NINETY-SECOND SESSION

***In re* Deville and others** **Judgment No. 2097**
***In re* Gasser**

The Administrative Tribunal,

Considering the complaints filed against the World Health Organization (WHO) on 2 December 2000, and corrected on 7 March 2001 by Mr Gérard Bancal, Mr Jacques Deville, Mr Laye Doumbouya, Mr Philippe Dubos, Mr Peter Falter, Ms María Isabel Gallarzagoitia Lavilla, Mr Raimundo Gomes da Silva Arbenz, Ms Geneviève Mermin Martinez, Mr Oscar Nascimento, and Ms Maria Luisa Perreten, the WHO's reply of 11 June, the complainants' rejoinder of 12 September, and the Organization's surrejoinder of 26 October 2001;

Considering the complaint filed by Mrs Doris Gasser against the WHO on 2 December 2000 and corrected on 7 March 2001, the WHO's reply of 7 June, the complainant's rejoinder of 12 September, and the Organization's surrejoinder of 26 October 2001;

Considering the further submissions filed by the complainants on 9 October 2001 at the Tribunal's request and the Organization's comments thereon of 17 October 2001;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

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

A. The complainants are all General Services staff members at the WHO. At the material time, most of them worked in the Division of Conference and General Services (CGS). In 1995 a decision was taken to abolish a total of 167 posts at WHO Headquarters, with effect from 1 January 1996; ninety of these posts were in CGS. The Director of CGS conveyed this information to all staff members of the Division in a memorandum dated 17 July 1995. On 21 July Information Circular IC/95/65 was issued, explaining to all Headquarters staff the reasons for the abolition of posts, the consequences that could arise for staff members, the procedure to be followed in a reduction-in-force (RIF) exercise, and the anticipated time frame of the process. Information Circular IC/95/66, issued on 28 July, informed all Headquarters staff that special measures for voluntary separation from service would be taken in order to minimise the number of "forced departures".

Despite all these measures, it was foreseen that 22 staff members in CGS would have to be separated from service after the RIF exercise. As a means to avoid this, on 23 October 1995 the Director-General decided to convert 24 vacant, full-time posts in CGS into 48 half-time posts. In a memorandum of 23 October to the staff members concerned, the Director of CGS explained the process of converting the full-time posts to half-time and he also organised several meetings with them to discuss it. Staff were informed that there would be a roster created of those interested in accepting short-term contracts to supplement their half-time posts.

On 25 October 1995 the Director of CGS offered one half-time post, starting on 1 February 1996, to each staff member whose post would be abolished. They were given until 6 November 1995 to respond. Staff members who declined the offer could opt to participate in the RIF exercise. Seven of the complainants accepted the offer at that time and four of the complainants accepted offers of half-time employment after being unsuccessful in the RIF exercise.

In a memorandum dated 6 February 1996 from the Director of CGS, staff members on half-time posts were asked to indicate their interest in being offered short-term contracts which would supplement their half-time fixed-term appointment. The short-term contracts were to be offered at step one in the relevant grade. Under the WHO Rules,

staff appointed under short-term contracts were not eligible for certain allowances and indemnities or for participation in the United Nations Joint Staff Pension Fund. The exclusion from participating in the Pension Fund was removed in January 1997. By a letter of 3 July 1998 from an official in Personnel, each of the complainants was offered a conversion of their half-time, fixed-term appointment into a full-time, fixed-term appointment, effective from 1 July 1998. They were asked to express their acceptance of the offer by signing and returning a copy of the letter.

On 12 August 1998 the complainants, who had accepted the offer, wrote to the Director of the Division of Personnel asking for the possibility to have contributions made to the Pension Fund, retroactively, for the period they were under short-term contracts but not eligible to participate in the Fund. Following a series of correspondence and meetings, and having received no satisfactory response to their request, the complainants appealed to the Headquarters Board of Appeal on 13 August 1999. In addition to their claim for Pension Fund contributions, they made claims for "grade indemnities" and dependants' allowance. In its report dated 29 May 2000 the Board of Appeal concluded that the Administration had followed the rules in force concerning short-term contracts in terms of step within the grade and of the payment of allowances, and therefore recommended rejecting those claims. However, it considered the claim concerning pension fund contributions to be allowable. On 5 September 2000 the Director-General informed the complainants that, as recommended by the Board, she had exceptionally granted their retroactive participation in the Pension Fund but rejected the rest of their claims. That is the impugned decision.

B. The complainants submit that the Administration did not clearly explain the terms and conditions under which the short-term contracts would be offered. Therefore, they assumed that these contracts would be offered at their existing grade and step, with provisions for dependants' and language allowances, and with contributions made to the Pension Fund.

The WHO's treatment of them, as short-term staff members for the balance of their half-time assignments, was irregular and a violation of accepted norms of international law. They were not short-term staff members, but rather international civil servants whose fixed-term contracts had been reduced to half-time. In support of this statement they cite Article 1(d) of the Part-Time Work Convention, 1994 (No. 175), of the International Labour Organization (ILO) and contend that the WHO erred when it applied Staff Rule 1320 (relevant to short-term workers) to them. In fact, they submit that the Staff Rules make no mention of short-term contracts, only short-term staff. It is not possible for a fixed-term or permanent contract holder to be, concurrently, short-term staff, even if that person is remunerated under a short-term contract. Under the wording of the ILO's Convention, the complainants were "full-time workers affected by partial unemployment". The "extra hours" worked by the complainants should not have been regarded as separate short-term contracts, but as extensions of their already existing relationship with the Organization.

The WHO's failure to pay the complainants the same benefits and salary as paid to their fixed-term peer staff members for the work the former had performed under their so-called "short-term contracts" is a violation of the Universal Declaration on Human Rights and ILO Equal Remuneration Convention, 1951 (No. 100). Both instruments require that all workers be given equal remuneration for work of equal value. Convention No. 100 defines "remuneration" to include salary and all additional emoluments. As an international organisation the WHO is bound to uphold fundamental principles of international law and this includes the principle of equal remuneration for work of equal value. The Organization's treatment of the complainants during the period in question clearly violated this principle.

By maintaining a legal fiction - that during the period in question the complainants were mere short-term staff members during the 50 per cent of the working day that they performed the tasks under a short-term contract - and by granting them fewer benefits for the work performed thereunder than under their half-time fixed-term contracts, the WHO has been unjustly enriched. Under the Tribunal's case law, unjust enrichment is illegal and irregular.

The complainants were in law and in fact similar to other fixed-term staff members who were performing similar or equivalent duties and as a result they were entitled to all benefits, conditions of service and any other emoluments denied to them by the Organization. Although the complainants' service at the WHO between February 1996 and July 1998 was divided in half, with part of their service denoted fixed-term, and the other short-term, their true status, in fact and in law, was that of a fixed-term contract holder, similar in nature to the status held by many of their WHO colleagues. As such, the WHO's division of their employment status, into two different contract types, was an illegitimate use of a legal fiction which caused the unfair denial of a number of benefits,

protections and privileges under the short-term contract, but which were accorded to the complainants for their fixed-term, part-time service. In the complainants' case, the nature of their work made it impossible to ascertain any difference between their functions and status while acting under their part-time fixed-term capacity and while acting under their short-term contracts. Under the Tribunal's case law, the reality of the working contract should control the actual, existing terms of the relationship, not the form of the written document.

Remunerating the complainants under the "short-term contracts" at a grade or step lower than that of their half-time fixed-term contracts violated Staff Rule 570. The failure to pay the complainants a pro-rata end-of-service grant upon reduction of their status from full-time to half-time in February 1996 violated Staff Rule 375 and provided another unjust enrichment to the Organization.

The complainants request the production of numerous documents relating to their contract status during the period in question. They ask the Tribunal: to order the full restoration and payment of the emoluments and benefits of which they had been wrongfully deprived between February 1996 and July 1998; to award them a pro-rata end-of-service grant pursuant to WHO Staff Rule 375; to award them 15,000 Swiss francs in costs and legal expenses; to award them damages in the amount of 50,000 francs per complainant for the serious moral and emotional injuries suffered as a result of the loss of benefits and emoluments; payment of interest on any awards of six per cent per annum from 1 February 1996 through the date such awards are fully and finally paid; and any other relief that the Tribunal deems necessary, just and equitable.

C. The WHO submits that the complainants may not validly challenge the terms of contracts which they knowingly and freely accepted; the stability of legal relationships requires that contractual terms are inviolate.

By doing all that it could to avoid separating from service its staff members - including offering the option of half-time posts - the WHO did all that was required of it under its Rules. Although the complainants were given preferential treatment in the awarding of short-term contracts, the Organization had explained that these contracts could only be offered to them if the cost to the WHO was not more than recruiting any other short-term staff member. Thus, participation in the Pension Fund was excluded and the salary was set at step 1 in the grade.

The Organization argues that each short-term contract offered to the complainants was distinct from their fixed-term appointment, that the short-term contracts were governed by the rules applicable specifically to short-term contracts, and that the contracts offered complied with these rules. Any argument to the contrary is not supported by the Staff Rules, the terms of the contracts, or the Tribunal's case law. Their acceptance of the short-term contracts did not turn their half-time fixed-term appointment into a full-time fixed-term appointment. Staff Rule 340 excludes the payment of the dependants' allowance to short-term staff so the complainants' short-term contracts did not provide for it.

If the complainants believed their contracts to be inequitable, they could have rejected them. However, they chose freely to accept the contractual terms offered to them. Each contract referred to the appointment as a short-term appointment, issued in accordance with the conditions of employment for short-term staff. They cannot now argue that they had assumed that the remuneration under the short-term contracts would be the same as for their fixed-term contracts. By arguing that they were "in fact and in law" fixed-term staff members, the complainants are seeking a retroactive revision of their contractual situation between February 1996 and June 1998.

While the complainants always performed the same duties under their half-time fixed-term appointment, in most cases their duties under their short-term contracts varied. And while it might have happened that a complainant performed comparable duties under both contract types, there is nothing improper in offering a contract to a staff member whose experience makes him or her suitable for the work, or in taking his or her preferences into account.

ILO Convention No. 175 is not binding on international organisations; it is only binding on States who are a party to it. Moreover, it is not relevant to the situation at the WHO: Convention No. 175 concerns the "temporary" reduction in normal working hours, but the situation at the WHO was of a lasting nature.

There was no breach of the principle of equal remuneration for work of equal value. The two types of contract confer different rights and therefore create different situations in law and in fact. There was no discrimination here; the complainants received the same treatment as their colleagues in the same situation in fact and in law.

The WHO was not "unjustly enriched" through its employment of the complainants under short-term contracts. The

concept of unjust enrichment refers to the retention of money or benefits which belong to someone else, and this was not the case here.

There was no violation of Staff Rule 570. The complainants were reassigned from a full-time post to a half-time post of the same or higher grade. Since they suffered no reduction in grade, Staff Rule 570 is not applicable. That provision is also not applicable to their short-term contracts, as under those contracts they did not hold posts. Staff Rule 375 (on end-of-service grants) does not apply in the case at hand.

D. In their rejoinders the complainants refute the Organization's argument that they freely accepted the half-time post proposals. They submit that they were presented with no real alternatives and were pressured to accept the Administration's proposals. Moreover, the WHO offered no communication, counselling or explanation of the terms and conditions of the proposals and required the complainants to respond within a week.

They press their request for the production of documents, in particular for the Information Circulars issued on 21 and 28 July 1995 which allegedly explained the full consequences of the restructuring measures. They submit that the different options were never fully explained to them so they took their decisions without a full and complete understanding of the terms, conditions, and consequences of each option. They had accepted the proposal for half-time employment on the assumption that the short-term assignments would be remunerated in keeping with their fixed-term appointment terms and conditions and they deny that they had received prior notice of the different terms and conditions which would apply to any short-term appointment. Even the Board of Appeal questioned whether the complainants had fully understood the real and practical effect that accepting the proposals would have on their financial situation. In the absence of the Administration's express statement otherwise, the complainants were reasonably entitled to assume that the short-term assignments would be offered on comparable terms as their fixed-term assignments.

The Administration's decision to restore the complainants' entitlement to the Pension Fund undermines its position and shows that the Administration intended to treat them not as short-term staff, but as fixed-term staff members affected by partial unemployment.

The complainants state that their sole interest lies in being properly remunerated for the work they performed, in accordance with their true positions as fixed-term staff members. They are not seeking to convert the nature of the contract from short-term to fixed-term, but rather they seek to uphold the intended and implied terms and conditions.

They submit that there is a difference between the terms "short-term contracts" and "short-term staff" and that it is significant for understanding how the Administration erred in applying Rule 1320. The Administration sought to treat their short-term assignments as "short-term contracts"; but such contracts are held by "short-term staff" who hold temporary positions of no tenure with the Organization. They reiterated that they were, in fact, full-time workers affected by partial unemployment as defined under the ILO Convention. Regardless of the "label" the WHO attached to their assignments, in reality they continued to perform the same or equivalent work under both their fixed-term and short-term contracts, with the only appreciable difference being the "labels" assigned and the lower step allocation and emoluments paid under the short-term assignments.

E. The WHO has submitted with its surrejoinders the two Information Circulars requested in the rejoinders. It reiterates that the complainants were duly informed why the half-time posts would be offered and each complainant was free to decide not to accept the offer of such a post. As evidence, the Organization points out that not all of the complainants had initially opted for the half-time contracts but instead some had been unsuccessful participants in a RIF exercise before they applied for a half-time post. At no point were the complainants under duress to accept the offer of a half-time post. They were also made fully aware of the implications of their choice, by the use of written communications as well as various meetings held on the subject.

The Organization provides information on the types of short-term contracts offered to each complainant as proof that the short-term contracts were often not for the same duties as the part-time, fixed-term contracts. It states that "virtually without exception" the nature, location, or level of the work differed.

Regarding the complainants' argument on the decision to allow participation in the Pension Fund, the WHO states that the Director-General's decision was taken as an exceptional measure without any legal obligation to do so. It was taken in good faith and as a gesture of goodwill to long-serving staff.

F. In further submissions the complainants state in answer to a question put by the Tribunal that they do not object to the Tribunal joining the two cases (*in re* Deville and others and *in re* Gasser).

G. In its comments the WHO says that it has no objection to any joinder of the two cases by the Tribunal.

CONSIDERATIONS

1. The case of Mrs Gasser differs in no material respect from the case of Mr Deville and others and had been, together with the latter, the subject of a single joint appeal before the Headquarters Board of Appeal. The Tribunal orders that they be joined and disposed of by a single judgment.

2. In 1995 the complainants were all General Services staff members of the WHO. At that time the Organization was experiencing serious financial difficulties. The posts occupied by the complainants were in danger of being abolished. Rather than expose its staff to the uncertainties of a RIF process, the Administration converted twenty-four posts into half-time posts and offered those interested the possibility of a fixed-term appointment at half-time. This would allow two staff members to occupy on a half-time basis a number of posts which had previously been held by only one staff member, in effect a form of "job-sharing". Some complainants accepted this arrangement immediately while others chose first to try their luck at the RIF process but when they were unsuccessful in the latter, they each applied for and obtained one of the half-time posts. The upshot was that by early 1996 each of the complainants, who had previously held a full-time fixed-term appointment, now held a half-time fixed-term appointment.

3. Over the ensuing two and a half years all of the complainants were offered, on a preferential basis, a series of short-term part-time appointments by the WHO which they carried out in the time which was now available to them because their fixed-term appointments were only at half-time. Under applicable WHO staff rules "fixed-term" appointments are, as their name implies, of limited duration but for one year or more. "Short-term" appointments are also for a limited term, but their duration is shorter than one year and may be in practice very much less.

4. The short-term contracts offered to the complainants were in every case at the lowest grade and step for the position being filled; they also did not carry with them any pension rights or allowances for family status or language proficiency. As a result when performing under the part-time short-term appointments, the complainants were being remunerated for the "short-term" part of each day's work according to a scale different from, and lower than, the scale used for the work performed (sometimes for the identical job) during that part of the day when they were working under their half-time "fixed-term" appointments.

5. This situation continued until July 1998 when, its finances having improved, the WHO restored all the complainants to their full-time fixed-term status. In August 1998 the complainants asked in writing that their eligibility to participate in the Pension Fund, in respect of their earnings under their short-term appointments up to January 1997 (pension contributions had been resumed after that time), be re-examined. In May 1999 the complainants complained about the rates of remuneration received by them under their short-term contracts and the refusal to award them dependants' allowance and "grade indemnities". No satisfactory resolution having been found, the complainants appealed to the Board of Appeal.

6. The Board of Appeal found the joint appeals to be receivable, a position not disputed by the Organization. It recommended granting full pension participation for the complainants in respect of their "short-term" contracts but further recommended the dismissal of their other claims. These recommendations were accepted by the Director-General in the decision now impugned.

7. The complainants seek payment of the sums which they say they should have received when working under their short-term appointments. They also seek damages, costs and other consequential relief.

8. The principal plea advanced by the complainants is that, because they were holders of fixed-term, half-time appointments - and therefore had status as regular staff members of the WHO - the additional work that was given to them could not be and was not, in law, the subject matter of separate short-term appointments or contracts but, on the application of general principles of international civil service law and WHO Staff Rules, was merely an extension of their fixed-term appointments.

9. They further argue that they do not conform to the definition of "part-time worker" found in the ILO Part-Time Work Convention, 1994 (No. 175). They also claim that the Organization has breached the rules requiring payment of equal remuneration for work of equal value and has enriched itself unjustly at their expense. The contractual nature of their short-term appointments was in their view simply a sham designed to mask the true nature of their status as fixed-term staff, and the contracts themselves are invalid, having been entered into under economic duress.

10. It is this last argument which brings us to the heart of the difficulty faced by the complainants in this matter. In respect of each short-term appointment taken up by them, they entered into a written contract specifying the duration, remuneration, grade, step and other pertinent conditions applicable to them. They do not deny that they were paid exactly as stated in the contract documents. If the contracts are valid and enforceable and not in breach of any applicable staff rule or principle of international civil service law, the Tribunal has no power to reform them or to remake the bargain which the parties themselves have chosen to make.

11. Furthermore, the complainants, having taken the benefit of the short-term appointments offered to them, have a heavy burden to overcome if they are to argue successfully that the Tribunal should now treat the contracts as being null, for it is now impossible to replace the parties in the position they were in at the time the bargain was struck. They must show either that their short-term appointments violated some fundamental and overriding principle of law or that their apparent consent thereto was vitiated. They have failed to do so.

12. First, while it is unusual to find an employee working simultaneously for a single employer under two different contracts of employment, there is nothing inherently illegal about such an arrangement. Nor have the complainants pointed to any applicable staff rule which would deny the Organization the right to do what it did.

13. In fact, Staff Rule 1320 makes it quite clear that the appointment of short-term staff is exempted from the application of any other staff rule:

"1320. SHORT-TERM STAFF

The Director-General may appoint short-term staff for conference and other short-term service without regard to the provisions of other sections of the Staff Rules."

14. What of the general principles of international civil service law invoked by the complainants? Other than generalised assertions that the Organization has acted wrongfully, they can point to no instance in the case law which can lend them any comfort. In fact, the Tribunal has consistently held that it will not interfere with the right of an organisation to manage its affairs and to settle by agreement with the members of its staff the terms of the latter's employment.

15. Thus in Judgment 1450 (*in re* Kock and others) the Tribunal upheld the right of an organisation to appoint auxiliary staff on short terms. It said:

"23. However municipal law on the grant of fixed-term contracts may vary from country to country, the fact is that in the international civil service such contracts are common and the policy is seen as a proper and even necessary method of administration. So the EPO acted unimpeachably in resorting to fixed-term contracts to get auxiliary work done and so ease the undue rigidity of its staff structure. True, especially when there is not full employment, the decision not to renew a contract on expiry may cause hardship. But that is why, in keeping with precedent, the Tribunal will in each case look to the circumstances in which the decision not to renew or not to convert to permanent appointment may have come about."

16. Similarly, in Judgment 1938 (*in re* Alvarez Vigil) the Tribunal dismissed, in the following terms, the claim of a person who had worked for many years on a series of short-term contracts:

"8. With regard to the very short periods during which he worked for the Organization under temporary advisor contracts, namely from 25 to 30 July 1982, 7 September to 4 October 1987, 12 to 22 June 1988 and 3 to 7 October 1988, the complainant provides no information which would allow him, several years after the material facts, to challenge the benefits which he received. In practice he is seeking to obtain a revision of the whole of his career from 1976 to 1996. But he himself accepted the contractual conditions offered to him. He did not challenge the decision taken in 1979 not to renew his fixed-term appointment and not to convert it into a permanent appointment. Moreover, he offers no legally valid argument to challenge the way he has been treated since 1979. His claims

must therefore be dismissed ..."

17. The complainants' attempt to invoke a number of international conventions out of context and in a way which was never intended, is futile. They cite the definition given in the ILO Part-Time Work Convention to show that they are not part-time workers within the meaning of that document. They may not be; the Tribunal does not have to decide the point. The Convention itself requires the States who adhere to it to establish certain guarantees for persons who are part-time workers as defined, and it is of no avail to show that the Convention does not apply to the case.

18. The argument based on the principle which guarantees equal remuneration for work of equal value is likewise without merit. The principle of equal remuneration is designed to prevent discrimination by employers between employees and to ensure that persons performing different work of the same or similar value shall receive equal remuneration. The Organization is right to submit that its most common application is to the classification or grading of jobs. What is perfectly clear, however, is that that principle was never intended to apply so as to give rise to a claim by an individual to be paid at the same rate for all work which he or she performs: differential rates for work performed under different conditions, such as overtime to take a common example, are not discriminatory. In the present case there is nothing improper in the WHO's paying lower rates to persons such as the complainants doing temporary work on a short-term basis.

19. The complainants also argue that their contracts are voidable on general principles of contract law. They suggest error and fraud or sham but produce no evidence which would lend any colour of right to those submissions. Their main contention on this plea is that the contracts are a nullity because they, the complainants, entered into them under duress. They were, they say, in a condition of economic fragility which gave them no choice but to accept the terms of the contracts which were offered to them. It is, of course, the case that the short-term appointments were of great economic benefit to the complainants and the fact that they had accepted a reduction of their fixed-term contracts to half-time made them eager to accept any additional source of income which might be offered. But that is not a ground for nullifying a contract. Most contracts are entered into because both parties think it is to their economic advantage to do so. Where there is great disparity in bargaining power, as is the case here, the law will impose constraints upon the more powerful. In the international civil service that is one of the functions of the staff rules, and where these are inadequate, the Tribunal will intervene to redress the balance through the application of general principles of international civil service law. But, neither the Staff Rules nor the application of those general principles have been in any way breached by the Organization in this case. There was nothing unconscionable, quite the contrary, in the way the WHO treated the complainants and the claim for the nullity of the short-term appointment contracts entered into by them must, therefore, fail. It is noteworthy that the true source of the "economic duress" to which the complainants say that they were subjected was the fact that their full-time fixed-term contracts had been replaced by half-time fixed-term contracts, but that was a situation which they themselves accepted and which they did not contest at the time, and do not now, and the time for doing so has long since expired.

20. Furthermore, the existence and validity of the contracts is a complete bar to the complainants' plea of unjust enrichment. The doctrine of unjust enrichment finds its origins in the law of quasi-contract, and the existence of a valid contract between the parties, covering the very matters which are the subject of the claim, excludes any claim of unjust enrichment. It is likewise with the plea that the complainants suffered a reduction in grade contrary to the provisions of Staff Rule 570; quite apart from the fact that there was no reduction in grade, that rule does not exclude the possibility of a consensual reduction in grade, and the complainants entered into short-term contracts for employment in positions at lower grades than those which they occupied on a half-time basis.

21. In a subsidiary claim, the complainants ask to be given a *pro rata* end-of-service grant pursuant to Staff Rule 375. That grant is payable to a staff member holding a fixed-term appointment whose appointment is not renewed after completing ten years of service. That is not what happened to the complainants when each of them was reassigned from a full-time to a half-time post in early 1996. Quite apart from the fact that many of the complainants had not completed ten years' service, they were each offered a half-time post, which they accepted, and they therefore continued in service with the WHO as staff members. Thus, this claim also fails.

22. Before concluding, there are two matters which the Tribunal must take up. First, the complainants have asked the Tribunal to order the WHO to produce a vast array of documents relating to its hiring practices generally in an apparent attempt to demonstrate that the Organization has acted illegally or unfairly in other cases. This is how they describe the requested documents:

"Copies of all contracts or appointments, short-term, fixed-term, or otherwise, granted to all of the Conference and General Service staff members (including without limitation the Complainants, external personnel, external enterprises, etc.) during the period from February 1996 and July 1998."

23. The Tribunal will not countenance this type of "fishing expedition". It can only deal with complaints filed in accordance with its Statute and the Rules, and the materials presently before it are fully adequate to allow it to dispose of the present case; it will not embark on a general inquiry extending beyond the complaint actually before it.

24. Finally, the Tribunal has dealt with this whole matter on the basis that the complaints are receivable since the Organization has not claimed otherwise and the Board of Appeal found the appeal to be so. The Tribunal, however, does entertain considerable doubt on this point, and it is entitled on its own motion to hold that a complaint is irreceivable. But since it concludes for the reasons stated that the complaints before it are, in any event, without merit, it is not necessary to dwell further on the point.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 9 November 2001, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2002.