

The Administrative Tribunal,

Considering the complaint filed by Mrs M. d. R. C. e S. d. V. against the World Meteorological Organization (WMO) on 10 November 2006 and corrected on 22 and 30 November and on 15 December 2006, the Organization's reply of 12 April 2007, the complainant's rejoinder of 9 July and WMO's surrejoinder of 3 October 2007;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant was born in 1959 and has dual Portuguese and Italian nationality. She joined WMO on 1 June 2003 as Chief of the Internal Audit and Investigation Service (IAIS) at grade P.5, reporting directly to the Secretary-General. Her initial two-year fixed-term contract was in due course renewed for a further period of two years.

Shortly after taking up her functions she was asked to investigate a suspected case of fraud involving at least one staff member. In light of her initial findings, the Organization decided in November 2003 to refer the matter to the Swiss authorities so that criminal proceedings could be initiated. Meanwhile, the main perpetrator succeeded in escaping to Egypt. When the current Secretary-General took office at the beginning of 2004, he instructed the complainant to pursue her internal investigation, focusing in particular on the role that other staff members might have played in the fraud. He also took a number of measures designed to strengthen the Organization's internal controls, including the establishment of an Audit Committee, to which the complainant submitted a series of investigation reports.

In February 2004 the Swiss investigating judge informed the complainant that WMO's then senior legal adviser had made a telephone call to the main perpetrator on the day of his escape to Egypt. In her ninth interim report dated 12 April 2005 the complainant drew attention to this and to certain other facts which suggested that the senior legal adviser might have helped the main perpetrator to evade arrest, and recommended that the senior legal adviser be kept aside from the internal investigation pending clarification of these facts. She reiterated this recommendation in her final report of 29 April 2005. The Secretary-General asked the complainant to alter what she had written in these reports concerning the senior legal adviser before they were submitted to the Audit Committee, on the grounds that her findings were unsubstantiated, but she refused to do so. On 10 May 2005 a lawyer acting on behalf of the senior legal adviser wrote to the complainant and threatened to take legal action against her if she did not withdraw her "unfounded [...] and libellous" allegations against his client. The complainant drew this matter to the attention of the Secretary-General and asked him to provide her with legal assistance.

The complainant's final investigation report was presented to the Executive Council in June 2005 during an *in camera* session only part of which she was invited to attend. During that same month the Executive Council, on a recommendation of the Audit Committee, decided that the internal investigation into the fraud should be closed and that it should be reopened only if additional, substantial information became available.

In the second half of 2005 steps were taken to reorganise the IAIS. This initiative stemmed from a request, made by the Audit Committee in October 2004, that the Secretary-General should strengthen internal audit services. Various options had been envisaged, including a proposal by the complainant, but the solution that was ultimately adopted was essentially that which the Secretary-General had been advocating since February 2005: it involved replacing the IAIS with a new Internal Oversight Office (IOO) and creating three new posts, one at grade D.1 and two at grade P.5.

A vacancy notice was published in October 2005 for the new D.1 post of Director of IOO, which indicated that the

incumbent would “[f]ulfil the function designated in the Financial Regulations for the Chief of [IAIS]”. The complainant applied but was not selected. On 10 January 2006 she was notified of the decision to separate her from her functions as Chief of IAIS and to reassign her, with effect from 1 February 2006, to the grade P.5 post of Chief of the new Internal Audit Service (IAS), in which she would report to the Director of IOO. By a memorandum of 20 January 2006 the complainant requested that the Secretary- General reconsider this decision, arguing that it was contrary to the Financial Regulations. She further alleged that she was being harassed by senior management in connection with her investigation.

In an e-mail of 31 January 2006 addressed to the members of the Audit Committee, the complainant stated that it was her duty to inform them of the Secretary- General’s decision to “abolish” the IAIS and that she would shortly be sending them a report on the matter. Having been reminded by the Secretary-General that communications with the Audit Committee should be channelled through him, she sent him the report in question on 8 February, asking that it be forwarded to the Committee members. However, the Secretary-General replied the following day that the complainant had a “clear and serious conflict of interest” and that she was therefore to “refrain from any further involvement in all internal audit functions regarding the reorganization of the internal audit services”. He also drew her attention to the fact that she was not permitted to approach member country representatives with a view to contesting his decisions, but was required to restrict herself to the internal channels. By a letter of 14 February 2006 he informed the complainant that he maintained his reassignment decision. With regard to her allegations of harassment, he referred her to Service Note No. 26/2003.

On 23 February the complainant sent a message from her private e-mail address to the members of the Audit Committee, copying it to several representatives of the United States Department of State. Referring to a Bulletin entitled “Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations”, which was issued by the United Nations Secretary-General in December 2005, she called into question the legality of the restructuring of the internal audit function and asserted that, despite her recommendations, WMO’s Secretary-General had chosen not to lift the immunity of certain senior officials to enable them to be investigated by the Swiss judge. She attached a copy of the report she had submitted to the Secretary-General on 8 February, which, she assumed, had not been forwarded to the Committee members.

On 14 March the complainant lodged an appeal with the Joint Appeals Board contending that the reorganisation of the IAIS was unlawful, that her reassignment was “invalid” and that she had suffered harassment in connection with her investigation. On 10 May, while that appeal was pending, she submitted a grievance for harassment to the Secretary- General, copying it to the WMO President, the members of the Audit Committee and the External Auditor. Her allegations were directed against the Director of IOO. In a memorandum of 1 August 2006 she explained to the Secretary-General that she had not intended to lodge a formal harassment grievance. However, in September 2006 she wrote to the Secretary of the Board on two occasions to remind him of the need to refer her allegations of harassment to the Joint Grievance Panel in accordance with Service Note No. 26/2003. She subsequently challenged the validity of the Board’s proceedings on the grounds that it had failed to do so.

In its report dated 21 September 2006 the Board recommended that the complainant’s appeal be rejected as devoid of merit. With regard to her allegations of harassment, it considered that there was no need to refer them to the Joint Grievance Panel, since they were the subject of separate proceedings initiated by the complainant on 10 May and subsequently withdrawn by her. By a memorandum of 4 October 2006, which constitutes the impugned decision, the Secretary-General informed the complainant that he had dismissed her appeal in accordance with the recommendations of the Board.

B. According to the complainant, the Secretary- General’s decision to abolish the IAIS and to relieve her of many of her duties by reassigning her to a “diminished position” is attributable to the fact that, in the course of her investigation, she uncovered evidence showing that the defrauded funds were mainly used to influence the voting during the elections in May 2003 which led to his appointment. She therefore contends that the impugned decision was taken *ultra vires* insofar as its underlying purpose was to conceal fraud by ensuring that the person supplying information to the investigating judge would no longer be in a position to do so.

The complainant considers that the Secretary-General abused his authority by reassigning her without consultation. Under these circumstances, she submits that her reassignment is to be seen as a disguised and disproportionate disciplinary sanction. She also argues that the impugned decision is illegal in that it constitutes an act of retaliation.

In her opinion, the harassment to which she was subjected in connection with her investigation also warrants

setting aside the impugned decision. In this regard she refers in particular to the attempts to persuade her to alter her investigation reports, to anonymous telephone calls received at her home, to the fact that the lock on her office door was changed in her absence, to the way in which she was treated by the Director of IOO and to threats by external legal consultants engaged by the Organization or by its former senior legal adviser. She contends that these actions violated her dignity and led to prolonged periods of absence from work through illness.

Lastly, the complainant submits that the internal appeal proceedings were tainted with numerous procedural irregularities and that she was denied due process. In particular, she denounces the absence of an adequate investigation into the facts and the collusion of a number of senior officials in acts constituting harassment.

By way of redress, she asks the Tribunal to “recommend” that the Secretary-General revoke his decision to remove her from her position as Chief of IAIS and that he reinstate her in that position with effect from 1 February 2006 with all the legal consequences that this implies. She also seeks recommendations to the effect that Article 29 of the WMO Convention be properly applied with regard to the restructuring of the IAIS in light of Article 13 of the Financial Regulations; that the Secretary-General issue her a letter of apology, copied in full to the members of the Audit Committee, the External Auditor, the Executive Council and the investigating judge, and that he inform the members of the WMO Congress of the nature of such letter; and that WMO pay her 330,000 Swiss francs in moral damages. She further claims “aggravated” damages in light of the harassment and intimidation she suffered, and costs. She asks the Tribunal to hold witness hearings and to order the production of various documents.

C. In its reply WMO observes, with regard to the relief requested by the complainant, that the Tribunal is not competent to order the application of Article 29 of the WMO Convention, since that provision applies only to disputes between parties to the Convention, which are to be resolved by arbitration. Moreover, the Tribunal is not competent to order the defendant to issue an apology.

On the merits the Organization submits that the Secretary-General had the authority to conduct the reorganisation of internal oversight, and it emphasises that the President of WMO, the Audit Committee, the External Auditor and the Executive Council all approved the reorganisation after having considered the arguments raised by the complainant to oppose it. It asserts that the measures taken by the Secretary-General fully complied with the Financial Regulations. Furthermore, in view of the fact that the complainant applied, without expressing any reservation, for the vacant post of Director of IOO, it considers that she is estopped from challenging the legality of the decision to advertise that post. In this regard, it notes that it was only when the complainant learnt that she had not been selected for the post of Director of IOO that she began to question the legality of the reorganisation and to allege that those involved in it were attempting to obstruct her investigation.

WMO argues that by assigning the complainant, at the same grade and in the interest of the Organization, to a post matching her qualifications, the Secretary-General properly exercised the power conferred on him by Staff Rule 112.1, and it points out that the complainant has not shown how her reassignment damaged her dignity or reputation. It denies that this measure constituted a disguised sanction.

Lastly, the Organization states that the complainant’s allegations of harassment are currently under review by the Joint Grievance Panel, at her request.

D. In her rejoinder the complainant presses her pleas. In support of her argument that the post to which she was reassigned was by no means equivalent to her previous post, she points out in particular that she no longer reported to the Secretary-General and that she no longer had responsibility for investigations or for reporting to the Executive Council and the Audit Committee. In her view the post to which she was reassigned corresponded to a grade P.4 post. She extends her request for the production of documents to include the report concerning the selection of the Director of IOO.

E. In its surrejoinder WMO maintains its position. In view of the complainant’s continued reliance on her allegations of harassment in support of her complaint, it points out that the Joint Grievance Panel, which issued its report in August 2007, rejected all her allegations of harassment in connection with the reorganisation of internal oversight, and that the Secretary-General communicated a final decision on this matter to the complainant on 28 September 2007. It produces the Panel’s report, together with several other documents, under confidential cover. The Organization accuses the complainant and her lawyers of trying to exercise political pressure on it by interfering with the World Meteorological Congress in April 2007, filing legal proceedings in the United States and in Switzerland and waging a media campaign against WMO, and it observes that these actions raise serious doubts

as to the true purpose of the present complaint.

CONSIDERATIONS

1. This is one of two matters involving the same parties presently before the Tribunal for decision. The matters raise separate and distinct legal issues and, accordingly, will be dealt with separately.
2. The complainant is a former official of WMO, her employment having been terminated on 3 November 2006. She was appointed Chief of the Internal Audit and Investigation Service (IAIS) with effect from 1 June 2003 and held that position until 1 February 2006 when she was reassigned to the post of Chief of the Internal Audit Service (IAS) within the newly created Internal Oversight Office (IOO). The Secretary-General dismissed her internal appeal with respect to her reassignment on 4 October 2006 in accordance with the recommendation of the Joint Appeals Board. That is the decision the complainant impugns before the Tribunal.
3. The background to the complaint involves an investigation by the complainant into a serious fraud within WMO. That investigation commenced in July 2003, shortly after she took up the post of Chief of IAIS. The main perpetrator was identified and the case concerning him was handed to Swiss law enforcement authorities in November 2003. Before he could be arrested, he escaped to Egypt. It seems that the questions whether others were involved in the fraud and, if so, to what extent, have not finally been resolved.
4. It is not disputed that some of the misappropriated funds were used to meet the expenses of certain delegates to the Fourteenth World Meteorological Congress held in May 2003. Although not one of the initial candidates, the then Deputy Secretary-General was elected Secretary-General at that Congress. He took up his new post on 1 January 2004, approximately six months after the complainant began her investigation into the fraud. On 5 February 2004 he informed her that she should investigate “possible involvement or implication of other staff members through negligence, gross negligence or even complicity” and, also, that she should “pursue as far as documentation and information allow retrospective analysis of the fraud case”.
5. After his election the Secretary-General took steps to establish an Audit Committee composed of members of the WMO Executive Council and independent experts. The Committee met first in October 2004 and, again, in February and in June 2005. Over the course of its meetings, the Committee was provided with ten reports prepared by the complainant. At its third meeting, the Committee recommended that “the Executive Council request the Secretary-General to close the internal investigation of the fraud, recognizing that it should be re-opened later if additional, substantial information were uncovered”. At its meeting in the same month, the Executive Council noted that recommendation and resolved that “the internal investigation should be resumed if additional, substantial information became available”.
6. Before the fraud investigation was closed in June 2005, the complainant was informed by the Swiss judge investigating the main perpetrator that the senior legal adviser who had been responsible for referring the investigation to the Swiss authorities had made a call to the telephone of the perpetrator on the day he escaped to Egypt, albeit some six hours after the escape. The complainant later made certain recommendations with respect to the senior legal adviser. Those recommendations set in train certain events to which it will later be necessary to refer in greater detail.
7. At its first meeting in October 2004, the Audit Committee requested the Secretary-General to “strengthen the internal audit operation on an urgent basis and to provide adequate resources”. At that stage, the complainant was the only Professional category official engaged in internal audit activities and she had limited assistance from General Service category staff. Some time thereafter, she was provided with two additional staff members. Although WMO contends in its reply that one of these new staff members was in the Professional category, the evidence of the complainant is that, at that stage, they were both members of the General Service category. Prior to the second meeting of the Audit Committee in February 2005, the Secretary-General informed the complainant of a proposal to strengthen the internal audit service by creating a grade D.1 post. Later, in April, he provided her with a draft proposal to this effect. In May, at the Secretary-General’s request, the complainant submitted her own proposal for the strengthening of the service. Her proposal did not involve the creation of a D.1 post but involved the appointment of additional Professional category staff and the outsourcing of some functions such as the auditing of information systems and risk management.

8. At its third meeting in June 2005, the Audit Committee was presented with three options for strengthening the internal audit service, two of which involved the creation of a D.1 post and the third of which involved the outsourcing of internal oversight. The complainant's proposal was not put before the Committee. The Committee did not express a preference for any of the options before it, but recommended that the Executive Council "[r]equest the Secretary-General to strengthen the internal audit service on an urgent basis [within the budget allocation for the next biennium]". The Executive Council resolved accordingly at its June 2005 meeting.

9. The Secretary-General proceeded with his proposal to create a D.1 post. The proposal also involved the creation of two P.5 posts, namely, Chief of Evaluation and Chief of IAS, the latter post being the one to which the complainant was reassigned in February 2006. The posts were evaluated by an external classifier in August 2005 and applications were called for the D.1 post in October 2005. The complainant applied for that post but was not successful. On 23 December the Secretary-General sought the approval of the President of WMO, on behalf of the Executive Council, for the appointment of an external candidate to the D.1 post and the separation of the complainant from her post of Chief of IAIS and her reassignment to the post of Chief of IAS. Approval was granted on 28 December 2005. The complainant was notified by memorandum of 10 January 2006 of the structure of the new Internal Oversight Office to come into effect on 1 February and of her reassignment to the new post of Chief of IAS from the same date. She was also then provided with a job description for the new post.

10. On 20 January 2006 the complainant requested the Secretary-General to reconsider his decision to reassign her to the post of Chief of IAS. In her memorandum requesting reconsideration, she claimed that the decision breached the WMO Financial Regulations and that she had been the victim of harassment since January 2005 "in connection with the investigation of staff members involved in the fraud case". On 31 January, while still Chief of IAIS, she informed members of the Audit Committee that she was preparing a report on the new structure. Thereafter, the Secretary-General informed her that communications with the Audit Committee should be channelled through him. In early February the complainant submitted a report on the new structure to the Secretary-General and asked him to forward it to the Committee. In that report, the complainant contended, amongst other things, that the new structure was inconsistent with the WMO Financial Regulations. The Secretary-General replied on 9 February, claiming that the complainant had a "clear and serious conflict of interest" and directing her to "refrain from any further involvement in all internal audit functions regarding the reorganization of the internal audit services". In the same memorandum, he informed her that she was not entitled to approach "member country representatives in opposition to [his] decisions" and warned her of "the potentially serious consequences" if she did so. On 14 February he informed her that he was maintaining his decision to reassign her to the post of Chief of IAS. In doing so, he referred to her claim of harassment and advised her "to check [her] perception of the situation with a colleague in the Organisation, as indicated in Service Note No. 26/2003".

11. The complainant lodged an internal appeal with the Joint Appeals Board on 14 March 2006. In her written submissions, dated 28 April 2006, she argued that the abolition of the IAIS, the creation of the IOO and her reassignment as Chief of IAS were illegal, and that her reassignment was an abuse of authority in that it was both the culmination of attempts to corrupt the internal audit service and the final step in a campaign of harassment that had begun in 2005. Additionally, she claimed that her reassignment to a "significantly diminished position" violated her employment agreement and her rights as an international civil servant.

12. Shortly after filing her submissions with the Joint Appeals Board, the complainant lodged a formal grievance for harassment against the Director of IOO. That grievance repeated some of the matters upon which the complainant had relied in her submissions to the Board. However, on 1 August 2006 the complainant stated in a memorandum to the Secretary-General that, whilst reserving her right to file a formal grievance, she "ha[d] chosen not to pursue with a formal grievance for harassment complaint against [the Director of IOO] at [that] point in time". On 8 September, after being informed verbally that the Joint Appeals Board had completed its consideration of her appeal, the complainant sent an e-mail to the Chairperson of the Board directing attention to the requirement in Service Note No. 26/2003 that, when an appeal includes an allegation of harassment, the Board should refer that aspect of the appeal to the Joint Grievance Panel. She also indicated that she wished to provide further information in relation to her harassment claim. On 16 September she wrote to the Secretary of the Board asking that her allegations of harassment be referred to the Joint Grievance Panel with the consequence either that her appeal be placed on hold or that it be restarted later. In the alternative, she asked that the Board recognise its failure to comply with Service Note No. 26/2003 and accept the invalidity of its work up to that point. On 20 September she wrote to the Secretary-General requesting him to declare the Joint Appeals Board proceedings invalid. He replied the same day indicating that he would consider her request along with the report of the Joint Appeals Board when it was received.

13. The Joint Appeals Board issued its report on 21 September 2006. The Board dealt with the harassment claim as follows:

“Many of these allegations related to incidents [that] occurred in 2005 without any procedure for harassment having been initiated at the time [...]. Taken together, the [Board] considered that these allegations had been raised as an argument in support of the plea that the re-organization [...] and the re-assignment [...] were unlawful. [...] The [Board] took note that [the complainant] herself had decided not to pursue any harassment grievance [against the Director of IOO]. [It] also took note of the fact that [he] had not taken part in the re-organisation of internal oversight. The allegations of harassment were therefore considered inconsequential to [the] case and the [Board] saw no need to refer them to the Joint Grievance Panel as foreseen in [...] Service Note 26/2003.”

The Board rejected the complainant’s arguments with respect to the legality of the reorganisation, as well as her arguments relating to the breach of her employment contract and improper motive. Additionally, it was of the view that there was “no indication that the Secretary-General did not treat [her] with due respect or that she was subject to unfair treatment”. Accordingly, it recommended that her appeal be rejected as “devoid of merit”.

14. The complainant maintains the various arguments advanced before the Joint Appeals Board and, also, contends that its proceedings were flawed. She seeks to have the reassignment decision set aside and to be reinstated as Chief of IAIS with effect from 1 February 2006. She also claims 330,000 Swiss francs in moral damages for “injury to her professional reputation, health, both physical and psychological, and the failure to mitigate [...] damages” together with interest. Additionally, she claims “aggravated” damages for harassment and intimidation and costs. Further, she asks for recommendations that the Secretary-General “properly enforce [...] Article 29 of the [WMO] Convention” and that he issue her a formal apology. Two other matters should be noted. The first is that the complainant seeks a public hearing in which to give evidence and to call witnesses. The second is that she seeks an order for the production of various documents, including the Secretary-General’s reports to the Audit Committee and the Executive Council relating to the fraud investigation, minutes of specified meetings of the Committee and the Council and a copy of a report by an external consultant, Mr M., with respect to the senior legal adviser earlier referred to.

15. Before dealing with the complaint, it is necessary to note that the complainant made a formal complaint of harassment to the Joint Grievance Panel and submitted written submissions to it in March 2007. Apparently, those submissions replicate the claims made in the complaint before the Tribunal. The report of the Joint Grievance Panel was referred to the Joint Appeals Board and a final decision to close the case of harassment was made by the Secretary-General on 28 September 2007. That decision is the subject of three further complaints to the Tribunal. In none of those complaints does the complainant seek to have the Secretary-General’s decision to close her harassment case set aside. In the first of those three complaints, however, she seeks the quashing of decisions of 4 October, 25 October and 3 November 2006. The decision of 4 October 2006 is the decision challenged in the present proceedings. The decision of 25 October was a decision not to renew her fixed-term contract on its expiry in May 2007 and that of 3 November was to dismiss her summarily. In the present case, the complainant contends that these decisions and the events surrounding them are further incidents in the continuing harassment to which she was subjected.

16. A preliminary question arises as to the course that should be taken with respect to the claim of harassment made in the complaint. As already indicated, the precise same claim was made to the Joint Grievance Panel, and it was made either shortly before or shortly after the complaint was filed with the Tribunal. General principle dictates that a person cannot litigate the same issue in separate proceedings, much less in concurrent proceedings.

17. WMO refers to “inconsistencies and manoeuvres” by the complainant in relation to her harassment complaint and submits that the complaint before the Tribunal “can be adjudicated at this juncture without reference to her allegations of harassment and the results of the investigation into them”. However, the complainant is not responsible for all problems associated with the present consideration of her claim. It is true that, apart from the harassment grievance presented against the Director of IOO and, later, not pursued, the complainant did not proceed in accordance with Service Note No. 26/2003. It is unnecessary to determine whether, as she claims, that was because she was unaware of its terms as a result of her absence on sick leave. It is sufficient to note that her written submissions to the Joint Appeals Board clearly alleged harassment during 2005 and, to a considerable extent, the problem that now arises derives from its failure to refer her claim to the Joint Grievance Panel as required by Service Note No. 26/2003. Additionally, the Secretary-General, the person required to make a final

decision in relation to the claim, informed her, without any aspect of it having then been considered either by the Joint Grievance Panel or the Joint Appeals Board, that his view went beyond the findings of the Board as he considered her claims “abusive and ill driven”. In the circumstances, that response is properly to be seen as a final decision dismissing her claim of harassment and, as the claim is before the Tribunal, it must be determined. However, it is undesirable that the claim be determined in the absence of a thorough consideration of all the circumstances on which the complainant relies. Accordingly, although it is necessary to have regard to the various matters and circumstances upon which the complainant relies to ascertain whether the decision to reassign her to the post of Chief of IAS was taken for an improper motive, as she claims, the final determination of the harassment claim should await consideration of the various complaints filed in relation to the Secretary-General’s decision of 28 September 2007.

18. The complainant claims that the various actions of the Secretary-General culminating with the decision to replace the IAIS with the IOO and to reassign her to the post of Chief of IAS were motivated by a desire to “cover-up for his cronies” and that, when his attempts to corrupt the investigation process failed, he took “drastic and brutal and illegal decisions [...] to get rid of [her] and to destroy her character and her dignity”. In support of the first of these propositions, the complainant relies on various matters not all of which directly concern her. For example, she points to the use of some of the misappropriated funds to defray the expenses of certain delegates to the Congress at which the Secretary-General was elected and to what she considers was the lenient treatment of staff members who, in her view, were involved in the fraud. So far as concerns her more general thesis, she refers to various events in 2004 and 2005. She points out that in early 2004 she could not “freely access the e-mail accounts of certain staff members”. During the same year, according to her, the Secretary-General attempted to oblige her to travel on mission with a person whom she believed to be an accomplice of the main perpetrator of the fraud. In the end the mission was cancelled. Additionally, the complainant points out that, between January and November 2004, a period which, in her view, was crucial for the fraud investigation, she had no Professional category staff to assist her and only limited support from General Service category staff.

19. At this stage, it is necessary to note that, although the Secretary-General initially refused to allow the complainant access to the e-mail account of one staff member, permission was subsequently granted. That staff member and two others were the subject of the complainant’s fourth report in November 2004, as a result of which the Secretary-General launched internal disciplinary proceedings against all three. In January 2005 the Joint Disciplinary Committee required the complainant to respond to the written replies of the three staff members concerned within a period of ten days. The complainant considered this inappropriate and expressed her concerns to the Secretary-General who, nonetheless, urged her to respond and she did so. Later, on 1 February, she was called to a meeting with the Secretary-General and the Deputy Secretary-General to discuss the additional information that she had provided to the Joint Disciplinary Committee. The complainant says that she felt that the purpose of the meeting was “subtly, to put psychological pressure on [her]”. It was at this time that the complainant informed the Secretary-General that part of the misappropriated funds had been used in relation to the Fourteenth World Meteorological Congress at which he had been elected.

20. It is convenient at this point to consider the various events that occurred during 2004 and up until 1 February 2005. Standing alone, they do not justify the suspicion, much less the conclusion that the Secretary-General tried to thwart the investigation process. The Secretary-General had only taken up his new position in January 2004 and, very soon afterwards, he instructed the complainant to undertake investigations into other staff members. In the result, three were the subject of disciplinary proceedings and were later reprimanded. And although the complainant was not provided with adequate assistance, that was also the position under the former Secretary-General and may well have been the result of staffing or other pressures. Accordingly, unless subsequent events place some other complexion on them, these matters establish neither the motive claimed by the complainant nor harassment.

21. The next event upon which the complainant relies involves a newspaper article in the *New York Times* on 9 February 2005 in which the Director of the Resource Management Department was quoted as saying that he had helped supervise the internal inquiry into the fraud. The complainant asked the Secretary-General to take action to have that statement corrected but no action was taken. At or about the same time, there were other newspaper articles concerning the fraud and some staff members, including the senior legal adviser, were providing information to the press. The complainant says that she herself was instructed by the Secretary-General not to speak to the press, a course that she then considered to be correct. However, she now argues that the Secretary-General forbade her to speak to the press but allowed others with a personal interest to do so as “part of a strategy to cover up [...] the extent of those involved in the fraud including himself”. She also claims that those who did speak

to the press “manipulated the information [...] regarding [...] the work performed by [her] [...] in anticipation of [her] removal from the WMO”. Even assuming that those who spoke to the press did so in terms that minimised the importance of the complainant’s work and exaggerated the importance of their own, that supports neither the complainant’s claim as to the motives of the Secretary- General nor her implied claim of foreknowledge of her removal from WMO in November 2006.

22. Whatever may be said of events prior to mid-February 2005, the relationship between the complainant and the Secretary-General underwent a marked change thereafter. In late February, the complainant became aware of the call made from the telephone of the then senior legal adviser to the telephone of the main perpetrator on the day of his escape to Egypt. She reported this to the Secretary-General on 17 March and recommended that the senior legal adviser “be kept aside from the process temporarily, until the situation [...] is clarified”. Her report concerning the senior legal adviser, her ninth report, was presented to the Secretary-General in mid-April. The complainant states, and it is not denied, that the Secretary-General then informed her that he had lost faith in her because of the disclosure of an e-mail without his authorisation. Until then, the complainant’s reports into the fraud had gone forward without alteration. However, at a meeting on 2 May, the Secretary-General sought to have changes made in her ninth report and in her final report of 28 April, including with respect to the senior legal adviser. The complainant refused to make these changes.

23. It appears that the senior legal adviser discussed the complainant’s report concerning her with the Secretary-General and other senior officials, including the Director of Resource Management, and was informed by them that her case would not be referred to the Joint Disciplinary Committee. Later, on 4 May 2005, the complainant was handed a document that incorporated the handwriting of the Director of Resource Management in which it was said:

“The group considered that the allegations made in the [ninth] Interim Report (submitted to [the Secretary-General] on 15 April 2005) were absolutely unfounded and reckless. It strongly felt that the investigation was conducted in a[n] unprofessional manner and that the conclusions of the Interim Report were totally unacceptable. It believed that releasing [the] Interim Report would damage the image and credibility of [the senior legal adviser] and the organisation.”

24. It is clear that it was not intended that the complainant should receive the document referred to above. Shortly after its receipt, the Director of Resource Management entered her office without knocking and demanded aggressively that she return it forthwith. The complainant refused to do so and later complained to the Secretary-General, who told her that, if she returned all copies and signed attesting for them, the document would disappear and nothing would be written against her. On 11 May 2005 the Secretary-General wrote to the complainant expressing his disappointment that she had not agreed to return all copies of the document. The same day, the complainant received a letter from a private attorney acting for the senior legal adviser, stating that unless she withdrew the accusations in her report and apologised by 25 May, his client reserved the right to initiate criminal and civil proceedings against her. On 12 May the complainant drew this letter to the attention of the Secretary-General. In her letter she stated that this was a WMO matter and indicated her need for legal assistance. The Secretary-General responded the next day asking her to clarify the type of legal services she required.

25. On 12 May the senior legal adviser sent the complainant a copy of a memorandum addressed to the Secretary-General in which she thanked him for informing the chairman of the Joint Disciplinary Committee that she was not subject to disciplinary proceedings and stated that:

“if the false accusations formulated by [the complainant] [...] are made public, I will have no choice but [to] defend myself through all available means including direct contacts with Member States and appropriate juridical action internal and/or external.”

26. The complainant informed the Secretary-General as to the legal services she required on 18 May, including, she said, advice as to the letter she had received from the senior legal adviser’s lawyer. She received no reply. The next day, 19 May, she received a memorandum from the Director of Resource Management, copied to the Secretary- General, stating that her conduct in failing to return the above-mentioned document concerning the senior legal adviser and to confirm that no copies existed was “unacceptable”. In her reply to that memorandum, which was likewise copied to the Secretary-General, she referred to audit regulations which, in her view, obliged her to keep a copy of the said document. She also said that she felt “threatened and harassed”. On 23 May she received a copy of the earlier letter from the private lawyer acting for the senior legal adviser and informed the

Secretary-General of this and also of the fact that, in the absence of legal advice, she had consulted the investigating judge. At the same time she claimed that, since February, she “ha[d] been subject to personal attacks and threats [...] and [had been] requesting [his] attention to help resolve them”. Again, there was no reply.

27. In early June 2005 the complainant was asked to meet with an external consultant – Mr S. – in connection with “legal issues” involved in her investigation. The meeting took place on 13 June. It is not denied that Mr S. said that the complainant had treated the senior legal adviser badly and that she should apologise and remove all references to her from her reports. He also told the complainant that she might have to pay damages to the senior legal adviser personally. The same day, the Secretary-General forwarded to the complainant certain documents, which had been provided to him by the senior legal adviser, and asked her to review the material. He also stated that he assumed that, on the basis of this material, she would wish to remove the references to the senior legal adviser from her ninth and tenth reports. The complainant was not satisfied as to the authenticity of the documents provided by the Secretary-General and replied on 15 June stating that the matter would be treated “in strict compliance with professional practice” and seeking authorisation to speak with the investigating judge who, she said, had requested the lifting of the immunity of the senior legal adviser so that he could interview her. The next day, the Secretary-General informed the complainant that, as she had a “potential personal conflict of interest”, it was inappropriate for her to communicate with the judge. He also asked her to respond to his memorandum of 13 June “in a manner which helps overcome [the senior legal adviser’s] grievance”. Later, at the request of the investigating judge, the complainant was authorised to see him but solely as a witness.

28. In the event, the complainant refused to delete the references to the senior legal adviser from her reports. Although until then the complainant herself had submitted her reports to the Executive Council, that was not the case when the Council met on 23 June 2005. There was then an “*in camera*” session and, although the complainant was called to the last part of the session, she was instructed by the WMO President not to refer to the investigation. It was at that meeting that the Council decided, in effect, that the investigation should be closed.

29. There were further communications between the complainant and Mr S. in which the complainant was told that it was likely that she would be liable for damages and for costs if she did not remove references to the senior legal adviser from her reports. He also told her that the senior legal adviser had lodged an internal appeal and said that her claim not to know this was “unconvincing [...] and [...] at best disingenuous”. It is not clear whether or not there was an internal appeal. However, in September, the Secretary-General informed the complainant that he was obtaining another legal opinion on the matter and later requested her to meet with Mr M. After meeting with him, the complainant wrote to the Secretary-General pointing out that she had not been informed as to the nature of the exercise in which he was engaged. Mr M. later prepared a report which has not been made available to the complainant and in respect of which she seeks an order for production.

30. The events that occurred following the complainant’s report referring to the senior legal adviser indicate a disregard for her role and responsibilities as internal auditor and a lack of respect for her dignity. As earlier indicated, the question whether they constitute harassment will have to await further consideration. It is sufficient to note that those events do not put any different complexion on the events that occurred prior to February 2005. And even when considered in the context of other events upon which the complainant relies, including matters related to her performance appraisal report, which is the subject of the second complaint presently before the Tribunal for decision, events associated with the decision to create the IOO, the implementation of that decision and the subsequent treatment of the complainant by the Director of IOO, they do not establish that the impugned decision was motivated by a desire to harm or injure the complainant in consequence of the Secretary-General’s failure to corrupt her investigation of the fraud. That is because any inference of improper motive of the kind asserted by the complainant is inconsistent with other facts.

31. One matter that tends against the inference of improper motive is the fact that there was an open competition for the post of Director of IOO. Although the complainant contends that the restructuring process was *per se* illegal, she has not challenged the subsequent appointment or the competition process. And apart from her claim that she was asked questions concerning the investigation that could not have been put to other candidates, there is nothing to suggest that the appointment process was flawed. Accordingly, the Tribunal must proceed on the basis that the competition was fair. Not only was the complainant a candidate in that competition, but she was encouraged to apply for the D.1 post by the Secretary-General.

32. Two other matters tend against the inference of improper motive of the kind alleged. The first is that, although the restructuring was not set in train until August 2005, the Secretary-General had conceived the idea of

creating a D.1 post as early as February of that year, well before the events which developed with respect to the complainant's reports referring to the senior legal adviser. Finally, the internal investigation of the fraud was effectively closed in June 2005 by decision of the Executive Council. In these circumstances, it is wrong to view the impugned decision as some form of retaliation for the complainant having prevented the Secretary-General from corrupting the investigation process.

33. Given that the complainant was a candidate for the D.1 post in a competition which the Tribunal must accept was regularly and fairly conducted, and given also that her reassignment was the direct result of her not being successful in that competition, it is impossible to view either the restructuring or the impugned reassignment decision as a hidden disciplinary measure.

34. It was said in Judgment 2510 that "an international organisation necessarily has power to restructure some or all of its departments or units, including by the abolition of posts, the creation of new posts and the redeployment of staff". The word "necessarily" in that statement indicates that that power will be implied even if it is not expressly conferred by the relevant regulations. However, that power cannot be implied if it is contrary to the regulations.

35. At the time of the complainant's appointment as Chief of IAIS and until January 2008, that is to say after her reassignment, Regulation 13.7 of the WMO Financial Regulations relevantly provided:

"Under the broader scheme of internal oversight which would include the programme evaluation mechanism, the Secretary-General shall establish an Internal Audit and Investigation Service (IAIS)."

The role of the IAIS, as specified in Regulation 13.7, was to "provide for an independent verification of financial, administrative and operational activities". Additionally, by Regulation 13.8, the IAIS was also "responsible for investigating all allegations or presumptions of fraud, waste or mismanagement". Regulation 13.9 relevantly provided:

"The Secretary-General shall appoint a technically qualified Chief of IAIS after consulting with, and obtaining the approval of, the President of WMO acting on behalf of the Executive Council. Notwithstanding Articles 9, 10 and 11 of the Staff Regulations dealing with separation from service, disciplinary measures and appeals, respectively, the Secretary-General shall likewise consult the President of WMO acting on behalf of the Executive Council and obtain his approval before separation of the Chief of IAIS."

36. The Financial Regulations were amended by the WMO Congress in May 2007 to provide for the creation of the IOO to replace the IAIS and for the appointment of a Director of IOO with substantially the same powers, duties and responsibilities as those formerly reposed in the Chief of IAIS. These amendments, which had been recommended by the Executive Council in June 2006, took effect on 1 January 2008.

37. As already mentioned, the Executive Council had resolved in June 2005 that the Secretary-General should "strengthen the internal audit service on an urgent basis". There is no inevitable inconsistency between "strengthening" a service and restructuring it. However, there is an inconsistency when restructuring involves the abolition of what is intended to be strengthened. The legal effect of the WMO Congress resolution of May 2007 was to abolish the IAIS and replace it with the IOO. The same abolition occurred, *de facto*, when the Secretary-General appointed the Director of IOO with effect from 1 February 2006 and reassigned the complainant to the new post of Chief of IAS. So much is clear from Appendix A to EC-LVIII Rep 4.1(3) which was before the Executive Council in June 2006. That document states, in relevant part, as follows:

"The new concept included the establishment of an Internal Oversight Office (IOO) to replace the Internal Audit and Investigation Service (IAIS). [...] The new organisational structure was announced by WMO Service Note No 2/2006 of 6 January 2006 and implemented on 1 February 2006." (Emphasis added)

38. The Executive Council resolution of June 2005 with respect to the strengthening of the internal audit service cannot be construed as authorising the abolition of the IAIS, the existence of which was mandated by the Financial Regulations. The whole tenor of those Regulations was not only that the Secretary-General should establish the IAIS but also that he should maintain it until it was lawfully decided otherwise. Were that not so, there would be no authority for the independent performance of those duties and responsibilities that are essential to the proper governance of an international organisation. Accordingly, any restructuring involving the abolition of the IAIS was

contrary to the WMO Financial Regulations, as they stood until January 2008, and was until then beyond the power of the Secretary-General.

39. Because the WMO Financial Regulations had not then been amended, the Secretary-General acted without authority in abolishing the IAIS and replacing it with the IOO on 1 February 2006. And as the complainant's reassignment from the same date was inextricably bound up in that course, it too was an act done without lawful authority, notwithstanding that it was purportedly authorised by the WMO President. His authorisation was given in the context of authorising a course of action that was forbidden by the Financial Regulations. Moreover, Regulation 13.9 deals with "separation from service", not separation from a post. The complainant was not separated from service on 1 February 2006; she was reassigned to a new post.

40. Notwithstanding the Executive Council's subsequent confirmation of the Secretary-General's action, his decision to reassign the complainant to the post of Chief of IAS was taken without lawful authority and the Joint Appeals Board erred in holding to the contrary. The circumstance that the Executive Council later ratified the abolition of the IAIS and the complainant's reassignment cannot overcome the fact that the decisions were unlawful at the time they were taken. As the Secretary-General's decision dismissing the complainant's internal appeal was based on the recommendation of the Appeals Board, that decision must be set aside. That being so, it is unnecessary to consider the complainant's subsidiary arguments that she was denied due process, that her reassignment breached the terms of her employment contract and that the proceedings before the Joint Appeals Board were flawed.

41. Although the decision to reassign the complainant to the post of Chief of IAS was taken without authority, it does not follow that she should be reinstated in her former post. That post was lawfully abolished when the Financial Regulations were amended to provide for the IOO and the appointment of a Director of IOO. However, she is entitled to substantial damages notwithstanding that her reassignment was to a post at the same grade.

42. Before turning to the question of damages, it is necessary to note some ancillary matters. The first is that WMO seeks the dismissal of the complaint as an abuse of process. In doing so, it refers to a number of press articles and television broadcasts which it claims are the result of a campaign conducted against it by the complainant. It also refers to legal proceedings commenced by her in national jurisdictions. Whatever may have been the motives of the complainant in actions taken subsequent to her separation from service, a matter that it is not necessary to consider in these proceedings, she has a good cause of action and the jurisdiction of the Tribunal has been regularly invoked. She is entitled to have the matter determined. Accordingly, the application by the defendant must be refused. So too, its argument that the complainant is estopped from bringing the present complaint must be rejected. That argument is based on the fact that the complainant was an applicant for the post of Director of IOO. Realistically, she was obliged to apply for the post to protect her own position. More importantly, her application could not possibly have led the defendant to assume that she was acquiescing in the abolition of her post as Chief of IAIS – the bare minimum necessary for an argument based on estoppel.

43. As mentioned earlier, the complainant seeks a public hearing and the production of documents. These applications are also rejected. To a large extent, WMO has not challenged the primary facts upon which the complainant relies to establish harassment and improper motive save, perhaps, to the extent that they are covered in documents provided by the defendant on a "confidential" basis. The Tribunal cannot have regard to material of that kind. The documents have been returned and no regard has been had to their contents. Because the primary events are largely uncontested, it is unnecessary to hold public hearings. So far as concerns the application for the production of documents, it has not been shown that they have even potential relevance to the matters raised in this complaint.

44. Two other matters should be noted. The Tribunal issues binding orders, not recommendations as sought by the complainant. Additionally, the Tribunal has no power to order a party to apologise.

45. As already indicated, the complainant is entitled to substantial damages in consequence of the unlawful decision to reassign her to the post of Chief of IAS. The reassignment was to a post with significantly diminished duties, responsibilities and status. The larger part of her former duties was transferred to the Director of IOO; she was required to report to the Director of IOO and not the Secretary-General, as was previously the case and as had been mandated by the WMO Financial Regulations. Moreover, she was deprived of that measure of security provided by Regulation 13.9 with respect to her separation from service. These matters must necessarily have resulted in harm to her professional reputation. Moreover, she was put in a position where she could do nothing

either to prevent or correct what she rightly perceived to be an unlawful decision. Further, it must have been tolerably clear to her after the Executive Council had recommended the amendment of the Financial Regulations in June 2006 that it was unlikely that her situation could or would be reversed. These matters warrant an award of material damages in the amount of 50,000 Swiss francs and moral damages in the amount of 20,000 francs. There will also be an award of costs in the amount of 8,000 francs.

DECISION

For the above reasons,

1. The Secretary-General's decision of 4 October 2006 is set aside insofar as it relates to the complainant's appeal with respect to her reassignment.
2. WMO shall pay the complainant material damages in the amount of 50,000 Swiss francs, moral damages in the amount of 20,000 francs and costs in the amount of 8,000 francs. All amounts are to be paid within 28 days of the delivery of this judgment.
3. The claim of harassment is stood over for further consideration in conjunction with the complaints filed with respect to the Secretary-General's decision of 28 September 2007. Costs relating to the claim of harassment are reserved.
4. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 16 May 2008, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Seydou Ba

Mary G. Gaudron

Dolores M. Hansen

Catherine Comtet