Registry's translation, the French text alone being authoritative.

FORTY-THIRD ORDINARY SESSION

In re DE VILLEGAS

Judgment No. 404

The ADMINISTRATIVE TRIBUNAL,

Considering the three complaints brought against the International Labour Organisation (ILO) by Mrs. Maria Adriana de Villegas on 15 November 1978, 12 January 1979 and 16 May 1979 and brought into conformity with the Rules of Court on 20 December 1978, 4 April 1979 and 8 June 1979 respectively, the ILO's reply of 30 March 1979 to the first complaint and its additional memorandum of 10 August 1979 in reply to the second and third complaints;

Considering the complainant's single rejoinder of 25 September 1979 to the ILO's memoranda, supplemented by two additional documents filed on 11 October 1979, the ILO's surrejoinder of 15 November 1979, the complainant's additional statement of 7 February 1980 and the ILO's comments of 3 March 1980;

Considering the Tribunal's decision, notified to the parties on 22 May 1979, to join the three complaints for the purpose of the written proceedings and considering that the three complaints should be joined to form the subject of a single decision;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Articles 2.3, 11.5, 11.6 and 11.16 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. In 1969 the complainant, who is a Colombian citizen, was appointed to the Economics Branch of the International Labour Office. In 1972, as a result of an internal competition, she was given a permanent appointment. The Economics Branch was abolished at the end of 1974 and the Office looked for another assignment for the complainant. In due course she was transferred to the Working Conditions and Environment Department. She took with her her post and the resources pertaining to it. Meanwhile, all ILO posts, including the complainant's post in the Economics Branch, had undergone a grading review. On 5 May 1975 she was informed that the grading of her post at P.3 had been confirmed. She appealed against that decision to the Professional Grading Appeals Committee. The Committee's work was seriously held up by difficulties which have no bearing on the case. On 6 October 1975 the complainant was transferred to the Office for Women Workers' Questions. Towards the end of 1975 difficulties arose between her and another official in the same branch, and in the end the Chief of the Working Conditions and Environment Department asked that she should be transferred. On 27 July 1976 the Chief of Department wrote an adverse report on the complainant's performance and the Director-General withheld her annual increment. On 6 December 1976 the complainant submitted an internal "complaint".

B. In an overhaul of the Office 51 posts, including the complainant's, were abolished and attempts were made to redeploy the incumbents. On 28 March 1977 the Personnel Development Branch asked Mr. Zoeteweij, the Chief of the Bureau of Economic and Social Analysis and former Chief of the Economics Branch whether he would agree to employ the complainant. In a long confidential minute of 19 April 1977, which was not notified to the complainant, he refused. Shortly afterwards the complainant underwent an operation in Bogotá and from there sent the Chief of the Working Conditions and Environment Department a medical certificate which, on 10 May, he passed on to the Medical Service. At the same time the Administrative Committee, which the Director-General consults on appointments, was discussing what was to be done about the complainant, in accordance with Article 11.5 of the Staff Regulations (Termination on reduction of staff). The Committee concluded that no new permanent assignment could be found for her and on 13 May 1977 she was told that, since her post had been abolished, her appointment was terminated. In accordance with Article 11.5(e) she appealed against that decision. The ILO nevertheless proposed an agreement which consisted mainly in giving her a renewable one-bear appointment and

paying her the "indemnity upon reduction of staff" payable under Article 11.6. There were several clauses stating that during the appointment she would be put on special leave with pay and would undertake study and research in New York; that the agreement was to constitute full settlement of matters pending between her and the ILO; that she would be awarded the annual increment which formed the subject of the appeal of 6 December 1976; and that in consideration she would withdraw that appeal. The complainant was at the time in a clinic in Lausanne, where she had just undergone another operation, and it was there that the agreement was put to her for signature. She signed it, but then at once declared that she regarded it as a preliminary draft and had signed it only under duress because of the state of her health and doubts about her position. Meanwhile the Professional Grading Appeals Committee had heard her appeal and concluded that her post in the Economics Branch ought to have been graded P.4 with effect from 1 January 1975. On 15 June 1978 she was informed that her fixed-term appointment would ordinarily expire on 20 August 1978. That decision was confirmed on 17 August, but the appointment was nevertheless extended to 30 September. That is the decision which the complainant impugns in her first complaint.

C. On 19 August 1978 the complainant wrote to the Director-General informing him that when the agreement had been concluded she had been given assurances that her one-year appointment would be renewed if she could not be transferred to some other organisation. On 18 September the Director-General answered that he knew nothing of any such assurances but that he would have an inquiry made into the matter and if they had indeed been given he would respect them by extending her appointment; in the meantime he upheld his decision not to extend it. On 22 September the complainant asked to be given a hearing for the purpose of the inquiry. This was held to be unnecessary. On 3 October she was informed on the Director-General's behalf that the inquiry had not shown that any formal commitment had been entered into when the agreement had been signed; the Director-General was willing, however, if the complainant could show that the state of her health had prevented her from taking steps to find alternative employment, to extend her appointment by three months, less the period of extension already granted up to 30 September 1978. The complainant asked that a Joint Committee should meet to review the case, but on 18 December her request was refused. On the same day the decision of 3 October was confirmed. That is the decision which she impugns in her second complaint.

D. On 4 January 1979 the complainant asked to see the Staff Union file on her case. She contends that she discovered in that file several documents of which she had known nothing. They included Mr. Zoeteweij's minute of 19 April 1977. Believing that that minute was libellous and had tainted the whole procedure, on 26 January 1979 she asked the Director- General to quash all his decisions, to instruct the Administrative Committee and a Joint Committee to review her case in her presence and to publish her reply to the criticisms in the minute. On 15 February 1979 she was informed that that request was rejected, and that is the decision which she impugns in her third complaint.

E. The complainant contends: (a) the decision of 17 August 1978 not to renew her appointment was tainted with abuse of authority: the procedure for abolition of posts was used to obscure what was really a dismissal motivated by prejudice against her. That prejudice is proved by the Administration's reluctance to regrade her post; the obstacles it put in the way of her transfer to another organisation; its refusal to communicate documents to her; the mishandling of her personal file; the decision which it took on 18 December 1978 not to grant her special leave without pay, and for which false reason were given; and above all Mr. Zoeteweij's secret minute. She maintains also that the Administrative Committee denied her right to a hearing. Several of its members who had once been her supervisors ought to have withdrawn; others who were called upon to evaluate her professional competence were of a lower grade than her own. Again, the dismissal was notified to her while she was on sick leave. She was forced to sign the agreement so that she would not appeal under Article 11.5. The agreement was not properly carried out anyway, since the assurances given to her were not respected. Moreover, it was tainted with all the flaws which preclude consent, namely mistake, misrepresentation and duress. It also caused her to forfeit the larger indemnity payable under Article 11.16. In law, the agreement constituted an abusive exception from the Staff Regulations and a breach of the principle of the equality of staff members. Furthermore, the reason given for the decision was the Staff Union's opposition to the extension of her appointment; yet such opposition was of doubtful validity in view of the terms of Articles 4.8 and 10.1 of the Staff Regulations and in any case it was a general policy relating to a category of staff to which she did not belong. (b) As regards the decision of 3 October 1978, upheld on 18 December, the complainant puts forward the following pleas. On 18 September 1979, she observes, the Director-General ordered an inquiry. In other words, his decision of 17 August 1978 had been based on an incomplete version of the facts and prejudged the findings of the inquiry. It ought to have been suspended pending the outcome of the inquiry. She was not given a hearing during the inquiry; the scope of that inquiry was therefore too narrow, und the findings, which were notified to her on 3 October 1978, incomplete and mistaken on several counts. The period of the extension of appointment offered to her was much shorter than that of the incapacity due

to her illness. It was a shabby offer, the extension being shorter in duration than that had been offered to other officials, and is further proof of prejudice against her. Lastly, the refusal to set up a Joint Committee was tainted with a mistake of law since the reason given for it was that she was no longer a staff member. It was also tainted with a mistake of fact, since she was told that her request was pointless: in fact, its purpose was obvious - to shed light on the whole case. (c) In impugning the decision of 15 February 1979 refusing to review the whole case from the outset, i.e. from 19 April 1977, the date of Mr. Zoeteweij's minute, the complainant argues as follows. The decision contains a gross inconsistency. On the one hand, it says that the minute was "the result of a proceeding adopted by the Administrative Committee"; on the other, it says that the Committee's recommendation was not based on the minute. The way in which that minute was written and the use to which it was put constituted a breach of the basic rights of defence. It was not notified to her for comment, nor did the Administrative Committee, which saw it, ask her to comment. She believes it to be libellous and malicious, and inadmissible on two grounds. Not only does it state that she could not "serve the ILO usefully in any professional capacity" and criticise her for lack of "responsibility and discretion" but it accuses her of "serious immaturity and an unstable personality". Yet Mr. Zoeteweij, as Chief of the Economics Branch, had countersigned, without comment, the complainant's five satisfactory annual reports prepared up to 1974 by her immediate supervisor Mr. Franklin. The complainant contends that the failure of the Chief of the Economics Branch to reveal his true opinion of her: (a) constitutes a breach of Article 2.3(a) of the Staff Regulations ("The responsible chief shall keep the officials for whom he is responsible informed of his opinion of their work"); (b) seriously impaired her prospects of employment in other organisations, since she gave Mr. Zoeteweij as a reference in support of her applications; and (c) utterly vitiated the proceedings of the Administrative Committee in her case.

F. If the claims for relief set out in the three complaints are taken together, the complainant is in substance asking the Tribunal to quash all the decisions subsequent to 19 April 1977, to order her reinstatement without interruption of service, and to award her damages amounting to one Swiss franc for moral prejudice and damages equivalent to at least two years' full salary for the wrong done to her by Mr. Zoeteweij's minute; subsidiarily, should the decision to terminate her appointment be upheld, to order the ILO to take diligent action to secure her reinstatement in the United Nations system and to pay her damages comprising her earnings from 1 October 1978 to 31 May 1982, compensation of 100,000 Swiss francs for the prejudice she has suffered, and damages equivalent to not less than two years' full salary for the wrong done to her by Mr. Zoeteweij's minute. She undertakes to repay that sum in the event of reinstatement, less 8,000 francs for every month from 30 September 1978 up to the date of her reinstatement. She also claims 18,000 Swiss francs as costs.

C. In its reply the ILO gives an account of several incidents and an appraisal of the complainant's services which, in its view, show that she was unable to co-operate with other officials and to represent the Office effectively. It contends that it was not prejudice but the complainant's inadequacy which made it reluctant to accept the recommendation for regrading her post at grade P.4, which the Professional Grading Appeals Committee had made on the grounds of the duties of representation pertaining to the post. The Administrative Committee gave a hearing to the complainant and to her representative, Mrs. Epstein, on 23 March 1977, before it made its recommendation. The members of the Committee who had been the complainant's supervisors in the Working Conditions and Environment Department did withdraw. It was not until 29 May 1977, after the Committee had made its recommendations, that the Medical Service passed on to the Personnel Department the certificate saying that she was in hospital. In May 1977 the complainant appealed to the Joint Committee, in accordance with Article 11.5(C) of the Staff Regulations, against the decision to dismiss her on the grounds of abolition of her post. The reports of the Administrative Committee were at the time communicated to her defending counsel, Maître Harpignies, and she was allowed long extensions of the time limit for filing her introductory memorandum. It was on 18 July 1977 that the Personnel Department sent her the last reminder asking for that memorandum, and it received no answer. The purpose of the agreement of 22 July 1977, like that of agreements concluded between the ILO and other similarly placed officials, and with the consent of the Staff Union, was to gain time until the United States gad taken its final decision on withdrawal from membership of the ILO. If in November 1977 the United States had not confirmed its withdrawal from membership the contracts of employment could easily have been extended and the staff members kept on. The agreement was fully negotiated; there was either any plot nor any pressure put on the complainant; and the agreement was freely signed, although "considerable improvements were promised". All the letters which the complainant wrote at that date show that despite the state of her health she was quite lucid. But the complainant then wanted to go back on the agreement and in the end, on 22 September 1977, the ILO's representative had to give her formal notice that she should either accept it as valid, or appeal against it to the Tribunal. She did not reply. Although there was not lull performance of the agreement, that was because she was on sick leave almost throughout the year from 2 May 1971 to 3 May 1978 - and receiving her full salary during that period. Since she was on leave, she could not be transferred to New York. The ILO supported her application for

employment with UNESCO and the Director-General himself interested on her behalf. When the United States left the ILO in November 1977, over a hundred more posts had to be abolished, and so the complainant's appointment could not be extended. The reason why the Staff Union was opposed to the extension was that no official who had agreed to the termination of his permanent appointment was to benefit under the arrangements made by the Administrative Committee for using the funds raised by deducting 2.2 per cent from staff salaries. The Director-General nevertheless granted the complainant an extension of 40 days.

H. The ILO also argues on the law. It considers to be time-barred the complainant's plea that the arrangements for ending her appointment were unlawful and her contention that the agreement was invalid. She paid no heed to the ultimatum of 28 July 1977 relating to the dismissal procedure and to that of 22 September 1977 relating to the validity of the agreement, and only when her appointment was not renewed did she make a move, i.e. no sooner than 27 June 1978, long after the time limit for an appeal had expired. Moreover, she is estopped from challenging her agreement with the Organisation since she signed it, let it be carried out, asked for improvements in it, and actually objected when it was not renewed. That was the only objection made within the time limit. The decision not to renew her appointment was lawful in form and was justified by the withdrawal of the United States from membership of the ILO. The assurances which she said she had been given - there was no formal commitment - were respected in so far as they had been given. In conclusion, the ILO wishes to argue on the merits if its plea of irreceivability is rejected, and it asks the Tribunal to dismiss the complainant's claim for the quashing of the decision not to extend her appointment.

I. In its supplementary reply to the other two complaints the ILO denies that there were secret documents. It argues that the second complaint, dated 12 January 1979, is time-barred because the decision of 18 December 1978 which it impugns is a mere confirmation of the decision of 3 October 1978. In any event the complainant cannot properly claim the right to a hearing since the "inquiry" did not take the form of contentious proceedings: it was just an investigation into the complainant's unproved allegation that she had been given assurances. Moreover, the reason why the Director-General did not suspend his decision of 17 August 1978 was that the inquiry offered no grounds in law for reviewing that decision. All the material evidence in the document goes to show that everyone involved in the matter of "assurances" was consulted in the course of the inquiry and that there had never in fact been any specific assurances. The promised improvements in the agreement were just that they might alter some of the clauses, but not detract from the substance, and so the scope of any assurances must have been narrow. What is especially absurd about the complainant's claim for an extension of appointment equal to the duration of her illness is that she was given leave with full salary for an unusually long period. The offer of a three-month extension was in fact generous. She has failed to establish that the state of her health hampered her in finding other employment.

J. The ILO expresses doubt about the receivability of the third complaint. At the time when Mr. Zoeteweij wrote his minute the report of the Administrative Committee referred o the "categoric refusal" in that minute and a member of the Personnel Department then discussed the refusal with the complainant. She could have asked to have the minute notified to her in the course of the proceedings she had begun under Article 11. 5. In fact the minute was not in breach of the Staff Rules: it was not one of the periodic appraisals of the complainant's performance but a sort of confidential note on the abilities of an applicant. Moreover, in this case the Administrative Committee was sitting as a board of examiners. According to paragraph 19 of Annex I to the Staff Regulations, in the case of a competition the Administrative Committee may decide to consult the chief of the organisational unit in which the vacancy exists. The Committee is not bound to give a hearing to any candidate. In the present case it did give a hearing to the complainant and to her representative. The ILO believes that the complainant has filed three complaints one after another because, while wishing to reserve the right to challenge the agreement, she did not want to forgo the advantages it gave her. The second and third complaints are no different in substance from the first and should there are be dismissed as time-barred and unfounded.

K. In her re joinder the complainant states, as to the receivability of her third complaint, that ever assuming that the agreement of 22 July 1977 was valid and did terminate her permanent appointment - though she categorically denies that - then a situation governed by contract replaced a situation covered by the Staff Regulations. Thus the time limit did not start to run from the date on which an administrative decision was taken but from that on which it became evident that the agreement had not been performed. As soon as she realised that it had not, she made a move. Nor, in her view, is her second complaint time-barred, since the decision of 3 October 1978 was not notified to her until 19 October, in a hospital in Bucharest. The third complaint was also clearly lodged within the time limit, which started to run from the date on which she discovered the new fact. She states that as early as 1975 she was - to quote the term used by Mr. Zoeteweij in his minute - under "a ban", for reasons which have never been disclosed to her despite her constant inquiries and which were to blame for her dismissal. Such hostility is the

reason for, among other things, the delay in granting her grade P.4, which proved seriously harmful to the success of her applications for employment in other organisations. The abolition of her post was just a pretext; otherwise why should only she and two others out of 51 officials have been dismissed as a result of the abolition of their posts? It was the sentence delivered by Mr. Zoeteweij which provoked that abuse of authority. Whatever the ILO may say, Mr. Zoeteweij's minute ought to have been communicated to her for comment and put at her disposal when she made her unsuccessful claim to the Director-General on 11 January 1979 for full information on the appraisal of her performance. The defendant organisation likens the Administrative Committee to a board of examiners, but the texts simply will not bear any such construction. Even if the analogy were admitted, however, the full formal guarantees provided for boards of examiners ought to have been respected, and they were not. Hence every action taken after the writing of Mr. Zoeteweij's minute should by declared null and void. Should the Tribunal reject that plea, the complainant observes that the agreement of 22 July 1977 was not really an agreement at all and that in any event it was quite wrong to the ILO to put pressure on one of its permanent officials to forgo the protection she enjoyed as such. The agreement is null and void and her original appointment continued to be in force. After all, the formal requirements laid down in the Staff Regulations for termination of employment were not even respected. If the Tribunal rejects that plea as well, she argues that the decision of 17 August 1978 not to renew the agreement failed to take account of the facts of the case because it was taken before the inquiry. That decision should therefore be set aside. After denying that any "assurances" were given the ILO now admits that they were. If the ILO had been and were still in good faith in contending that the need to abolish her post was the sole reason for the agreement and the consequences thereof, it would have made genuine and strenuous efforts - as was indeed its duty - to transfer her. Nor would it be trying to make out that the short extension granted to her fulfilled the assurances. Above all, it would immediately have reinstated her on 28 May 1979, the date on which it announced a competition - notice of which is appended to the rejoinder - to fill a P.4 post for a senior research officer (economist). The post description exactly matches her grade, training and the work she was actually doing. That item of evidence alone proves the abuse of authority beyond any shadow of doubt. Lastly, the complainant adds a new claim for relief. She asks the Tribunal to order the ILO to give her the certificate of employment which, to no avail, she asked it on 27 December 1978 to supply, and to pay her compensation amounting to 1,000 Swiss francs a month from that date. She also asks the Tribunal to hear at least three of the many witnesses she has cited.

L. In its surrejoinder the Organisation disputes all the complainant's arguments. It contends that the first and third complaints are irreceivable for the reasons given in its reply and its additional memorandum. As to the merits, it denies that any "ban" was put on the complainant: her supervisors' attitude was governed by a cautious reserve on account of the constantly inopportune action she had taken. The abolition of her post was not a pretext. After the abolition of the Economics Branch she was transferred together with her post. When the ILO was drive to make drastic reductions in its staff it had to abolish that post and, after comparing the complainant's record with that of other staff members with the same grade and Qualifications, the Administrative Committee unanimously decided that her appointment should be terminated. She is appealing against that decision, and had she not abandoned her appeal she might under the appeals procedure have demanded disclosure of Mr. Zoeteweij's minute dated 19 April 1977, since she knew it existed and challenged it in the Joint Committee. Besides, the minute contained advice from the chief of department to the Administration on a possible assignment, was "analogous", and not, as the complainant contends, identical, to a recommendation from a board of examiners. There was therefore no need to notify it to her. The delay in promoting her to P.4 after the Professional Grading Appeals Committee had regraded her former post in the Economics Branch was due merely to the ILO's misgivings about giving that grade to someone whose performance of the duties of the post had been mediocre. As or the agreement of 29 July 1977, its terms were more favourable than those of any other agreement of that kind. The complainant knew that quite well and signed it freely. Contrary to what she contends her permanent appointment was indeed terminated. The termination was notified to her at the same time as the new fixed-term appointment by Notice of Personnel Action No. 012041 dated 12 September 1977. The u1timatum dated 22 September 1977 from Mr. Peel was given on the Director-General's behalf and committed to ILO. The Organisation argues that the reason for the decision not to renew the complainant's fixed-term appointment was the withdrawal of the United States from membership. The competition for a P.4 post to which the complainant alludes in her rejoinder was an internal competition for a vacancy on the reduced staff and, since she was no longer a member of the staff, the Organisation was under no duty to reinstate her. It is not true to say that the Staff Union was opposed to renewal of her appointment. On the contrary it sought renewal, though unsuccessfully. All that the Staff Union was opposing was the financing of a possible renewal out of the solidarity fund. As regards the "assurances" she alleges, they constituted merely an undertaking from the ILO to do its utmost to extend the fixed-term appointment. The ILO therefore contends that all the complainant's claims for relief should be dismissed.

M. In an additional memorandum the complainant rejects the Organisation's arguments and again states that she

suffered breach of her right to a hearing, of her right to disclosure of material evidence, of the principle of equality and non-discrimination and of her acquired rights. In particular she develops her argument that there was abuse of authority. She maintains that such abuse began in 1972, when deliberately false information, for example about her nationality - she was born in Romania but for many years has been a naturalised Colombian citizen - was given to the ILO Administration, which laid the "ban" on her and cancelled her transfer to New York. She therefore presses all her claims for relief. She finds fault with the ILO for not granting her special leave without pay which would have preserved her status as an international civil servant and facilitated her appointment to some other international organisation. She contends that the ILO was wrongly to refuse her a certificate of service, of the kind prescribed in the Staff Regulations, setting out the duties and functions which she actually performed. She claims 1,000 Swiss francs as damages for each month which has elapsed since she applied for the certificate. In its observations in reply to her memorandum the ILO points out that she is merely repeating her earlier allegations and offers not a shred of evidence in support. As regards her application for leave without pay, it observes that such leave may be granted only to a staff member on the ILO payroll. It would therefore have been impossible, short of violating the spirit of the Staff Regulations and showing bad faith towards the host country, to grant the complainant leave without pay several months after she had ceased to be a member of the staff. As regards the certificate of service, the ILO says that it is willing and indeed anxious to help her. Dispute arose because she insisted that the Organisation give her a certificate which she drafted herself and which was a far cry from the assessments in her annual performance reports. Though anxious to help her by letting her have a certificate which will enable her to find other employment - for example by saying nothing of the adverse comments in her reports about her working relations with other staff members - the Organisation is not willing to write a certificate just to suit her.

CONSIDERATIONS:

COMPLAINT No. 1

The termination of this complainant's appointment

1. In accordance with an agreement which the parties signed on 22 and 29 July 1977 and by a decision dated 17 August l978. the Director-General extended the complainant's appointment to a date not later than 30 September 1978. The complainant challenges the validity of the termination of her appointment. She contends that she continued to be employed under the permanent appointment with the Organisation which she held from 1 September 1972 onwards. First, she argues that the agreement is not binding but a mere draft which the parties agreed to improve on later. Secondly, she contends that in signing it she acted under duress and that her consent was therefore vitiated. Thirdly, she contests the lawfulness of the agreement, which she says is founded neither on the Staff Regulations nor only other text.

(a) Before considering the complainant's pleas the Tribunal will sum up the terms of the agreement.

The text provides: (1) that the complainant will be promoted to grade P.4 with effect from 1 January 1975 following a decision of the Director-General; (2) that her appointment of indeterminate duration will end on 20 August 1977; (3) that she will be granted a fixed-term contract for the period from 21 August 1977 to 20 August 1978; (4) that, if that or any subsequent contract is not renewed, she will be paid the indemnity provided for under Article 11.6 of the Staff Regulations; (5) that she will be awarded the annual salary increment which forms the subject of her appeal to the Joint Committee; (6) that, if she wishes, she may continue her affiliation to the Staff Sickness Fund after 20 August 1978; (7) that she will be transferred at the earliest convenient date to New York, where she will carry out study and research for the ILO on special leave with full pay up to 20 August 1978; (8) that, if before her transfer to New York she obtains a fixed-term contract elsewhere she will be paid the maximum indemnity provided for under Article 11.16 of the Staff Regulations; (9) that she will withdraw her appeal to the Joint Committee concerning her annual salary increment; and that she recognises the agreement to constitute full and final settlement of all maters pending between her and the ILO.

(b) It appears from the foregoing that the complainant is mistaken in alleging that the agreement of July 1977 was not binding.

On 22 July she put her signature to the text. It is true that underneath she wrote "see attached observations", which referred to a document setting out several objections she had to the terms of the agreement. By a letter dated 25 July, however, the Organisation invited her to state whether she accepted the agreement as it stood and on the next

day she answered by writing on the text of that letter "O.K." and adding her signature. In other words, she did accept. The agreement was accordingly signed on 29 July on the Director-General's behalf. At that date it had been endorsed by both parties.

In later correspondence the complainant again contended that the agreement was not binding. With her future so uncertain, she maintained, she had been inveigled into consenting to a text which was, in her view, "dangerously detrimental" to her interests. On 5 August, however, an agent of the Organisation asked her to state unambiguously whether she considered herself not to be bound by the agreement. She then wrote a letter saying that in her view there was no agreement between her and the ILO. On 22 September the agent repeated his question, said that the ILO intended to perform its obligations under the agreement, and added that it was open to her to appeal to the Tribunal. She did not reply. Yet she did unconditionally accept the salary paid to her by the Organisation in accordance with the agreement and indeed on 29 May and again on 22 September 1978 asked for extension of her fixed-term appointment. She thus ceased to question the validity of the agreement. In other words, her original consent to it was express, her subsequent consent tacit.

(c) Contrary to what she contends, the complainant was competent to enter into a valid binding agreement on 22 July 1977, the date on which she signed. It is true that on that day she was in a clinic where she had just undergone an operation under anaesthetic. In the first place, however, her correspondence with the agents of the Organisation makes it plain that she had held talks with them before concluding the agreement. Secondly, she had assistance at the time from a lawyer and a member of the Staff Union Committee. Thirdly, the comments she appended to the signed text show that she was in full possession of her mental faculties. And fourthly, even supposing she was not fully able to grasp the meaning of her actions in July 1977, it is clear from her letters that she had recovered full possession of her faculties soon afterwards, and at any rate by the time when she implicitly recognised the agreement as binding.

(d) The complainant pleads that there is no text which provides for converting an appointment of indeterminate duration into a fixed-term one - the change of status prescribed in the agreement. Her plea fails. Although what she says is true, there is neither any general principle of law nor any provision of the Staff Regulations nor any term of her contract of appointment which precludes such a change of status.

2. The agreement having come into effect, the complainant was bound to the Organisation by a fixed-term appointment from 21 August 1977 to 20 August 1978. That is the legal context in which the Tribunal will consider the validity of the Director-General's decision of 17 August 1978 to give her, not a new appointment, but merely an extension to 30 September 1978.

That decision is of such a kind that the Tribunal will quash it only if it was taken without authority or tainted with some formal or procedural flaw, or based on a mistake of fact or of law, or tainted with abuse of authority, or if essential facts were overlooked, or if clearly mistaken conclusions were drawn from the facts. Accordingly, the complainant's pleas must fail.

There is no need to consider the virtue of all the arguments on which the decision not to renew her appointment was or might have been based. In particular, there is no need to determine whether the Director-General was right or wrong to plead the staff representatives' opposition to the extension of the complainant's appointment. All that need be said is that there was one consideration which alone warranted the non-renewal of her appointment. That was the Organisation's straitened financial circumstances, which were due mainly the withdrawal of the United States from membership and which required a reduction in staff. It was no abuse of authority for the Director-General to decide that, of those whose appointment the Organisation was considering terminating, the choice should fall on the complainant: she held a fixed-term appointment and had received less satisfactory performance reports than other members of the staff.

The complainant's promotion

3. One clause of the agreement of July 1977 speaks of promotion the complainant to P.4 with effect from 1 January 1975. At her own instance her promotion was notified to her on 19 January 1978. Hence, since the complaint is dated 15 November 1978, her claim for promotion to P.5 is time-barred, not having been filed within the ninety-day limit set by Article VII, paragraph 2, of the Statute of the Tribunal.

If the complainant took the delay in promotion to be wrongful, she might have submitted to the Director-General a

"complaint" within the meaning of Article 13.2 of the Staff Regulations not later than six months after 19 January 1978. ut she failed to do so, and her claim is therefore time-barred.

The complainant asks for discovery of the report of the Professional Grading Appeals Committee. The Organisation has appended the report to its reply and she has therefore obtained satisfaction.

Attempts to obtain a transfer for the complainant

4. The complainant maintains that the Organisation was remiss in facilitating her transfer to some other international organisation. Her plea can succeed only if the Organisation was under a duty to find for her or help her to find other employment. It was not; and besides, there is evidence which shows that it did try, though to no avail, to get her an appointment with UNESCO.

COMPLAINT No. 2

Receivability

5. The second complaint impugns decisions dated 3 October and 18 December 1978. The Organisation argues that the latter merely upheld the former, that the ninety-day time limit ran from 3 October and that the complaint, which is dated 12 January 1979, is therefore irreeeivable. In fact the decision of 18 December does not merely confirm the earlier one: it rejects the complainant's application for referral of her case to the Joint Committee and thus bars resort to an internal means of redress. Whether the time limit should run from 3 October or 18 December is therefore a matter of some doubt. It may remain unsettled, however, since the complainant's pleas are manifestly without substance.

The complainant's part in the further inquiry

6. On 17 September 1978 the Director-General expressly refused to suspend his decision to terminate the complainant's appointment. He stated, however, that he would inquire into the truth of her assertion that she had been given certain "assurances" in July 1977, when the agreement had been signed. That was a conciliatory gesture, and it meant neither the continuation of her earlier appeal nor the introduction of a new one. All that the Director-General had in mind was that his decision might be amended in the light of the outcome of the inquiry. Since the action he intended was informal, he was under no duty to give the complainant an opportunity to comment on the outcome. That she was not allowed to give evidence in the course of the inquiry therefore constituted no breach of the right to a hearing.

The alleged "assurances"

7. The complainant contends that the Organisation failed to honour assurances given by its agents. The plea would succeed only if she had been given binding promises. There is no evidence to suggest that she was. What she is saying is at odds with the stance the Organisation adopted when concluding the agreement and later. If, as it has consistently maintained, it considered the agreement binding, it could not regard itself as bound to amend the text or to make any firm promise to do so. True, its agent led the complainant to believe that the text was not necessarily final and that the matter of` sickness leave was pending. But that was the realm of mere possibility. Hence the Organisation's conditional offer to pay her three months' salary on the grounds of her health was made ex gratia, and there is no need to consider whether or not it was a fair one.

The Joint Committee's proceedings

8. On 1 November and 7 December 1978 the complainant, relying upon Articles 11.5 and 13.2 of the Staff Regulations, asked the Director-General to submit her claim to the Joint Committee. On 18 December he refused to do so. Her objections are unfounded.

According to Article 11.5 only established officials - those with appointments of indeterminate duration - may appeal to the Joint Committee. The complainant had held a fixed-term appointment since 21 August 1977 and therefore since that date had had no right to appeal to the Joint Committee under Article 11.5.

According to Article 13.2 it is for the Director-General to decide whether to refer a complainant to the Joint Committee and again the complainant may not validly allege breach of any right under that article.

The Organisation's refusal to disclose documents

9. The complainant objects to the Organisation's refusal to disclose certain documents But she fails to indicate what bearing the allegedly withheld documents may have had on the decisions she impugns, and her plea therefore fails.

The Organisation's refusal to give the complainant a contract providing for leave without pay

10. None of the complainant's objections to the Organisation's refusal is founded. Even if the Tribunal may, to a limited extent, rule on a decision of this nature, nothing in the present case would justify quashing it.

The certificate of service

11. In her second complaint the complainant states that she asked for a certificate of service in accordance with Article 11.17 of the Staff Regulations. It is true that she speaks of the matter and makes a claim in regard to it in her rejoinder, and also refers to it in her additional memorandum. There is no mention of the certificate of service, however, in the claims for relief in any of her three complaints. It is only on the matter of those claims that the Tribunal is required to pass judgment and it will therefore not give any decision on the text of the certificate asked for.

COMPLAINT No. 3

The minute intended for the Administrative Committee and discovered by the complainant

12. In March 1977 the Administrative Committee, which had the complainant's case under review, asked a chief of department whether she could be transferred to his department. On 19 April 1977 he submitted a minute which said that she could not. The minute and its conclusion are cited in the minutes of the Administrative Committee's meetings of May 1977. At the time the complainant was given a copy of those minutes and therefore knew of the existence of the minute and its conclusion. She nevertheless contends that it was not until 4 January 1979 that she came upon it in a Staff Union file that she ought to have been allowed to rebut it at the proper time, that there was breach of her right to a hearing, and that all the decisions taken between 19 April 1977 and 4 January 1979 should therefore be declared null and void. This reasoning is untenable.

The complainant had no right to automatic notification of the minute. If she wished to adduce it as evidence, she should have asked for its disclosure shortly after learning of its existence. She does say that she made unavailing attempts to obtain it from the Organisation. Direct approaches having failed, however, she should have put her claim to the Administrative Committee or to the Joint Committee and, if unsatisfied, appeal d to the Tribunal. She would then have faced the following alternatives: either her claim would have been rejected, which would have meant that the minute she had asked for was confidential and not available as evidence in the proceedings; or else her claim would have been allowed and she could then have challenged the minute before the impugned decisions had been taken. Being herself to blame for being ignorant of its contents, she cannot, long after it was written, argue on the grounds of such ignorance that all the decisions affecting her are null and void. Her attitude implies that she did not wish to consult the minute. In other words she surrendered her right to give her views.

The composition of the Administrative Committee and the joint bodies

13. The pleas under this head are immaterial and the Tribunal will not consider them.

DECISION:

For the above reasons,

The complaints are dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.