

SIXTY-SECOND ORDINARY SESSION

***In re* CORTEZ, FREEMAN and MALCOLM**

Judgment 838

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Joaquin Gregorio Cortez, Mr. Edward James Freeman and Mr. Neil Stuart Malcolm on 30 October 1985, as corrected on 10 January 1986, the FAO's replies of 30 April, the complainants' rejoinders of 6 August, the FAO's surrejoinders of 24 November 1986, the telex of 23 April 1987 from the complainants' counsel to the President of the Tribunal about their claim to costs and the FAO's comments thereon of 15 May 1987.

Considering the applications to intervene filed by:

H. A-Shami

C. Abad

N. Abd El-Hadi

Y. Abdilleh

Z. Abdul-Malek

F. Abou-Samra

A. Adam

R. Adhikarya

K. Adnan

H. Afifi

S. Afifi

B. das Agrawal

B. Agrawal

J. Aguilart

Manzoor Ahmad

M. Ahmad

A. Ahmed

R. Ahuja

J. Airey

C. Aizpurua

P. Akratanakul
J. Alberts
A. Al Khazraji
J. Alder
T. Aldington
N. Alexandratos
I. Ali Abul-Zahab
R. Allan
S. Allara-Carlin
A. Allawy
P. Allvin
M. Alwi
A. Amezketa
J. Amin Appiah
J. Ammin Appiam
F. Angoy
N. Anishetty
D. Antiporta
J. Antoine
L. Aquilar
A. Arar
C. Arias
A. Arndt
H. Arnoldus
J. Arnoult
O. Arora
L. Arulpragasam
M. Aspiras
S. Asseginou
K. Atkinson
J. Ator

F. Attere
Y. Attig
R. Aubray
P. Auriol
K. Aw Yong
A. Awan
W. Ayad
A. Ayazi
G. Ayih
S. Ayoub
M. Ba
A. Babillot
K. Badaoui
J. Bagirishya
S. Bahru
N. Bakhtri
L. Balbi
B. Baldini
J. Banfield
A. Bannaga
V. Barker
F. Barner
E. Barnwell
P. Baron
M. Barone
L. Barron del Castillo
R. Bartha
M. Barthalay
S. Basulto
W. Baudoin

E. Baumann
L. Bavcevic
G. Begueret
A. Beguin
R. Bellincampi
N. Bellino
M. Bellver-Gallent
D. Beloglavec
M. Ben Ali
A. Ben Ameer
M. Ben Djenana
B. Ben Salem
H. Ben Slimane
L. Benallou
Y. Bensoussan
G. Benvenuti
F. Berding
G. Bergerre
P. Berheim
G. Bernard
H. Besemer
G. Best
C. Bevan
G. Beye
M. Bihan-Faou
M. Bilbeisi
F. Binet
B. Birkenhager
F. Bishay
A-R. Bitar
B. Bjarnason

L. Björkman
F. Blanc
E. Bluhm
M. Bocoum
P. Boekstegen
R. Boeree
J. Boisclair
E. Bolle-Jones
M. Bollinger
E. Bomans
R. Bonnet
B. Bonnevaux
M. Bonnichon
P. Bono
R. Booth
P. Borel
L. Borsody
J. Bosch
W. Boss
L. Botero
F. Botts
R. Bowers
R. Bouard
J. Boucher
P. Bourgeois
E. Boutrif
L. Brader
H. Brammer
V. Branscheid
W. Brandhorst

X. Brennan
H. Bridgemohan
P. Brignol-Mendes
H. Brink
J. Brisson
D. Brogniez
M. Bromsveld
J. Brown
J. Bruin
A. Bruno
D. Bubalo
S. Bucciarelli
P. Buffard
A. Burkard
G. Burlando
J. Burns
E. Buzingo
J. Caballero
J. Caddy
T. Calderon
R. Calderoni
M. Calpe
C. Canales-Castaner
F. Canchon Avellaneda
G. Candido
R. Capitaine
C. Cappi
F. Cappucci
M. Cardenas
P. Carnaud
J. Carrico

M. Carroll
N. Carvalho-Thomsen
G. Caso
J. Castilla-Simarro
F. Causarano
E. Cayron-Thomas
G. Cecutta
G. Celestini
S. Cesarano
G. Cesarini
P. Cesbron
J. Chabloz
P. Chadhokar
R. Chamberlain
J. Chambron
T. Chan
R. Chandra
C. Chandrasekharan
G. Chapond
D. Charbonnier
A. Chari
W. Charles
P. Charransol
H. Chatelain
C. Chavez
S. Chen
G. Child
M. Chipeta
J. Chirgwin
S. Choi

A. Christoforides
G. Ciparisse
A. Cittati
R. Clark
D. Clement
P. Cloutier
A. Coccia-Tasciotti
A. Coche
M. Colavini
A. Condos
T. Contado
L. Conti
A. Contreras
E. Conze
C. Costopoulos
C. Coulson
C. Coursier
J. Couston
R. Coveney
D. Crespo
H-F. Creupelandt
M. Criscualo
A. Crispoldi
J. Crockett
E. Crone
T. Crowe
R. Cueva Rap
R. d'Ailhaud de Brisis
S. d'Alessandro
H. Dall
J. Davis

B. d'Avis
G. d'Avout
R. Dalebroux
J. Daneo
JD. Davies
K. de Alwis
L. de Bethlen
E. de Boer
P. de Decuer
D. de Feo
B. de Fooz
G. de Graaf
J. de Grandi
M. de Gregori
C. de Greling
B. Delabroise
E. de la Fuente
S. de la Fuente
R. Delahaye
G. de Lannoy
L. de Lardemille
E. de las Casas
F. de Luca
M. Delvaux
G. de Manincor
S. Dembelle
M. de Montalembert
M. de Nigris
J. Denis
L. de Nyary Comandini

J. Derting
L. de Santis
X. de Valck
M. Dessberg
H. Dewan
J. Dey
S. Dhanani
P. di Corpo
D. Di-Biase
P. Dieleman
N. di Pillo
B. Dix
J. Dixon
M. Doeff
A. Doeve
J. Doherty
R. Donald
J. do Nascimento
N. Doron
M. Dravi
J. Driessen
B. Dugdill
H. Duong
R. Dwarakinath
J. East
H. Eastwood
J. Echezarreta-Celaya
J. Edwards
H. Eeles
S. El Batal
F. El Dessouky

H. El-Hage
I. El-Khodary
C. Elliot
I. El-Malki
A. El-Zoobi
M. Elling
T. Elliott
T. Ellis
M. Ellis
W. Ellison
L. Enemark
I. Enna
E. Ensink
T. Ericson
S. Erozer
J. Eschweiler
K. Esenbel
L. Esparza Carvajar
J. Esquinas
D. Evans
G. Everett
A. Facco Sciovante
J. Fagnot
M. Farah
K. Farrell
J. Fausten di Cesare
D. Favia
A. Fayossewo
W. Feistritzer
W. Ferguson

O. Fernandes
B. Ferrera
P. Ferri
F. Ferri
A. Fickers
I. Field
P. Finelle
P. Fiorentino
W. Fischer
M. Fitzpatrick
G. Flood
R. Florin
E. Floto
F. Foglino
L. Foncke
D. Fonzo Blessich
N. Forni
C. Forthomme
P. Fortucci
P. Francis
G. Freak
D. Frederiksen
K. Freiin Knigge
P. French
Y. Freypons
K-H. Friedrich
M. Friesenegger
N. Frigerio
T. Frisk
B. Frykman
F. Fuenzalida

F. Fusco Femiano

J. Fyson

A. Gaaya

R. Gaddas

M. Gaieb

R. Gallacher

C. Gallagher

J. Gallene

A. Galletti

R. Galvin

L. Ganci

A. Gara

S. Garcia

F. Garcíá-Alvarez

M. Garzia

J-F. Gascon

M. Gauchon

J. Gaudet

K. Gbeblewoo

Z. Gebre-Mariam

A. Gebre-Michael

P. Gence

T. Gerressu

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H. Gigli

R. Gillet
Y. Gillet
N. Givelet
J. Gleenen
A. Glees
R. Golding
P. Gonzalez-Alberdi
Y. Gonzalez Corral
J. Gonzalez-Palmou
V. Gopalakrishnan
L. Gorla-Camerini
V. Gowtage-Sequeira
T. Graf Strachwitz
K. Grammelspacher
T. Granell
J. Greenfield
M. Grimaud
H. Groenewold
G. Grondin
G. Grütter
M. Gsell
M. Guidicellie
A. Guijarro
R. Gujral Sing
T. Gumprecht
A. Gummy
G. Gunubu
S. Gupta
J. Hadjigeorgiou
A. Haider
S. Haile-Miriam

H. Haim

K. Hall

M. Hall

R. Hancock

K. Hansen

R. Harris

N. Hassan

H. Haufe

W. Heemskerk

M. Heibleom

J. Heilkema

C. Heimo

H. Henderson

G. Hendriksen

A. Hersi

K. Herz

H. Herzog

Y. Hiemstra

G. Higgins

J. Hilder-Bindi

I. Hill

H. Hilmi

N. Hla

J. Hodges

K. Hoffman

C. Horrell

M. Hoskins

M. Hotta

E. Hotte

T. Hounto-Hotegbe

R. Hudry-Berardi

F. Hudson

M. Huertas

G. Huggins

H. Hugues

P. Hussi

J. Hutchinson

H. Huuhtanen

P. Iacoacci

B. Ibarra

A. Ibrahim

M. Ikegame

C. Ilomechina

P. Imevbore

L. Impiglia

R. Imponenti

A. Infante

M. Insalaco

A. Insull

H. Irshadul

S. Ismail

P. Itty

P. Ivarsen

M. Izumi

L. Jacobson

J. Jallade

D. James

N. Jayasundera

B. Jensen

J. Jimenez

H. Jimenez

A. Jinendradasa
J. Johnson
L. Johnston
C. Joly
M. Joshi
S. Jum'a
Z. Kalensky
J. Kambona
D. Kammer
A. Kandiah
J. Kapetsky
B. Karlgren
G. Kasper
B. Käss
J. Kassab
S. Kassupu
P. Kastanias
M. Kato
H. Katsuhisa
A. Kausar
M. Keita
J. Keita
A. Kemp
C. Kenny Jordan
L. Kerpan
R. Keshavamurthy
M. Khairi
H. Khalifa
M. Khan
O. Khanna

A. Kharrat
M. Khouzami
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R. Knaff
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I. Kollavik-Jensen
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H. Konuma
J. Konopka
F. Kopisch-Obuch
O. Koudgbo
G. Kouthon
D. Kraatz
J. Krane
T. Kubo
P. Kuhonta
N. Kyaw
B. Kyrklund
G. Lacomblez
L. Ladamery
M. Lafrance
C. Lafrance
J. Lahaussais
W. Lamade
J. Lambert
G. Landart

J. Landez
P. Laperre
O. Larfaoui
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S. Lasker
V. Lattes de Casseres
C. Lauwers
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P. Leclerco
T. Lee
C. Lefevre
B. Legesse
S. Leiper
D. Lens
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J. Leroux
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H. Lisac

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J. Lokwiya
G. Lopez
N. Lopez
L. Lopez Cordova
T. Lopez Ramirez
A. Losseau
I. Losseau-Samaha
C. Loutsch
M. Loyche
P. Lucani
B. Lundström
H. Lupin
E. Lynnerup
W. Maalouf
B. Mabbayad
A. Macarlioglu
R. Mac Cuaig
D. Macfarlane
A. Macmillan
P. Magini
R. Mahmoud
M. Maiga
F. Maignan
K. Maizenmiller
P. Maleki
S. Malhotra
R. Malik-Lali
L. Mallory

M. Mann
P. Mantez
M. Manuel
G. Maragliano
L. Marcelin-Rice
J. Marechal
J. Markie
J. Marquet
R. Marsili
R. Martello
M. Martinez
R. Martinez
H. Martins Ferrinho
G. Mattioni
N. Maturu
D. Mazzei
S. McConachie
P. McKosker
H. McNally
A. Medina Pizzali
K. Meecham
A. Meghdessian
W. Meinzingen
R. Melcher
F. Meliadó
H. Meliczek
D. Mellors-Puccinelli
D. Menasveta
Y. Mengesha
P. Mengin

U. Menini

M. Mermillod

Z. Mesa Parodi

J. Meyour

T. Michaelsen

S. Michalski

R. Michiels

C. Miczaika

A. Migliorini

D. Mihajlovich

J. Miller

J. Milligan

G. Miquel

C. Missiaen

L. Mitchell

J. Mitra

O. Mittal

H. Mittendorf

S. Mohan

P. Moity

J. Montalto-Dubery

L. Montesi

O. Monteza

R. Moore

J. Moreira Rato

C. Morfaw

C. Moron Jimenez

F. Mortier

R. Morton

G. Motkin

F. Moukoko-Ndoumbe

F. Mouttapa
S. Mu'ammam
O. Mudagile
K. Mulherin
E. Müller
O. Muller
B. Müller-Haye
D. Muller-Praefcke
B. Mulugetta
D. Munoz-Sanchez
A. Muratori
E. Murguia Oropeza
A. Muri
J. Murphy
S. Muttiah
P. Myers
H. Naeve
K. Narasimha
N. Narasimham
Y. Nasser
J. Nastorg
A. Ndao
V. Nedkova
R. Needham
F. Neergaard
M. Negrin
N. Newiger
F. Ngopya
A. Ngowi
V. Nguyen

J. Nierentz
R. Nieuwenhuysse
G. Nijborg
A. Nkougourou-Egongue
J. Noblet
D. Norse
I. Novelli
J. Novoa-Barrero
R. Noyce
D. Nyman
L. Ochtman
R. O'Connor
V. Odenyo
R. Olds
G. Oodally
E. Oppong
V. Orebi
L. Orszagh
E. Osanyinjobi
I. Ostaus
M. Ottaviani
J. Otten
O. Owusu
Y. Ozawa
E. Ozbilen
F. Padovani
G. Padroni
Y. Pages
G. Paltrinieri
G. Panayoti
R. Pantanali

M. Papetti
R. Pardo
F. Pariboni
M. Pasquali
M. Passavanti
B. Pathak
D. Paul
A. Pauly
M. Paveri
M. Pedini
J. Peeters
A. Pelser
M. Pena Sanz
A. Pentimalli-Marchetti
J. Perez de Vega
A. Perez García
R. Perkins
P. Perret
M. Perry
P. Petricevic
F. Petry
J. Phillips
R. Phoduc
U. Piccardi
J. Piel
G. Pierconti
P. Pierre
G. Pietrantoni
C. Pineda-Cardoza
R. Pinos Hombrados

P. Pinto
G. Politis
A. Politis-Mörch
J. Polluck
I. Pomplun-Mazzoni
G. Popov
P. Porcinai
D. Potts
J. Prado
U. Prien
D. Prior-Palmer de Marco
A. Provan-Perrini
G. Pudner
K. Punia
M. Purnell
L. Pustina
C. Putter
H. Quaix
M. Quieti
M. Quinlivan
Z. Rachmat
O. Radelet
S. Raghavan
M. Rahaman
H. Rahman
T. Raick
J. Rakotomalala
R. Ralibera
G. Ramamurthy
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A. Randell

N. Randhawa
M. Randriamamonjy
S. Ranjhan
C. Rannfelt
A. Rashid
O. Rebours
S. Reddy
V. Reddy
J. Renaud
C. Rendell
E. Reusse
S. Reynolds
J. Reyntjens
Z. Rhissa
C. Riccardi-Candiani
R. Ricciardi
J. Rice
A. Richards
H. Richmond
F. Riveros
F. Robayo
H. Röbbel
P. Robert
I. Robertson
L. Robertson
G. Robinson
M. Robinson
G. Roca
N. Rochford
E. Rodriguez

A. Roebbel
J. Roffey
N. Rold-De Pol
J. Rolland
J. Rook
G. Rose
C. Rosell
X. Rouillard
J. Rouse
R. Roy
E. Ruckes
M. Ruiz Ortiz
M. Rukuga
M. Rusnak
H. Rustler
C. Rutledge
H. Ryan
P. Ryhanen
G. Ryman
S. Sabanegh
K. Sabet
A. Sabillo
N. Sabra
O. Sabry
M. Sackett
M. Saker
Y. Salah
S. Salcedo
V. Salin
H. Salomonsson
Z. Samad

D. Sanders
R. Sandoval
R. Sansoucy
K. Santhirasegaram
G. Saravanamuttu
R. Scavazzon
W. Scheffers
H. Schels
C. Schenck
A. Schirle-Keller
P. Schjefte
C. Schneider
G. Schuetz
G. Schulten
J. Schulthes
R. Schürmann
J. Schuster
B. Schwela
E. Seidler
M. Sein
P. Selmer
R. Seneviratne
S. Serani
G. Seresini-Bruni
P. Sergi
H. Servoz
O. Setzer
P. Seyral
E. Sgaravatti
J. Shaffer

A. Shakoor
G. Shaver
A. Shepherd
L. Silvetti
F. Simmersbach
B. Simms
E. Simone
J. Simpson
D. Sims
K. Sing
S. Sing
K. Singh
M. Sissoko
A. Sitaraman
F. Sizaret
A. Sjoström
R. Skaf
I. Skora
F. Slosse
L. Smith
I. Sobhan
L. Sobon
O. Sode
A. Soenoto
D. Solderits
H. Soliman
L. Sonn
M. Souhlal Ratsimba-Rajohn
D. Spencer-Di Napoli
A. Spijkers
G. Ssentongo

B. Stainier
C. Stamatopoulos
J. Stampfer
C. Stannard
H. Steppe
G. Stergiou
J. Steverlynck
W. Stewart
H. Stolk
P. Stouraitis
J. Strebelle
M. Sugimura
R. Suppa
W. Supple
S. Suryakant
J. Suttie
S. Syed
D. Sylla
B. Szynalski
J. Taft-Dick
C. Tagoe
I. Taha Moaz
M. Taher
K. Takamya
T. Talberg
G. Tammi
R. Tanwir
J. Tao Kar-Ling
C. Tapias
E. Tapsoba

G. Tarp
R. Tatchell
J. Taylor
W. Taylor
T. Teclé
D. Tempelman
P. Terver
P. Tesha
S. Tessenam
F. Teutscher
G. Tevar
K. Thelen
R. Thomas
D. Thomson
U. Tietze
J. Toczek
J. Toha
T. Ton That
H. Tonkin
B. Toomey
M. Törnvall-Joseph
I. Torodo
B. Tossou
M. Touade
S. Toure
R. Traboulsi
J. Traore
C. Travaglia
J. Troensegaard
M. Trossero
H. Trupke

T. Tyler
R. Uberti
N. Upadhyay
G. Uriburu
A. Vaccari
A. Vaes
G. Valdivia
E. Valenzuela
V. Valeri
A. Vallejos Soto
F. Vallet
D. Vallin-Pluinage
J. van Acker
J. van Amerongen
T. van den Bergen
N. van der Graaff
P. van der Stichele
H. van der Veken
H. Vandevaart
G. van Dijk
N. van Leeuwen
H. van Loesch
C. van Nievwenhuyse
S. Vannini
A. van Rynbach
D. van Sloten
H. van Swinderen
J. van Wambeke
K. Varghese
T. Varghese

M. Vatter

M. Vaughan

D. Vaux

C. Veer

S. Venema

Giuseppe Ventura

G. Ventura

C. Vergelin

P. Vermeersch

L. Vermeiren

S. Verniau

M. Vicchi

F. Viciani

M. Vincke

J. Visser

F. Vita

T. Vivekananthan

C. Volhl

D. von Brentano

D. von Werner

P. Wade

A. Waeschle

V. Wagner-Hodges

P. Wardle

K. Watanabe

D. Waterman

M. Watt

M. Wauter

R. Weisell

D. Wheeler

B. Whitacre

A. Whittle
S. Widen
A. Wignell
I. Willaert
J. Williams
H. Willstedt
F. Winkelmann
K. Wojciechowski
E. Wong
G. Wurdack
A. Wycliffe
A. Yamamoto
H. Yazbeck
F. Zaengel-Bevilacqua
K. Zammarano-Anderson
M. Zanini
M. Zaroug
G. Zazzara
M. Zekrya
A. Zemaitis
R. Ziesler

and the FAO's observations in telexes of 18 and 25 May 1987 on those applications;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Staff Regulation 301.061, FAO Staff Rules 302.310, 302.61 and 303.1311, FAO Manual section 308, FAO Administrative Circulars 84/57 of 12 October 1984, 85/14 of 21 February 1985 and 85/32 of 5 July 1985, and Articles 1(p), 3(a), 48, 49(a) and (b), former 54(b) (in force from 1 January 1981 to 31 December 1984) and new 54(b) (in force since 1 January 1985) of the Regulations of the United Nations Joint Staff Pension Fund;

Having examined the written evidence and heard in public on 5 May 1987 submissions from Mr. Jean-Didier Sicault, counsel for the complainants, Mr. Dominick Devlin, agent of the World Health Organization, Mr. Francis Maupain, agent of the International Labour Organisation, and Mr. Alfons Noll, agent of the International Telecommunication Union;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Staff of the defendant Organization, which belongs to the "common system" of the United Nations, have for some forty years had a pension scheme known as the United Nations Joint Staff Pension Fund ("the Fund"). A

Joint Staff Pension Fund Board ("the Board"), set up by the General Assembly of the United Nations ("the Assembly"), runs the Fund and applies the Fund Regulations.

The amount of the pension depends on three things. One is length of service by the staff member. Another is the percentage of his remuneration that he is to get for each year of service. And the third is "pensionable remuneration", which depends on each staff member's grade and his step within the grade and governs the amount of his pension contributions.

The connection between the rates of pensionable remuneration and of actual pay has changed from time to time. Pensionable remuneration was originally equivalent to net salary; in 1960 it was made equivalent to semi-gross salary and in 1965 to gross salary. Also in 1965, to keep it in line with total pay, which included - and includes - a post adjustment allowance calculated to give staff in the Professional category and above equivalent purchasing power at all duty stations, the Assembly made arrangements for adjusting pensionable remuneration by a percentage known as the "weighted average of post adjustment" at the main duty stations when the average rose or fell by 5 per cent or more.

An actuarial evaluation of the Fund made at 31 December 1980 revealed a serious decline in its finances, the Board made proposals for savings which meant lower benefits, and the Assembly approved the proposals in resolution 37/131 of 17 December 1982.

To make further savings the Assembly decided in resolution 39/246 of 10 December 1984 to adjust pensionable remuneration. It approved a new scale of pensionable remuneration as from 1 January 1985 and correspondingly amended Article 54(b) of the Fund Regulations to read: "In the case of participants in the Professional and higher categories, the pensionable remuneration effective 1 January 1985 shall be as appears in the appendix to these Regulations". According to the new scale, which determined pensionable remuneration for each grade and step in the Professional and higher categories, pensionable remuneration went up for grades P.1 and P.2 but fell for P.3 and above. The Assembly rejected proposals from the International Civil Service Commission for transitional measures and asked the Board to put to it at its 40th Session proposals for interim or compensatory measures that would apply to staff on duty at 31 December 1984.

By Administrative Circular 84/57 of 12 October 1984 the Assistant Director-General of the FAO in charge of the Administration and Finance Department made known the Organization's intention of adjusting pensionable remuneration and amending accordingly Appendix A.3 to FAO Manual section 308 on salary and other pay. By Circular 85/14 of 21 February 1985 he announced that, the General Assembly having approved the new scale, the rates of pensionable remuneration were, as from 1 January 1985, higher for staff in grades P.1 and P.2 but lower for those in grades P.3 and above. In Circular 85/32 of 5 July 1985 he explained that for staff whose pensionable remuneration at 31 December 1984 had been higher than it was under the new scale the amounts corresponding to the difference between the rates of contribution under the two scales would be levied and put in a suspense account until the Assembly, at its 40th Session, decided whether to approve interim or compensatory measures. The staff would be paid back with interest any contributions not made over to the Fund on the Assembly's approving compensatory measures.

The complainants are Professional category staff of the FAO. Their pay slips for February 1985 were made out in keeping with the circular of 21 February 1985 and they found that the new scale meant a reduction in their pension contributions and so also in the amount of their future pensions.

They lodged internal appeals with the Director-General under FAO Staff Rule 303.1311: Mr. Freeman on 6 May 1985, and Mr. Cortez and Mr. Malcolm on 8 May. They challenged the decisions to apply the new scale to them as from 1 January 1985.

The Assistant Director-General rejected the appeals on the Director-General's behalf by letters of 2 August 1985 which are the final decisions they impugn.

B. The complainants are alleging breach of the FAO Staff Regulations and of other texts and principles that govern the terms of their appointment. In their submission the decisions they challenge cause them injury, and the Tribunal is competent to hear their complaints under Article II(5) of its Statute.

They allege breach of their acquired rights. There are two material provisions, one in the Staff Regulations and the

other in the Staff Rules. Regulation 301.061 says that "Provision shall be made for the participation of staff members in the United Nations Joint Staff Pension Fund in accordance with the Regulations of that Fund". And Rule 302.310 defines pensionable remuneration "for the purpose of Article 1(p)" of the Fund Regulations, which defines it too. The two provisions refer to and in part construe the Fund Regulations. Although the introduction of a definition in those Regulations as from 1 January 1981 has led the FAO to waive competence in the matter, the references in 301.061 and 302.310 have the effect of incorporating into the FAO Staff Regulations and Staff Rules the provisions of the Fund Regulations on pensionable remuneration. So those provisions may not be amended, insofar as they affect relations between the FAO and its staff, unless the staff's acquired rights under the Staff Regulations and Staff Rules are safeguarded.

By the lights of the Tribunal's case law and that of the World Bank Administrative Tribunal the pension scheme and the scale of pensionable remuneration are essential terms of an official's appointment, and he has an acquired right in the matter.

The complainants' second plea is that there was breach of the rule against retroactivity. Since Administrative Circular 85/14 of 21 February 1985, which went out on 28 February, provided for applying the new scale as from 1 January, its application as from 1 January to 28 February 1985 was retroactive and unlawful.

Lastly, the complainants plead breach of Staff Rule 302.310. The rule says how the scale is to be worked out. Yet the new scale approved by the General Assembly and applied by the Director-General does not tally with the reckoning the rule requires.

The complainants invite the Tribunal to quash the decisions to apply the new scale to them and order the application of the old scale or else award compensation for the reduction in pension rights. They claim costs.

C. In its replies the FAO points out that, though Article II of the Tribunal's Statute allows review of the observance of provisions of the Staff Regulations on pension rights, and Regulation 301.061 does provide for membership of the Fund in accordance with the Fund Regulations, that is not what the complaints are really about. Moreover, Article 48 of the Fund Regulations says that it is for the United Nations Administrative Tribunal to hear complaints alleging non-observance of the Regulations.

As to the merits, the Organization contends that the complaints disclose no cause of action. The two scales were adopted in accordance with the provisions of the Fund Regulations, and the provision in FAO Regulation 301.061 that staff members shall be subject to the Fund Regulations is an essential term of their appointment. By virtue of 301.061

the Fund Regulations form part of FAO Staff Regulations: on that score the parties seemingly agree. But though they acknowledge that it is the Fund Regulations that govern pensionable remuneration the complainants do not address the material provisions. Such remuneration is defined in 54(b), which the Assembly may amend under the procedure prescribed in 49(a) but without prejudice to rights to benefits acquired before the date of amendment (49(b)). What is more, the FAO's main function is the levying of contributions, whereas the complainants' future benefits will depend on the amount of pensionable remuneration. The quashing of the decisions impugned would have no effect on the amount of pensionable remuneration: the only consequence for the Organization would be to require it to levy higher contributions.

As to their allegations of breach of acquired rights, the complainants fail to explain what are the acquired rights they believe to have been denied and what is the text that was amended. The only acquired right conceivably at issue is the right to a pension, that is, to the Fund membership prescribed in 301.061. But since the impugned decisions correctly applied 301.061 the material issue is whether bringing in the new scale was contrary to 49(b) of the Fund Regulations. It would be in breach of 49(b) to do away with the right to a pension but not to change the scale of pensionable remuneration, whether the effect is to raise or to lower the amount of future pension benefits.

From the Tribunal's recent case law, and particularly Judgment 726, the FAO infers that the application of the new scale to the complainants does not amount to breach of their acquired rights.

Nor was it retroactive: the new scale was to apply automatically as from 1 January 1985 in keeping with the material provision of the Fund Regulations, and in any case the decisions were of immediate advantage to the complainants since they were paying lower pension contributions.

The FAO invites the Tribunal to dismiss the complaints.

D. In their rejoinders the complainants develop their case and seek to refute the defendant's.

Their purpose is, they submit, both substantive and straightforward: to keep in force a particular pension scheme, including the rules that determine the amount of pensionable remuneration.

The duty the Organization owes its staff in the matter of pensions is not confined to the levying of contributions. The acquired right the complainants are relying on is the right to have a set of rules apply that provide for a scale of pensionable remuneration by grade and step. There is no question of breach of Article 49(b) of the Fund Regulations: what they allege is that the FAO failed to abide by the terms of their appointment, not that the Fund was in breach of its own Regulations. What the defendant is saying is that it would be unlawful to do away with the right to a pension altogether but that it is lawful to change the method of reckoning contributions. To carry that plea to its logical conclusion would be to strip the right of all safeguards by allowing drastic cuts in future pensions.

The complainants observe that the defendant does not answer their plea about breach of 302.310.

Lastly, they press their plea that there was breach of the rule against retroactivity.

E. In its surrejoinders the Organization enlarges on its main pleas.

In its submission the complainants' rejoinders add no weight to their allegations of breach of acquired rights. By its very nature pensionable remuneration is a variable, because it is governed by outside factors, and cannot form part of the essential terms of appointment. Although constant cuts in pensionable remuneration might put the right to a pension under threat, that does not preclude reduction altogether in a constantly shifting economic context. What the Tribunal's case law requires in the matter of acquired rights is that the essential features and objectives of the pension system be safeguarded. Though the rejoinders seek to show that the introduction of the new scale of pensionable remuneration is just part of a downward drift, the complainants have failed to show any breach of acquired rights as so defined.

The plea about breach of Rule 302.310 is no more cogent. FAO Staff Rules may not alter the Staff Regulations or be at odds with them. Regulation 301.061 takes precedence over 302.310, and it refers to the Fund Regulations.

CONSIDERATIONS:

Pensionable remuneration

1. The United Nations General Assembly set up the United Nations Joint Staff Pension Fund to provide benefits for staff members of the United Nations and its specialised agencies in the event of their retirement, death or disability. The Regulations of the Fund came into force on 23 January 1949 and according to Article 3(a) the FAO joined the Fund on that date.

2. Although retirement pensions do bear a relation to staff pay, it is "pensionable remuneration" (in French it was known until 1981 as "traitement soumis à retenue pour pension" and then as "rémunération considérée aux fins de la pension") that serves in reckoning the amount of the pension. It has been adapted many times to changes in circumstances. It was originally equivalent to net salary, then to semi-gross salary, and from 1965 to gross salary, though account was also taken of the weighted average of post adjustment allowances paid at the main duty stations. A system was introduced that was based on two amounts, one reckoned in the United States dollar and the other in local currency, and the Assembly took a series of measures. In 1980 it decided to apply different methods of reckoning to contributions and to benefits. In 1982 it approved proposals for savings that brought about a reduction in benefits. In 1983 it raised the contribution rate and suspended adjustments of pensionable remuneration. On 10 December 1984 it adopted a new scale of pensionable remuneration to take effect on 1 January 1985 and an amendment to Article 54(b) of the Fund Regulations. On 18 December 1985 it approved transitional arrangements. Under the new scale pensionable remuneration was raised for staff in grades P.1 and P.2 but lowered for staff in higher grades.

The application of the new scale and the complainants' response

3. By Administrative Circular No. 85/14 of 21 February 1985 the FAO informed its staff that, the Assembly having

approved the new scale, pensionable remuneration would increase for officials in grades P.1 and P.2 but fall for those in higher grades.

Another circular No. 85/32 of 5 July 1985, said that the difference between the contributions due under the old and the new scales was to be paid into a "suspense account" to be used for the purpose of interim measures or, if not made over to the Fund, paid back with interest.

4. Staff pay slips for February 1985 took account of Circular 85/14, and the complainants found that because of the application of the new scale their pension contributions were lower and so too would be their pensions. They appealed to the Director-General alleging breach of their required rights, of Staff Rule 302.310 and of the rule against retroactivity. The Director-General rejected their appeals by decisions that were declared to be final.

They are asking the Tribunal to set aside the decision not to continue to apply the old scale and order that that scale apply to them, or, failing that, to award them the difference between their pension entitlements under the two scales. They claim costs.

Joinder

5. Complaints against a single organisation may be taken together provided the substance of the claims and the facts they rest on are the same.

The present complaints meet both requirements. They are all seeking the quashing of the decision to apply the new scale and redress for the alleged injury, and they are all relying on the same fact, namely the injury allegedly attributable to the change in scale. The complaints may therefore be joined.

Receivability

6. Under Article II(5) of its Statute the Tribunal may hear complaints alleging the non-observance of the terms of appointment of officials and of provisions of the Staff Regulations. Its competence thus covers any allegation of breach of service conditions.

7. The complainants submit that the FAO Staff Regulations and Staff Rules were applied in breach of their acquired rights and the rule against retroactivity. Their complaints will therefore be receivable only if the application of those regulations and rules does cause them injury.

The Tribunal concludes from the material rules that it does not.

Staff Regulation 301.061 says that "Provision shall be made for the participation of staff members in the United Nations Joint Staff Pension Fund in accordance with the Regulations of that Fund". That rule has nothing to do with the reduction in pensionable remuneration and plainly cannot in itself cause the complainants detriment.

Staff Rule 302.611 reads: "A staff member shall participate in the United Nations Joint Staff Pension Fund, in accordance with its regulations, provided that such participation is not excluded in the letter of appointment". The rule was made under Regulation 301.061 and has no bearing on the issues the complainants raise, and applying it therefore does them no injury.

The complainants' plea of breach of the rule against retroactivity suggests that the Organization failed to apply correctly the provisions that authorise it, whether expressly or by implication, to carry out Assembly decisions on pensionable remuneration. But there is no need to rule on the plea: the complaints show no injury attributable to the alleged breach of the rule, and the Tribunal therefore will not entertain the plea.

The complaints fail insofar as they are challenging the application of the provisions mentioned above.

Breach of Staff Rule 302.310

8. Rule 302.310 comprises 302.3101 and 302.3102.

Rule 302.3101 says that pensionable remuneration shall consist of the sum of gross salary, any non-resident's or language allowance, and any service differential payable.

Rule 302.3102 provides for the adjustment of pensionable remuneration for staff in the Professional and higher categories. It says that pensionable remuneration

"... shall be adjusted periodically in accordance with the movement of an index representing the weighted average of the post adjustment classifications of the headquarters and other major offices of the member organisations of the United Nations Joint Staff Pension Fund".

It adds that the International Civil Service Commission shall measure the movement of the index each year in January and in July, any movement of 5 per cent or more bringing about an increase or decrease in pensionable remuneration. The rates shall "never fall below the rates used for pension benefit purposes which are based on the United States Consumer Price Index".

9. The complainants submit that the change in scale was in breach of 302.3102.

The plea fails.

Unlike 301.061, which is a Staff Regulation, 302.3102 is a Staff Rule. The former therefore takes precedence and, where there is inconsistency, prevails over the latter. Since according to 301.061 FAO staff are subject to the Fund Regulations and to any amendments thereto, it is immaterial whether the new scale introduced under the Fund Regulations will square with 302.3102. Applying the scale is warranted by virtue of the ranking of the rules.

What is more, 302.3102 does not appear to create rights or duties. It reproduces Assembly resolution 1561 (XV) and is therefore merely informative. That is why it has not been amended despite the adoption of the new scale.

Besides, even supposing 302.3102 did confer rights on the staff they would not, for the reasons stated in Judgment 832, be acquired rights. There would therefore be no bar to amending the rule and to forfeit of the rights the complainants claim thereunder.

10. Since the complaints fail, so do the applications to intervene.

DECISION:

For the above reasons,

The complaints and the applications to intervene are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 June 1987.

(Signed)

André Grisel
Jacques Ducoux
Mohamed Suffian
A.B. Gardner