



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 403

Case Nos. 385: GRETZ
386: STRINI
387: LEGRAND
414: LEGRAND
415: STRINI

AGAINST: The United Nations
Joint Staff Pension
Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Roger Pinto, Vice-President;
Mr. Endre Ustor; Mr. Jerome Ackerman, alternate member. The presence and
participation of an alternate member ensured that the panel would always have three
members, and could avail itself of the alternate's special knowledge of the large
number of details which characterize these cases;

Whereas, on 23 May 1986, Mr. Antonio Gretz, the recipient of a retirement
benefit paid by the United Nations Joint Staff Pension Fund, filed an application
dated 11 April 1986, in which he requested the Tribunal:

"MAY IT PLEASE the presiding member to agree to the holding of oral
proceedings in this case.

AND MAY IT PLEASE the Tribunal:

1. To declare itself competent in this case;
2. To declare and judge the application receivable;
3. To order the rescission of the decision adopted by the Standing
Committee of the United Nations Joint Staff Pension Fund, acting on behalf of
the Board, at its 163rd meeting, held on 9 August 1985, to uphold the decision

of the Secretary to apply to the Applicant the revised pension adjustment system, involving a reduction by 1.5 percentage points of the first cost-of-living adjustment payable after 1 January 1985;

4. Accordingly, to order payment by the Fund to the Applicant, with effect from 1 January 1985, of the periodic benefits due to him, without subjecting them to the reduction mentioned in paragraph 3 above, minus any payments made under this heading for periods subsequent to 31 December 1984;

5. To award the Applicant, as costs, a sum payable by the Respondent, assessed at the time of the submission of this application at three thousand (3,000) United States dollars, pending completion of the proceedings."

Whereas, on the same day, Mr. Albert Louis Legrand, also the recipient of a retirement benefit paid by the United Nations Joint Staff Pension Fund, filed an application containing the same pleas;

Whereas, on the same day, Mr. Roger Joseph Strini, also the recipient of a retirement benefit paid by the United Nations Joint Staff Pension Fund, filed an application, in which he requested the Tribunal:

"MAY IT PLEASE the presiding member to agree to the holding of oral proceedings in this case.

AND MAY IT PLEASE the Tribunal:

1. To declare itself competent in this case;
2. To declare and judge the application receivable;

3. To order the rescission of the decision adopted by the Standing Committee of the United Nations Joint Staff Pension Fund, acting on behalf of the Board, at its 163rd meeting, held on 9 August 1985, to uphold the decision of the Secretary to apply to the Applicant the revised pension adjustment system, involving a reduction by 1.5 percentage points of the first cost-of-living adjustment payable after 1 January 1985, together with a further reduction resulting from the impact of the annualization of the adjustment system on the prorating formula;

4. Accordingly, to order payment by the Fund to the Applicant, with effect from 1 January 1985, of the periodic benefits due to him, without subjecting them to the reductions mentioned in paragraph 3 above, minus any payments made under this heading for periods subsequent to 31 December 1984;

5. To award the Applicant, as costs, a sum payable by the Respondent, assessed at the time of the submission of this application at three thousand (3,000) United States dollars, pending completion of the proceedings."

Whereas, on 23 December 1986, Mr. Albert Legrand filed a new application in case No. 414, in which he requested the Tribunal:

"MAY IT PLEASE the presiding member to agree to the holding of oral proceedings in this case.

AND MAY IT PLEASE the Tribunal:

1. To order the joinder of this case with cases Nos. 385 to 387;
2. To declare itself competent in this case;
3. To declare and judge the application receivable;
4. To order the rescission of the decision adopted by the Standing Committee of the United Nations Joint Staff Pension Fund, acting on behalf of the Board, at its 165th meeting, held on 18 June 1986, to uphold the decision of the Secretary to apply to the Applicant the revised pension adjustment system, involving a reduction by 1.5 percentage points of the first cost-of-living adjustment payable after 1 January 1985, thereby, for the first time since 1 January 1985, causing him to incur a monetary loss in the second quarter of 1986;
5. Accordingly, to order payment by the Fund to the Applicant, with effect from 1 January 1985, of the periodic benefits due to him, without subjecting them to the reduction mentioned in paragraph 4 above, minus any payments made under this heading for periods subsequent to 31 December 1984 [on the understanding that monetary loss was not incurred before 1 April 1986];
6. To award the Applicant, as costs, a sum payable by the Respondent, assessed at the time of the submission of this application at four thousand five hundred (4,500) French francs, pending completion of the proceedings."

Whereas, on 23 December 1986, Mr. Roger Joseph Strini filed a new application in case No. 415 containing the same pleas, with the exception of the fourth plea, which reads as follows:

"4. To order the rescission of the decision adopted by the Standing Committee of the United Nations Joint Staff Pension Fund, acting on behalf of the Board, at its 165th meeting, held on 18 June 1986, to uphold the decision of the Secretary to apply to the Applicant the revised pension adjustment system, involving a reduction by 1.5 percentage points of the first cost-of-living adjustment payable after 1 January 1985, thereby causing him to incur, for the first time since 1 January 1985, a monetary loss in the second quarter of 1986, together with a further reduction resulting from the impact of the annualization of the adjustment system on the prorating formula, also causing him to incur, for the first time since 1 January 1985 a monetary loss in the second quarter of 1986";

Whereas the Respondent filed its answers on 25 February 1987;

Whereas the Applicants filed written observations on 30 April 1987;

Whereas oral proceedings were held on 1 and 2 June 1987 in Geneva;

Whereas the Tribunal decided on 5 June 1987 to postpone consideration of these cases until the autumn session;

Whereas the Applicants informed the Tribunal on 7 October of the sums requested as costs;

Whereas, on 7 October 1987, Mr. André Chakour applied to intervene in cases Nos. 387 and 414;

Whereas, on 20 October 1987, the Respondent filed comments on the application for intervention;

Whereas, on 26 October 1987, the Tribunal asked the Respondent a question to which it replied on 27 October 1987;

Whereas, on 3 November 1987, the Applicants submitted comments on the reply given by the Respondent;

Whereas the facts in the cases are as follows:

Mr. Antonio Gretz, Mr. Albert Legrand and Mr. Roger Joseph Strini are the recipients of retirement benefits paid by the United Nations Joint Staff Pension Fund.

The Applicants having submitted the required proof of their country of residence, the pensions paid to them are subject to adjustments calculated in local currency, according to the system of adjustment adopted by the United Nations General Assembly in its resolution 33/120 of 19 December 1978 and modified by resolution 35/215 of 17 December 1980. Under this system, each beneficiary is entitled to the greater of the following two amounts:

"(a) One in United States dollars, which will be adjusted periodically to reflect changes in the United States Consumer Price Index;"

and

"(b) The other in local currency, which will be adjusted periodically to reflect changes in the Consumer Price Index in the beneficiary's country of residence" (A/33/9, annex V, para. 3).

In November 1984, the Joint Staff Pension Board, in its report to the United Nations General Assembly at the Assembly's thirty-ninth session, recommended, among other measures aimed at improving the actuarial balance of the Fund, changes in the method used to determine the initial amount of the pension and its subsequent adjustment under the two-track system referred to above (A/39/9, paras. 38-48). In its resolution 39/246 (section I) of 18 December 1984, the General Assembly adopted the following measures:

"1. ...

"(b) The periodicity of adjustment of benefits in payment for changes in the cost of living shall be reduced from twice a year to once a year, subject to the modalities set out in annex X to the report of the United Nations Joint Staff Pension Board;

"(c) On the first occasion after 1 January 1985 when a benefit in payment is to be adjusted for a change in the cost of living, the adjustment shall be reduced by 1.5 percentage points, ..."

According to the adjustment system in force prior to the introduction of the changes stipulated by the General Assembly in its resolution 39/246 of 18 December 1984, the pension of the Applicant Gretz would have been adjusted on 1 April 1986 by 5.4 per cent, in accordance with the movement of the Consumer Price Index (CPI) during the period under consideration for that purpose. Following the above-mentioned change, the percentage had to be reduced by 1.5 percentage points, giving him an adjustment of only 3.9 per cent. As a result of this same change, the pension of the Applicant Legrand, which would have been adjusted on 1 April 1986 by 5.4 per cent, was reduced by 1.5 percentage points, giving him an adjustment of only 3.9 per cent, while the pension of the Applicant Strini, which would have been adjusted on 1 April 1985 by 6.7 per cent, was reduced by 1.5 percentage points, giving him an adjustment of only 5.2 per cent.*

The Applicant Strini is also contesting the change stipulated by the General Assembly in paragraph 1 (b) of resolution 39/246, cited above, which limited the periodicity of adjustment of benefits in payment to once a year instead of twice a

* It should be noted that, at the time the Applicant Gretz's application was filed, the Applicant was not yet entitled to the adjustment, which was to be applied on 1 April 1986.

year (every six months) and the revised percentage, prorated according to the month of a beneficiary's separation, which was applied to his pension. Under the old system, the Applicant would have received 12/12 of the adjustment normally due him (having left the Organization in April 1984), whereas under the new system he received only 11/12.

Within 30 days of receipt of their statement of benefits for the second quarter of 1985, dated 21 March 1985, the Applicants addressed a letter to the Secretary of the Board, requesting the Standing Committee to review the decision by the Secretary of the Board to apply to their individual cases the reduction of 1.5 percentage points under the revised pension adjustment system. At its 163rd meeting, held on 9 August 1985, the Standing Committee decided, in its report, to uphold the decision by the Secretary of the Board, on the ground that it was a decision that he was bound to make pursuant to section I, paragraph 4, of General Assembly resolution 39/246.

By a letter dated 10 December 1985, the Secretary communicated to the Applicants the decision of the Standing Committee taken on behalf of the Board to uphold the decision by the Secretary of the Board.

On 23 May 1986, the Applicants filed the above-mentioned applications in cases Nos. 385, 386 and 387.

At its 165th meeting, held on 18 June 1986, the Standing Committee of the United Nations Joint Staff Pension Board considered the requests for a review of the decision by the Secretary of the Pension Board regarding the application, to the cases of the Applicants Strini and Legrand, of the reduction by 1.5 percentage points of the adjustment under the pension adjustment system as revised by the General Assembly, which entered into force on 1 January 1985 (document JSPB/G.4/Rev.12/Add.1).

The Standing Committee decided to uphold the decision of the Secretary of the Board on the ground that it was a decision that the Secretary was bound to make pursuant to section I, paragraph 4, of resolution 39/246, adopted by the United Nations General Assembly on 18 December 1984.

By a letter dated 24 September 1986, the Secretary of the Fund informed the Applicants Strini and Legrand of the Board's decision. On 23 December 1986, the two Applicants filed the applications mentioned above in cases Nos. 414 and 415.

Whereas the Applicants' principal contentions are:

1. The decision to apply to the individual cases of the Applicants the revised pension adjustment system involving a 1.5 per cent reduction in the first adjustment due after 1 January 1985 was taken in violation of their acquired rights.
2. The new annualized method of prorated adjustment was adopted in violation of the Applicant Strini's acquired rights.
3. Article 26 of the Regulations of the Fund was violated, since the General Assembly modified the pension adjustment system to offset the actuarial deficit, at least in part.

Whereas the Respondent's principal contentions are:

1. The Applicants' arguments based on "acquired rights" and article 26 of the Fund's Regulations are not relevant to this case.
2. The 1.5 percentage point reduction was a reasonable measure, adopted with prospective effect.
3. The new method of prorated adjustment of the Applicant Strini's pension was also a reasonable measure, adopted with strictly prospective effect.

The Tribunal, having deliberated from 4 May 1987 to 5 June 1987 in Geneva and from 12 October 1987 to 12 November 1987 in New York, now pronounces the following judgement:

I. Since the applications submitted in cases Nos. 385, 386, 387, 414 and 415 relate to the same measures and contain the same pleas, the Tribunal orders the joinder of these cases.

II. The Tribunal has received an application for intervention under article 19 of its Rules. It notes that the Applicant is the recipient of a retirement benefit paid by the United Nations Joint Staff Pension Fund. The judgement of the Tribunal may affect his entitlements. His application for intervention is therefore admissible. It will have the same outcome as the principal applications.

III. The Applicants, all recipients of retirement benefits paid by the United Nations Joint Staff Pension Fund (hereinafter referred to as the Fund), contest the application to them by the Fund of the changes made by the United Nations General

Assembly in the system of adjusting benefits according to changes in the cost of living.

IV. These changes were approved by the United Nations General Assembly in its resolution 39/246 of 18 December 1984, on the basis of recommendations by the United Nations Joint Staff Pension Board. The first change results in reducing the periodicity of adjustment of benefits in payment for changes in the cost of living from twice a year to once a year. The purpose of the second change is to reduce by 1.5 percentage points the first adjustment to be made after 1 January 1985. This reduction will continue to have an effect on subsequent periodic adjustments, which will be calculated on the basis of the amount reduced by 1.5 percentage points in 1985.

V. According to the General Assembly resolution, the purpose of these measures is to "reduce or eliminate the actuarial imbalance of the Fund ... and thereby to secure an adequate level of benefits for beneficiaries". To that end, "a co-operative effort by member organizations, participants and beneficiaries is required".

VI. In support of their requests the Applicants invoke inter alia article 26 of the Fund's Regulations on deficiency payments, in which paragraph (a) states:

"In the event that an actuarial valuation of the Fund shows that its assets may not be sufficient to meet its liabilities under these Regulations, there shall be paid into the Fund by each member organization the sum necessary to make good the deficiency".

The Applicants emphasize that the measures taken have the express purpose of reducing the actuarial imbalance of the Fund. They contend that therefore article 26 applies.

VII. As the Tribunal has had occasion to state (Judgement No. 360: Taylor), the measures envisaged in article 26 are not the only ones that would enable the Fund to maintain its assets at an adequate level. They are not exclusive in character. There are other possible measures, such as an increase in the rate of contribution, economy measures relating to the management of the Fund or a reduction in benefits. The package of measures to be recommended to the General Assembly depends on general policy, which is for the Fund to formulate.

VIII. The Applicants contend that the decisions they are contesting have been taken in violation of article 26 of the Regulations. The Tribunal must determine

whether article 26 of the Regulations confers upon participants a right, which if violated, can invalidate measures, other than those under that article, taken with a view to making good a deficiency in the Fund's assets.

IX. In this regard, the Tribunal considers that article 26 does not confer on participants a right directly applicable that can be invoked by the Applicants. There is no basis for the Applicants' contention that the violation of article 26 would render invalid specific measures aimed at making good a deficiency in the Fund's assets. The validity per se of each such measure must be evaluated by the Tribunal.

X. The Applicants contend that the measures in question were taken in violation of their acquired rights. The Tribunal considers, as it did in its Judgements Nos. 378 and 379 (1986), that the doctrine of acquired rights is not applicable, since the amendments in question have no retroactive effect.

XI. On the other hand, the Tribunal considers, as it did in the above-mentioned cases, that when the Fund makes changes in the pension adjustment system it has an obligation to respect certain fundamental principles. The Fund has, moreover, expressly recognized this.

XII. In its Judgement No. 379 the Tribunal expressed itself in the following terms:

"It [the Tribunal] holds that the revisions in the pension adjustment system are applicable without retroactivity to all beneficiaries of retirement pensions. These modifications must not be arbitrary. They must be reasonable and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members. They may not be used for purposes other than the protection of the purchasing power of retired staff members - nor with greater reason can they be allowed to result in forfeiture or deprivation" (para. 30).

XIII. The application of these criteria to the decisions contested by the Applicants leads the Tribunal to recognize the validity of the 1.5 percentage point reduction made in the first adjustment payable after 1 January 1985. This economy measure is justified to prevent an increasingly serious diminution of the Fund's assets, making it impossible to assure adequate benefits for beneficiaries. The measure cannot be considered unreasonable.

XIV. Similarly, the Tribunal considers that the annualization of the pension adjustment system does not reduce the benefits due to beneficiaries to an extent

that can be considered unreasonable, in view of the change made in the trigger point for the adjustment.

XV. The Tribunal notes, however, that the Respondent defines this reduction as a "one time reduction, in other words it is applied once and only once". In approving the reduction of 1.5 percentage points in the first pension adjustment occurring after 1 January 1985, the Tribunal was very much aware of the fact that this measure was described by the Fund as a one-time reduction. The Tribunal also took into account the fact that this measure was proposed to the General Assembly in this light.

This assertion by the Fund signifies, in the Tribunal's view, that the Fund, having recognized firstly the arbitrary character of the measure, in that it does not take account of the set of factors which usually determine changes in adjustments, and secondly the undesirable character of this kind of reduction, will in the future refrain from proposing reductions of this type. This is because such a reduction is on the borderline of what the Tribunal can consider reasonable in the light of its earlier decisions.

XVI. Lastly, the Tribunal emphasizes that the burden of the measure in question is borne exclusively by the retirees. It finds it quite inequitable that member organizations should not also be asked to participate in the financial effort required by the actuarial deficit.

XVII. As regards expenses and costs, the Tribunal decides that there is no reason to accede to the pleas of the Applicants when their application has been rejected.

XVIII. However, in accordance with the established practice of the United Nations, the Tribunal decides that the Respondent shall pay, upon substantiation, the travelling expenses and subsistence expenses in Geneva of counsel for the Applicants, incurred when he represented them in the oral proceedings.

XIX. For the foregoing reasons, the Tribunal decides:

- the applications are rejected;
- the application for intervention, though formally receivable, is rejected on the merits;
- the Respondent shall pay to the Applicants, upon substantiation, the travelling expenses and subsistence expenses in Geneva of their counsel, incurred at the time of the oral proceedings.

XX. All other pleas of the Applicants are rejected.

(Signatures)

Samar SEN
President

Endre USTOR
Member

New York, 12 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary

STATEMENT BY MR. SEN

I have signed the judgement as its legal foundation seems unassailable but should like to add the following:

The crucial question in these cases is how the 1.5 per cent reduction in pension adjustment, authorized by the General Assembly in its resolution 39/246 of 18 December 1984 without a vote, was to be applied after the reduction due "on the first occasion after 1 January 1985" had been carried out. One view is that the amount reduced by one-time operation will be the basis on which all future adjustments will be worked out; the other view is that the reduction effected "on the first occasion after 1 January 1985" will have no effect for future adjustments i.e. for pension adjustments subsequent to 1986, they should be applied on pensions as they would have been had there been no reduction as a consequence of the General Assembly resolution 39/246.

The relevant parts in the Report of 1984 of the United Nations Joint Staff Pension Board to which the General Assembly's resolution relates reads:

"47. Secondly, the Board recommends that the first cost-of-living adjustment that becomes due in each country after 1 January 1985 be reduced by 1.5 percentage points. The reduction would apply to both existing and new benefits, except that it would not apply to the minimum benefits under the Regulations. The resultant saving is estimated at 0.38 per cent of pensionable remuneration.

48. The last-named recommendation is quite arbitrary and, as such, is undesirable in principle. None the less the Board has decided to include it in the package of economy measures it is recommending to the General Assembly in an endeavour to ensure the virtual elimination of the actuarial imbalance as shown in the latest valuation. At the same time the Board points out that the recommended reduction would not be made up by subsequent cost-of-living adjustments and that it would thus reduce all periodic benefits, over the life-time of all participants and their surviving spouses, by about 1.5 per cent." (emphasis added)

The Tribunal's judgement tacitly acknowledges that the General Assembly endorsed and approved the arrangement outlined above. However, a more prudent course would have been to ask the Board to seek clear guidance from the Assembly on this point; meanwhile, application of pension adjustments made on amounts initially reduced by 1.5 per cent be kept in suspension or escrow. Such a course would not have affected the actuarial value of the Fund, if eventually the Assembly confirmed what it is now only presumed in the Tribunal's judgement.

Instead of following such a course, paragraph XIV of the judgement implies some hint of an obiter dictum. For an Administrative Tribunal, a constricted legal justification is perhaps not always adequate, especially on issues which affect the interests of so many pensioners and when some alternative legal course of action could be pursued.

(Signatures)

Samar SEN
President

New York, 12 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary

PARTIAL DISSENTING OPINION - MR. ROGER PINTO

I am unable to associate myself with the judgement of the Tribunal. I understand and endorse the Tribunal's evaluation of the character of the measure involving the reduction of 1.5 percentage points in the pension adjustment. I believe, however, that the borderline set by the earlier decisions of the Tribunal has already been overstepped and that the Applicants' rights have been affected, for the following reasons:

I. The Applicants, all recipients of a retirement benefit paid by the United Nations Joint Staff Pension Fund (hereinafter referred to as the Fund) contest the application to them by the Fund of the changes introduced by the United Nations General Assembly in the system of cost-of-living adjustments in pensions.

II. The purpose of these measures described in the judgement of the Tribunal is, as stated in the General Assembly resolution, to reduce or eliminate "the actuarial imbalance" and thereby to secure "an adequate level of benefits" for beneficiaries. To that end, "a co-operative effort by member organizations, participants and beneficiaries is required".

III. The Applicants invoke in support of their requests article 26 of the Fund's Regulations on deficiency payments, paragraph (a) of which states:

"In the event that an actuarial valuation of the Fund shows that its assets may not be sufficient to meet its liabilities under these Regulations, there shall be paid into the Fund by each member organization the sum necessary to make good the deficiency".

The Tribunal rejected this ground and I am in agreement on this point with the judgement.

IV. I am also in agreement with the judgement when it states that the doctrine of acquired rights is not applicable in this case.

V. I also concur with the Tribunal that, when the Fund makes changes in the pension adjustment system, it has an obligation to respect certain fundamental principles. The Fund has, moreover, expressly recognized this.

VI. It is recalled in the judgement that, in its Judgement No. 379, the Tribunal expressed itself in the following terms:

"It [the Tribunal] holds that the revisions in the pension adjustment system are applicable without retroactivity to all beneficiaries of retirement pensions. These modifications must not be arbitrary. They must be reasonable and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members. They may not be used for purposes other than the protection of the purchasing power of retired staff members - nor with greater reason can they be allowed to result in forfeiture or deprivation." (para. 30)

VII. Applying these criteria to the decisions contested by the Applicants, the Tribunal correctly recognizes the validity of the 1.5 percentage point reduction made in the first adjustment applicable after 1 January 1985.

VIII. Similarly, I concur with the Tribunal that the annualization of the pension adjustment system does not reduce the benefits due to beneficiaries to an extent that can be considered unreasonable.

IX. However, the fundamental principles laid down in Article 101, paragraph 3, of the United Nations Charter should always be borne in mind:

"The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible".

X. Consequently, the necessary economy measures must not be allowed to lead, cumulatively, to the deterioration of the international civil service. The consequences would be disastrous for the United Nations.

XI. I fully endorse the opinion expressed by the ILO Administrative Tribunal in paragraph 16 of its Judgement No. 832 (in re Ayoub et al.) (1987):

"... An international organization should refrain from any measure which is not warranted by its normal functioning or the need for competent staff. It is bound by the general principles of law such as equality, good faith and non-retroactivity. It will act from reasonable motives and avoid causing unnecessary or undue injury."

XII. I am thus led to consider whether the reduction of 1.5 percentage points in the adjustment, effected on the occasion of the first adjustment applicable after 1 January 1985 does not have a permanent character which would be inadmissible and contrary to the rights of the Applicants.

XIII. The Respondent defines this reduction as a "one time reduction, in other words it is applied once and only once". This wording is ambiguous: the

reduction continues to have an effect on subsequent adjustments and on all payments of periodic benefits of the Fund over the life-time of all participants and their surviving spouses, for pensions in payment and for future pensions (Report of the Board to the General Assembly - thirty-ninth session (para. 48)).

XIV. In its report, the Board acknowledges that the proposed reduction "is quite arbitrary and, as such, is undesirable in principle".

XV. It is true that, in its report to the General Assembly, the Board makes the measure it is proposing permanent in character. However, this intention was not effectively incorporated in the wording of the text. The text provides that the adjustment shall "be reduced by 1.5 percentage points" on the first occasion after 1 January 1985 when a benefit in payment is to be adjusted for a change in the cost of living. It does not specify that this reduction must be maintained beyond the first occasion.

XVI. In accordance with the well-established principle of interpretation - "contra proferentem" - the meaning of the provision in question cannot be extended beyond its strict scope. Consequently, in the case of adjustments subsequent to the first adjustment due after 1 January 1985, the percentage for the cost-of-living increase must be calculated on the basis of the amount of the adjusted benefit without the 1.5 percentage point reduction. Moreover, this provision is applicable only to benefits in payment on 1 January 1985 and not to future benefits.

XVII. In addition, during this session (Judgement No. 395: Oummihi et al.), the Tribunal itself applied an incontestable principle:

"XXIV. It is an accepted principle of law that, unless no other interpretation is reasonably permissible, the actions of any party, including a sovereign authority, are presumed to be in accord with, and to honour prior legislation and commitments. ..."

In the case under consideration, the application of this principle should have led the Tribunal to interpret the measure in question in the manner in which I have interpreted it above and to decide that it affected the established rights of the Applicants.

XVIII. The projection into the future of the 1.5 percentage point reduction in the adjustment recommended by the Board does not correspond to the recognized objectives of the adjustment system. The Respondent explains that the initial

reduction measure has had the effect of enabling the Fund to realize "substantial savings ... at a time when the Fund was experiencing an actuarial imbalance". As the judgement of the Tribunal indicates, this objective was neither unlawful nor unreasonable. On the other hand, the projection of the 1.5 percentage point reduction into the future cannot take account of changes in the actuarial deficiency and any eventual remedies for it, nor of changes in the cost of living. It cannot be based on the enlightened evaluation of actual circumstances which do not yet exist, of which the Fund knows nothing and which it cannot foresee.

XIX. In addition, this reduction, thus projected into the future, affects the right of the Applicants, recognized by the Fund, to a reasonable adjustment system. The reduction extends to all retirees, present and future, with no time-limit. It is arbitrary, as the Fund acknowledges, in that it takes no account of any of the factors which usually determine changes in the calculation of adjustments. Lastly, it is inequitable. It makes retirees alone bear this financial effort designed to overcome an actuarial deficiency. Member organizations are not asked to participate in this effort.

XX. I consider that the Tribunal should have acceded to the Applicants' request, within the limits which I have stated above.

(Signatures)

Roger PINTO
Vice-President

New York, 12 November 1987

R. Maria VICIEN-MILBURN
Executive Secretary