Recommendation accepted.

The Tribunal considers that production of evidence should have been sought by the Applicant before the Joint Appeals Board.—Request for preliminary measures rejected.

Complaint in respect of the prejudice suffered on account of the administrative investigation.—Applicant's contention that the investigation was improperly motivated.—Respondent's contention that decisions relating to the investigation were not administrative decisions subject to appeal.—The Tribunal holds that the decisions to hold an investigation and to disclose its results were administrative decisions subject to appeal.—The Tribunal concludes that these decisions were not motivated by improper motives and that the Applicant suffered no damage.—Request for compensation rejected.—Complaint in respect of the Administration's refusal to evacuate the Applicant and his wife.—The Tribunal finds no basis for compensation additional to that recommended by the Joint Appeals Board.—Complaint in respect of two months' break in employment.—The Tribunal finds that the Applicant is not entitled to compensation on account of a break in short-term appointment which carries no expectancy of renewal.—Complaint in respect of change of duty station.—The Tribunal finds that the Applicant had no entitlement to further employment in Beirut.—Complaint in respect of the release of a

report of investigation.—No opinion on this dispute was communicated by the Joint Appeals Board.—Complaint not receivable.—Complaint in respect of the length of proceedings before the Joint Appeals Board.—Finding of the Tribunal that, although regrettable, the delay did not vitiate the Board's proceedings.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, President; Mr. Arnold Kean, Vice-President; Mr. Roger Pinto;

Whereas, on 12 March 1982 Nuri Toama Jazairi, a former staff member of the United Nations, filled 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 4 February 1983;

Whereas the pleas of the application read:

“In accordance with article 7 (3) (a) of the Rules of this Tribunal, certain preliminary measures and remedies are requested by the Applicant in order to more fully elaborate the pleas herein advanced and demonstrate the merit of the contentions. These include, and the Applicant hereby requests, that this honorable Tribunal conduct oral proceedings in accordance with chapter IV, article 15 of the Rules and summon for examination the following witnesses:

- | | |
|----------------------|----------------------------|
| “1. Mr. N. Chalak | “12. Mr. A. Al-Alem |
| “2. Mr. S. Salameh | “13. Mr. A. Raouf |
| “3. Mr. R. Gieri | “14. Mr. James O. C. Jonah |
| “4. Mr. A. Ciss | “15. Mr. M. Al-Attar |
| “5. Mr. B. Hannush | “16. Mr. N. Lakshmi |
| “6. Mr. R. Foudhaily | “17. Mr. S. Makdesi |
| “7. Mr. B. Urquhart | “18. Mr. G. Badr |
| “8. Mr. G. Greene | “19. Mr. K. Haseeb |
| “9. Mr. G. Haddad | “20. Mr. D. Kusuma |
| “10. Mr. H. Debatin | “21. Mr. L. Flanders |
| “11. Mr. L. Abdunnur | |

“In addition, in order to amplify the pleas and to make more apparent the Applicant's entitlements to redress pursuant to article 9(1) of the Statute, the Applicant requests that this honorable Tribunal order the production of:

“(a) the complete records of the investigation referred to in the ‘Report of the Investigation Panel’, dated 15 December 1980;

“(b) the complete records of the names, dates and type of appointments of all ECWA [Economic Commission for Western Asia]* staff members, together with details of their evacuations, missions, leaves,

*In 1985, the Economic Commission for Western Asia officially changed its name to the Economic and Social Commission for Western Asia (ESCWA).

attendance records, duty stations, and all payments made to them (and their dependants), together with material evidence of their whereabouts between 15 August 1975 and 10 March 1977;

“(c) all the Applicant’s personnel files and documents, confidential or otherwise, together with those files of Mr. Ciss, Mr. Hannush, Mr. Foudhaily, Mr. Abdunnur, Mr. Chalak, Mr. Lakshmi, Mr. Kusuma, Mr. Al-Attar, Mr. Haddad, and Mr. Haseeb;

“(d) all and any memoranda written by present or past ECWA staff members alleging irregularities and wrongdoings in ECWA, including in particular two memoranda written by Mr. Haddad and Mr. Kusuma;

“(e) the report or reports written by Mr. Salameh and Mr. Gieri relating to their mission to ECWA at Amman in January, 1977;

“(f) all ECWA Administration memoranda written on or in connection with the mission of Mr. Salameh and Mr. Gieri to Amman in January, 1977;

“(g) the JAB [Joint Appeals Board] official file on the Applicant; and all JAB documents, confidential or otherwise, relating directly or indirectly to the Applicant’s case;

“(h) to order the Respondent to declassify the confidential files of and any confidential documents on all U.N. staff members and to end once and for all this practice by the Administration;

“(i) to order the auditing and verification by outside competent authorities of all the documents specified herein as items (a) through (g) before it deems them to merit consideration as true and authentic documents.

“In this way, the Tribunal will be able to examine for itself the charges of conspiracy and cover-up that lie at the basis of the Applicant’s grievances and of his pleas to this honorable Tribunal.

“Moreover, the Applicant hereby requests the following monetary damages as an ‘exceptional case’, in accordance with article 9(1) of the Statute of the Administrative Tribunal:

“1. For the interference with his prospects of employment with the U.N. Headquarters, including damages for loss of career position (approximate base salary in 1977 being \$60,000 per year), loss of benefits, loss of pension, as adjusted to current value, in the amount of eight million dollars (\$8,000,000.00);

“2. For the damage to his reputation in the U.N. and in the academic community, in the amount of one million dollars (\$1,000,000.00);

“3. For the damage caused by the publication of the false claim of his concurrent employment at the AUB [American University of Beirut] to Messrs. Salameh and Gieri and the prejudice caused thereby to his claim for evacuation benefits, change in duty station and break in service, as adjusted to current value, in the amount of seventy five thousand dollars (\$75,000.00);

“4. For the damage caused to his reputation with the AUB by the divulgence of the ‘strictly confidential’ inquiry to the AUB and the ensuing damage to his reputation in the academic community, in the amount of one million dollars (\$1,000,000.00);

“5. For the damage and mental and emotional anguish caused by the ‘strictly confidential’ inquiry into the question of his prior concurrent

employment with the AUB, and the bad faith motives that underlie its initiation, perpetuation, and divulgence, coupled with the contempt, ridicule, and obloquy to which he was held in its aftermath; together with the lost employment opportunities at ECWA and at U.N. Headquarters as a result of this investigation, in the amount of ten million dollars (\$10,000,000.00);

“6. For the damage to his reputation by the defamatory release of the ‘Report of Investigation’ by the Urquhart-Greene panel on December 15, 1980, in which the Applicant was mentioned by name and his allegations wrongly found unsubstantiated, in the amount of one million dollars (\$1,000,000.00);

“7. For punitive damages, at the discretion of the Tribunal, for the egregious conduct by ECWA and by representatives of the Secretary General, in an amount deemed sufficient by this Tribunal to deter future violations of the Charter and the Rules.

“8. As compensation for having been subjected to the grave risk of death and/or serious physical injury, in the amount of one million dollars (\$1,000,000.00);

“9. As compensation for the refusal to accord him and his wife evacuation allowances and travel benefits to which they would have been entitled, had they been evacuated, in the amount of fifty thousand dollars (\$50,000.00), adjusted to current value;

10. As compensation for the loss of Beirut as a duty station and for the break in service during July-August, 1976, in the amount of twenty thousand dollars (\$20,000.00), adjusted to current value;

11. For the costs of legal and incidental expenses incurred, as well as the personal time and lost opportunities necessitated in his attempts to seek redress for the wrongs to which he has been subjected, in the amount of five hundred thousand dollars (\$500,000.00).”;

Whereas the Respondent filed his answer on 25 March 1983;

Whereas the Applicant filed written observations on 12 August 1983;

Whereas the Tribunal heard the parties at a public session held on 5 October 1983;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Economic Commission for Western Asia (ECWA) in Beirut, Lebanon on 15 August 1975 as an Economic Affairs Officer under a short-term appointment for two months as a non-local recruit at the P-3 level. His appointment was extended three times, until 30 June 1976.

In the first half of 1976, serious disorders broke out in Beirut. On 22 January 1976 the Executive Secretary of ECWA offered voluntary evacuation to the international staff of ECWA and their dependants, and on 29 March 1976 he issued a mandatory evacuation order. It appears that the Applicant requested evacuation for his wife and himself around the end of April 1976 but that his request was denied. On 2 June 1976, in a memorandum to the Chief of the Division of Administration of ECWA, Mr. Ciss, the Applicant inquired as to the status of his appointment. On 28 June 1976 Mr. Ciss, who was away from ECWA Headquarters, cabled the immediate superior of the Applicant, Mr. Chalak, Chief of the Statistical Unit of ECWA, also away from ECWA Headquarters, as follows:

“APPOINTMENT JAZAIRI EXPIRES 30/6. IN ORDER RECOMMEND TO UN HEADQUARTERS HIS ONE YEAR APPOINTMENT NEED CONCRETE AND DETAILED INFORMATION FROM YOU ON DUTIES TO BE PERFORMED BY JAZAIRI IN COMING MONTHS AND PAST DUTIES. ALSO HOW PERFORMANCE THUS FAR RATED. PLEASE SEND MEMO CARE OF UNDP POBOX 565 AMMAN.”

On the following day Mr. Ciss sent the following cable to ECWA in Beirut:

“PLEASE INFORM JAZAIRI REQUEST FROM CHALAK SUITABLE RECOMMENDATION FOR RETENTION HIS SERVICES INORDER PRESENT HIS CASE TO TARS [TECHNICAL ASSISTANCE RECRUITMENT SERVICE] NEW YORK. UNTIL SUCH TIME AS HEADQUARTERS APPROVES HIS APPOINTMENT REGRET BREAK IN HIS SERVICE WITH ECWA UNAVOIDABLE. HOWEVER SHALL TRY UTMOST EXPEDITE HIS APPOINTMENT SOON.”

On 5 July 1976 Mr. Chalak replied to the cable from Mr. Ciss as follows:

“RECOMMEND EXTENSION JAZAIRI’S CONTRACT ONE YEAR AND AWAITING HIS REPORTS LATEST ACTIVITIES. DETAILED INFORMATION WILL FOLLOW UPON RECEIPT CV”.

On 14 August 1976 the Applicant wrote to the Executive Secretary of ECWA stating that the break in his short-term employment was approaching fifty days and that if the one-year contract was still in process it was only fair that ECWA should renew his short-term contract until that process came to a conclusion. On 29 August 1976 Mr. Chalak recommended to the Executive Secretary of ECWA the appointment of the Applicant for one year or, if such an appointment could not be offered at that stage, the renewal of his short-term contract until the one-year appointment could be made. On 1 September 1976 the Applicant re-entered the service of ECWA in Amman, Jordan, where the ECWA Headquarters was then functioning, as a statistician under a short-term appointment for two months at the P-3 level which was, on 10 October 1976, retroactively superseded by an intermediate-term appointment for one year at the L-4 level. On 13 January 1977 Mr. Ciss addressed a “strictly confidential” letter to the Officer-in-Charge of the ECWA Office in Beirut, Mr. Hannush, asking him to make a discreet investigation as to whether the Applicant had severed his ties with the American University of Beirut (where he had been under a teaching contract) and whether he was still receiving emoluments from the University. On 10 February 1977 Mr. Hannush replied in a “strictly confidential” letter that the Applicant had been under contract with the University from 30 June 1975 until 31 August 1976 and had received certain emoluments. On 16 February 1977, in a memorandum to the Applicant, the Chief of the Personnel Section of ECWA, Mr. Foudhaily, stated that the Applicant had held a job with and received emoluments from the American University of Beirut during the period of his former employment with ECWA, referred to Staff Rule 101.6 on outside activities and interests, and asked for an early explanation. In a reply dated 8 March 1977, the Applicant denied any impropriety and stated that numerous high officials of ECWA had been fully informed by him about his teaching at the American University of Beirut; he alleged that the investigation was in reprisal for his having, on 12 January 1977, met with two officials from Headquarters who were then in Amman in order to discuss his claims against ECWA, and he requested review of those claims, which he summed up as follows:

“4. I have asked ECWA and I repeat that I am still asking why you refused myself and my family evacuation from Lebanon during the civil war last year, thus subjecting us to grave physical danger, suffering and

financial loss; why you refused to consider compensating me for the loss of my furniture and my books which took place during the war in Lebanon and while I was employed by ECWA; why you broke my employment with ECWA for two months in the middle of the war in Lebanon and after I had resigned from my job at the AUB [American University of Beirut] on the basis of the understanding that you would guarantee me long term and continuous employment; why when you re-employed me after the break in my employment you refused to consider ECWA's duty station as my duty station; and finally why you refused to consider extending my installation grant beyond the normal one month although my family and I were living in a hotel in Amman for three months before we found an apartment. These problems, sir, made me and my family exhaust all our savings and go nearly bankrupt while employed by ECWA. Yet all I have done is to ask about the interpretation of the UN regulations in my case. And instead of considering my situation fairly and objectively, which is after all your duty as well as my right, you decided to dig out a completely false and absolutely unjust issue designed to reflect on my integrity. Since when has the mere act of asking questions become punishable in the United Nations?"

On 10 March 1977 the Applicant's appointment was superseded by a fixed-term appointment for six months at the P-3 level with the Statistical Office at United Nations Headquarters. On 24 March 1977 Mr. Foudhaily, in reply to the Applicant's communication of 8 March 1977, noted that the Applicant had not deliberately withheld from the Organization's knowledge his employment with the American University of Beirut; he stated that, after consultation with the Executive Secretary, he did not intend to pursue the matter further, and dealt with the Applicant's claims as follows:

"I shall merely confine myself to answering some of the main and relevant points you have raised in paragraph 4; viz.,

"(i) your employment with the AUB;

"(ii) your request for evacuation and compensation for the loss of furniture and books;

"(iii) the break in your employment with ECWA;

"(iv) Your re-employment with Amman as duty station;

"(v) payment of extended installation grant.

"The answers to these points are as follows:

"(i) This has been adequately answered . . . ;

"(ii) As was explained to you, since you were on a short-term appointment, i.e. for less than a year, unfortunately you and your wife were not eligible for evacuation. However, I am willing to take up the matter with the appropriate officials at Headquarters in New York, with a view to finding out whether, as an exceptional measure, some form of compensation, such as payment of evacuation allowance to your wife, and compensation for loss can be afforded to you. For this, I would require full details of your wife's evacuation and loss of personal effects;

"(iii) You must have known by now that the break in your contract was not intentional on our part. It was unavoidable and mainly due to the events then prevailing in Lebanon and the evacuation of staff. Furthermore, it was perfectly made clear to you that while every attempt would be made to secure a long-term appointment for you, we could not commit ourselves in writing;

“(iv) It was clearly explained to you by Mr. Ciss, at a meeting in his office in early September, that we were unable to recruit you with your duty station as Beirut. If I may say so, we need not have re-employed you, but with due regard to the quality of your contribution to our statistics programme and in order to honour the Executive Secretary’s verbal promise to you, that you were re-employed. You quabbled about your grade and requested in writing about our making a recommendation to New York for a P-4 level, which we in fact did. I find it, therefore, somewhat odd that in your memorandum you accuse ECWA of not putting anything in writing;

“(v) There was no valid justification from you for the payment of extended installation grant. Consequently, we were unable to pursue the matter further”

On 3 May 1977 the Applicant wrote to the Secretary-General requesting a review of his various claims. On 1 August 1977 the Assistant Secretary-General for Personnel Services sent him the following reply:

“. . . The question of your teaching at the American University in Beirut was not the subject of any administrative decision of which review can be requested under rule 111.3. You complained of a so-called allegation that your teaching activities were in violation of rule 101.6. Since the Administration took no action on that matter, there can be no review and consequently no appeal.

“You requested reimbursement of evacuation expenses and payment of evacuation allowance in respect of yourself and of your wife. The fact is that you, yourself, never left Beirut until your fixed-term appointment with ECWA expired. There can, therefore, be no question of evacuation expenses or evacuation allowance as far as you are concerned. With regard to your wife, who departed from Beirut alone, I recall that she did not travel to the duty station at United Nations expense because your appointment was for less than one year and under the provisions of rule 107.2 (a) (i) staff members appointed for less than one year have no entitlement to the travel of their dependants at United Nations expense. This being the case, the United Nations is under no obligation to pay for the evacuation of such dependants. In an emergency the Organization may make arrangements for the travel of such dependants but the expenses are to be borne by the staff member and no evacuation allowance would be payable to him under the provisions of paragraph 12 and 13 of the ‘Arrangements for the Protection of Personal and Property of the Family of Organizations of the United Nations’ approved by CCAQ (pages A-29 and A-30 of the Field Administration Handbook).

“You also claimed continuity of service and requested that the two-month interval between your fixed-term appointment with ECWA in Beirut and your subsequent fixed-term appointment with ECWA in Amman be bridged. Fixed-term appointments are separate self-contained arrangements with definite effective dates and expiry dates. They do not carry any expectancy of renewal or of conversion to another type of appointment. When your appointment with ECWA in Beirut expired, there was no obligation on the part of the Organization to offer you another fixed-term appointment. However, two months later you were offered and accepted a new fixed-term appointment in Amman. It is not possible to consider your services as having been continuous and to pay you the salary of the two months in question during which you did not work for ECWA.

“Your complaint about establishing Amman as your duty station during the new fixed-term appointment with ECWA is not well founded. The action cannot be said to have violated any of your rights under the Staff Regulations or Rules or under the terms of your letter of appointment. The fact is that several internationally-recruited professional staff members who joined the staff of ECWA at the same time were offered and accepted appointments with Amman as duty station. The treatment you received was therefore not in the least discriminatory.

“Finally, your request of an extended installation grant in Amman is not justified. You received the regular installation grant and thereafter the regular rental allowance. Extended installation grant can be authorized, at the Secretary-General’s discretion, only in exceptional cases. Your case was not considered as one justifying such an exceptional treatment.

“Your claim of compensation for property losses sustained while stationed in Beirut is now under consideration by the Claims Board. The proper action on this matter will be taken upon submission by the Claims Board of its report.”

After the expiry of his appointment on 9 February 1977, the Applicant returned to Canada, his country of nationality, and served as Consultant to the Statistical Office of the United Nations from 1 October 1977 to 31 March 1978. On 4 October 1977 the Tribunal lodged an appeal with the Joint Appeals Board. The Board submitted its report on 11 September 1981. In its report, the Board summarized its recommendations as follows:

“(a) On the *first complaint*, relating to the administrative enquiry into the circumstances of the appellant’s association with the American University of Beirut while a United Nations staff member, the Board, having given the complaint the fullest possible consideration in the circumstances, has decided that it will make no recommendation.

“(b) On the *second complaint*, regarding refusal of evacuation from Beirut, the Board recommends that:

“(i) the appellant should be paid the actual cost of his wife’s evacuation to the United Kingdom (her country of origin), and the amount of the monthly evacuation allowance for April, May and June 1976 which she would have received had she been evacuated after the mandatory evacuation order was issued, and

“(ii) the appellant should also be paid in respect of the legally incorrect failure to consider whether danger to his security created an exceptional case requiring evacuation, the sum of \$1,000.00.

“(c) The Board recommends that the appellant’s claims respecting the *third complaint*, relating to the break of two months (July-August 1976) on his appointments, should be rejected.

“(d) On the *fourth complaint*, concerning the appellant’s re-employment by ECWA with Amman as duty station, the Board recommends that the appellant’s claims should be rejected.

“(e) On the *fifth complaint*, regarding refusal of the extension of the appellant’s installation grant in Amman, the Board recommends that the appellant’s claims should be rejected.”

On 10 December 1981 the Assistant Secretary-General for Personnel Services advised the Applicant that the Secretary-General, having re-examined the case in the light of the Board’s report, had decided:

“(a) To take no further action on the first, third, fourth and fifth complaints of your letter of appeal;

“(b) With regard to the second complaint of your letter of appeal, to accept the Board’s recommendation that you be paid:

“(i) a sum equivalent to the actual costs of your wife’s evacuation to the United Kingdom and the amount of the monthly evacuation allowances for April, May and June 1976 which she would have received had she been evacuated after the mandatory evacuation order was issued; and

“(ii) the sum of \$1,000.00.”

On 12 March 1982 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The decision of ECWA to initiate and perpetuate an investigation into the Applicant’s prior concurrent association with the American University of Beirut was founded upon improper motives, was initiated and perpetuated in bad faith by high level officials at ECWA, was conceived, perpetuated and covered up by ECWA and senior officials at Headquarters for the avowed purpose of preventing the Applicant from divulging evidence of widespread corruption and irregularities in ECWA. The revelation and perpetuation of this ill-conceived investigation has caused substantial damage to the Applicant for which he is entitled to be compensated. The Applicant is, in addition, entitled to an award of punitive damages.

2. The decision of ECWA to refuse the Applicant and his wife evacuation benefits from Beirut during the period of strife in 1976 was arbitrary, inhumane, and grossly irregular. The decision denying these evacuation benefits was similarly motivated by improper motives. By virtue of this decision, the Applicant is entitled to be compensated both for material damage and for the mental and emotional anguish thereby caused. The Applicant is, in addition, entitled to an award of punitive damages.

Whereas the Respondent’s principal contentions are:

1. The Applicant’s general allegations of prejudice and bad faith concerning the Organization’s handling of his case have not been substantiated.

2. The preliminary or provisional measures and remedies requested by the Applicant are extraneous to the issues relevant to the Applicant’s contract of employment with the Organization or the terms of his appointment and are irrelevant and unnecessary for the disposition of this case.

3. The administrative decisions contested by the Applicant were a valid exercise of the Secretary-General’s discretion as Chief Administrative Officer of the Organization:

(a) The Applicant has failed to establish that the investigation into his association with the American University of Beirut while a United Nations staff member was in violation of the terms and conditions of his employment;

(b) The Applicant has not established that the investigation was improperly motivated.

4. The Applicant has failed to prove that the failure to evacuate him or his wife from Beirut was due to an invalid or improperly motivated administrative decision.

5. The Applicant had no legally cognizable expectancy of continued employment in the Organization on expiry of his temporary appointments for a fixed term.

6. The Applicant's request for damages based on the findings of the Urquhart/Greene Panel of Investigations is non-receivable under Article 7(1) of the Tribunal's Statute.

The Tribunal, having deliberated from 5 to 20 October 1983, now pronounces the following judgement:

I. The Applicant has requested certain preliminary measures and remedies "in order to more fully elaborate the pleas herein advanced and demonstrate the merit" of his contentions. The measures and remedies requested are:

(a) the summoning for examination of 21 present and former officials of the Organization; and

(b) the production of various files and documents, and their auditing and verification by outside competent authorities.

The application is well-documented, with 75 annexes running to 268 pages. The Tribunal notes that the Applicant has not specified the particular oral evidence and additional documents he requires or the particular matters to which they relate. His request is therefore in the nature of a fishing expedition, undertaken in the hope that the evidence produced may reveal something to his advantage. It was open to the Applicant, in his appeal to the Joint Appeals Board, to seek production of this evidence, but he failed to do so and in fact declined to take further part in the Board's proceedings. Bearing these factors in mind and that proceedings before the Joint Appeals Board are, in general, the proper occasion for the examination of evidence, and not being satisfied that the preliminary measures and remedies requested would assist the Tribunal in deciding the issues, the Tribunal rejects the above-mentioned request.

II. The Applicant's request for damages is in excess of \$22 million, together with punitive damages at the discretion of the Tribunal. He argues that this is an "exceptional case" within the meaning of article 9, paragraph 1 of the Tribunal's Statute, enabling the Tribunal to award compensation in excess of two years' net base salary. Each head of damages must be considered separately.

III. Five requests for damages (numbers 1 to 5 inclusive, specified above) arise from the Applicant's first complaint, in respect of the investigation of his alleged concurrent employment by ECWA and AUB without the approval of the Secretary-General required by Staff Rule 101.6 (a). The Applicant claims that the initiation, perpetuation and divulgence of the investigation were in bad faith, and motivated by improper motives

"for the avowed purpose of silencing and preventing the Applicant from divulging evidence of widespread corruption and a pattern of irregularities in the Administration of ECWA."

The Respondent contends that the fact of initiating an investigation did not constitute an administrative decision subject to appeal under Staff Rule 111.3 (a). The Tribunal is of the opinion that in the present case the decisions to hold an investigation and to disclose its result were administrative decisions which are subject to appeal.

IV. The Tribunal is not, however, satisfied that these decisions were made in bad faith or motivated by improper motives. Indeed, the ECWA Administration, upon being informed that the Applicant was concurrently engaged in

outside employment, would itself have been open to criticism if it had failed to institute an investigation of the facts, which it did by means of a letter of 13 January 1977 marked "strictly confidential" and addressed by Mr. Ciss to Mr. Hannush, the officer in charge of the ECWA Office in Beirut. The publication of information relating to the investigation was not, in the opinion of the Tribunal, excessively wide so as to give the Applicant cause for complaint.

V. The Tribunal notes, moreover, that the Administration has been satisfied that the Applicant accepted and continued his concurrent employment with AUB in good faith, under the impression that no further approval was required from ECWA inasmuch as senior officials of ECWA were aware of his employment with AUB. In consequence, the Administration has unreservedly withdrawn any imputation of bad faith on the Applicant's part.

VI. Furthermore, it is apparent that the Applicant suffered no damage from these events, apart from some natural anxiety, since his reputation evidently remained unstained. He continued to serve with ECWA and was later employed by the Statistical Office at United Nations Headquarters. At York University in Toronto, he resumed his position as an Associate Professor, with tenure, and continues to hold that position at the present time. At his present age of 42 he has not had an unsuccessful career. The Tribunal concludes that

(a) the Applicant's requests for damages (numbers 1 to 5, inclusive) in connexion with the investigation of his employment at AUB must fail; and

(b) in any event he has suffered no damage in consequence of that investigation.

VII. The Applicant's second complaint is in respect of the Administration's refusal to evacuate him and his wife from Beirut. The Joint Appeals Board recommended that compensation should be paid to him for the Administration's failure to consider whether his was a "most exceptional case" in which his security was endangered, or his property lost or damaged, as a direct consequence of his employment by the Organization, within the meaning of the instruction in the Field Administration Handbook, paragraph 12. The Joint Appeals Board further recommended the measure of compensation to be paid and the Secretary-General has accepted this recommendation and has paid compensation to the Applicant accordingly. The Tribunal sees no evidence which would justify any additional payment in this regard, under requests numbers 8 and 9.

VIII. The Applicant's third complaint is in respect of the break of two months in his employment (1 July to 31 August 1976). He held a short-term appointment for two months, which was extended three times, until 30 June 1976. Short-term appointments do not carry an expectancy of renewal or of conversion to another type of appointment, and nothing was done by the Administration or by the Applicant's superiors to create such an expectancy. In consequence, the Applicant is not, in the Tribunal's view, entitled to compensation for the break in the continuity of his employment (request number 10), and it is unnecessary for the Tribunal to consider whether the Administration acted with due dispatch in entering into a further contract for his employment.

IX. The Applicant also claims as part of request number 10 compensation for the loss of Beirut as a duty station, in consequence of his fresh appointment being to Amman, where part of ECWA's staff had been evacuated. The Tribunal considers that, having no expectancy of a further contract, the Applicant had no entitlement to further employment in Beirut.

X. Request number 6 is a claim for damages caused to the Applicant's reputation by the allegedly defamatory release of the "Report of Investigation" by the Urquhart-Greene panel on 15 December 1980. This dispute arose after the Applicant had left the service of the Organization and is not one on which the Joint Appeals Board has communicated its opinion to the Secretary-General or which the Secretary-General and the Applicant have agreed to submit directly to the Tribunal. The Applicant has argued that request number 6 is an integral part of other claims on which the Joint Appeals Board has in fact communicated its opinion to the Secretary-General, but the Tribunal sees no connexion between request number 6 and those other claims. Accordingly, this part of the Application is not receivable under article 7, paragraph 1, of the Tribunal's Statute.

XI. The Applicant further requests (number 7) "punitive damages . . . in an amount deemed sufficient by this Tribunal to deter future violations of the Charter and the Rules". Inasmuch as the Applicant has not succeeded in any of his requests the question of punitive or other damages does not arise.

XII. The Applicant requests (number 11) the award of \$500,000 as costs and expenses and as compensation for his loss of time and opportunities necessitated in seeking to redress the wrongs to which he has allegedly been subjected. All of the Applicant's other claims having failed, the Tribunal rejects this request.

XIII. In his written observations the Applicant adds a final point in respect of the Joint Appeals Board's report, and refers to the Board's

"numerous procedural errors which did violence to the rules of due process, thereby vitiating its own proceeding by its own procedural errors".

The Applicant has not, however, specified the procedural errors he has in mind, though he complains of the delay in dealing with his case, asserting that the hearing of his case by the Joint Appeals Board lasted more than five years. In fact, the Applicant initiated his appeal by his letter to the Secretary-General dated 3 May 1977, in accordance with Staff Rule 111.3 (a), and the Joint Appeals Board's report was dated 11 September 1981, more than four years later. The delay in the Joint Appeals Board's proceedings, although regrettable, does not, in the Tribunal's view, vitiate those proceedings.

XIV. For the foregoing reasons, all of the Applicant's pleas are rejected.

(Signatures)

Endre USTOR
President

Arnold KEAN
Vice-President

New York, 20 October 1983

Roger PINTO
Member

Jean HARDY
Executive Secretary