

UNITED NATIONS

ADMINISTRATIVE
TRIBUNAL



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ADMINISTRATIVE TRIBUNAL

Judgement No. 377 COLLECTION

Case No. 368: JABRI

AGAINST: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Samar Sen, President; Mr. Arnold Kean, Vice-President;
Mr. Roger Pinto;

Whereas, at the request of Tarek Jabri, a staff member of the United Nations,
the President of the Tribunal, with the agreement of the Respondent, extended the
time-limit for the filing of an application with the Tribunal until 9 August 1985;

Whereas, on 26 July 1985 the Applicant filed an application that did not
fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, filed a
corrected application on 29 November 1985, in which he requested the
Tribunal:

- "1. To rescind the written censure imposed by the Secretary-General on me on
July 1, 1983 for allegedly 'distributing among (my) colleagues an
unofficial preliminary version of a governmental proposal (the so called
Yemen Plan) omitting to mention its provenance and without prior
knowledge or authorization of (my) superiors (I) had allowed (myself) to
become an instrument of unauthorized communication between a delegation
and the Secretariat'.

and allegedly

'seeking assistance of (my) colleagues to promote a governmental proposal
that contained a criticism of the report commissioned by the Secretariat
and which (I) had sufficient grounds to believe might differ from the
Secretary-General's proposal'.

2. To order the payment of damages for the mistreatment which I have
received as a result of the misapplication of justice and of the rules
and regulations which has caused irreparable damage to my career,
permanent impairment of my health and untold misery to my family; and
measurable and significant loss in salary and emoluments all due to the
breach and violations of my rights of employment.

3. To order such additional relief as the Tribunal may find appropriate under the circumstances.
4. Restore status and benefits and effect promotion retroactive from April 1980 as would have accrued to me in normal circumstances."

Whereas the Respondent filed his answer on 5 March 1986;

Whereas the Applicant filed written observations on 13 June 1986;

Whereas, on 1 October 1986, the President of the Tribunal ordered that there should be no oral proceedings;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 18 August 1969. He was initially offered a two year fixed-term appointment at the P-3, step IV, level as an Information Officer in the Office of Public Information. His appointment was converted to a probationary appointment on 1 May 1971 and to a permanent appointment on 1 February 1972. On 1 January 1976 the Applicant was appointed Chief, Middle East Unit, Radio and Visual Services Division, Department of Public Information. On 1 April 1976, the Applicant was promoted to the P-4 level. The Applicant has continued to exercise the same function, at the same level, until this date. His functional title has been changed to Chief, Middle East/Arabic Unit, Radio and Visual Services Division, Department of Public Information.

On 15 December 1980, the General Assembly adopted resolution 35/201 on "Questions relating to information". In section III, paragraph 4, of that resolution, the Assembly requested the Secretary-General

"to report to the Committee on Information on a plan for regionalizing the Radio and Visual Services Division in a manner that would permit each regional section to be responsible for all radio, television and film productions for their respective regions."

The Director of the Radio and Visual Services Division asked staff members who worked in the Division for ideas on how to proceed in order to implement the Assembly's mandate. To that end, consultations were held between chiefs of the various regional units, including the Applicant.

On 13 January 1981, the Applicant addressed a memorandum to the Under-Secretary-General for Public Information in which he set forth his personal views on the plan for "regionalizing" the Radio and Visual Services Division. In addition, he stated his disagreement with the decision taken by the Department to recruit George L. Davidson - a consultant of Canadian nationality and the former Under-Secretary-General for Administration and Management - to prepare the report for the Committee on Information. The Applicant suggested alternative courses of action. The Applicant never received a reply to this letter.

The Committee on Information commenced its meetings at Headquarters on 27 April 1981.

The Committee examined the report prepared by Mr. Davidson, hereinafter referred to as the "Davidson report", which was issued as an annex to a note by the Secretary-General with the document symbol A/AC.198/34. In addition, the delegation of the Yemen Arab Republic introduced to the Committee a conference room paper dated 6 May 1981 and bearing the symbol A/AC.198/CRP.7. This paper contained an alternate draft plan for the regionalization of the Radio and Visual Services Division, hereinafter referred to as the "Yemen plan".

On 14 May 1981, the representative of the Yemen Arab Republic addressed the Committee on Information, and, when he referred to the "Yemen plan", he stated that it was "a product of joint and constructive efforts of elements from within DPI and from the diplomatic community at the United Nations". He also acknowledged that his delegation had been "assisted by the not inconsiderable contribution of constructive elements within the DPI in the formulation of the plan". On the same date, the representative of the United Kingdom of Great Britain and Northern Ireland stated in that connection, that his delegation did "not believe that individual members of the Department of Public Information have a right to help draft papers for delegations on their own authority".

The Committee's session ended on 15 May 1981. On 3 June 1981, the Director of the Radio and Visual Services Division wrote to the Under-Secretary-General for Public Information to report these statements made in the Committee on Information during the discussion of the "Davidson report" and the "Yemen plan". In addition, he noted that the "Yemen plan" discussed in the Committee on Information was

"virtually identical" to the paper he had given to the Under-Secretary-General on 30 April "and which reportedly was prepared by Mr. Tarek Jabri ... who may or may not have been assisted by other staff members". He suggested that an inquiry be initiated within the Department to establish whether DPI staff members had been involved in the preparation of the "Yemen plan" and, if so, whether any action should be taken under the pertinent Staff Rules.

On 4 June 1981, the Under-Secretary-General for Public Information informed the Assistant Secretary-General for Personnel Services of these events and referred the matter to him "for appropriate action, including a possible inquiry and/or reference to the Joint Disciplinary Committee".

On 2 July 1981, the Officer-in-Charge, Division of Personnel Administration, Office of Personnel Services, asked the Applicant to provide his comments on the allegations made by the Under-Secretary-General for Public Information that he may have participated in the preparation of the "Yemen plan". In a reply dated 7 July 1981, the Applicant denied the allegations and asserted that he did not object to the initiation of an investigation.

In a memorandum dated 19 August 1981, the Administrative Officer in charge of Review of Administrative Decisions, Appeals and Disciplinary Cases, Office of Personnel Services, informed the Chief, Staff Service, Office of Personnel Services, that, after a preliminary exchange of memoranda between the Office of Personnel Services, the Applicant and officials of the Department of Public Information, there were "indications" that the Applicant "may have participated in the preparation of the plan for regionalizing the Radio and Visual Services Division submitted by the Yemen Arab Republic to the second session of the Committee on Information, held between 27 April and 15 May 1981". These indications were as follows: firstly, the Applicant had not been able to make a satisfactory response to a request from the Chief, Staff Service, Office of Personnel Services, that he produce copies of documents to which the Applicant had drawn the attention of the Permanent Mission of the Yemen Arab Republic and which, in the Applicant's view, contained all the information which appeared in the "Yemen plan". Secondly, the Chief had provided "the names of three staff members of the Radio Service who had been approached by Mr. Jabri with requests for assistance involving either translation or contacts with delegations". Since these indications were "at the same time, strong enough to justify further proceedings

notwithstanding Mr. Jabri's categorical denial of the allegations against him ... and insufficiently conclusive for a submission to the Joint Disciplinary Committee at this stage ...", he advised that a panel of investigation be established to gather and evaluate all the evidence. A decision whether or not to refer the case to the Joint Disciplinary Committee would be taken following the report of the panel of investigation.

The Assistant Secretary-General for Personnel Services, with the concurrence of the Under-Secretary-General for Public Information, established a panel of investigation. The Applicant was informed of the composition of the Panel on 9 November 1981. The Applicant challenged the Panel's composition and a new panel was constituted on 19 November 1981. The terms of reference of the Panel were stated to be "to determine the factual basis of the allegations" of unauthorized involvement of Department of Public Information staff members in the preparation of documents for delegations, contained in the memorandum of 4 June 1981 from the Under-Secretary-General for Public Information to the Assistant Secretary-General for Personnel Services.

The Panel heard different staff members of the Department and submitted a report to the Assistant Secretary-General, OPS, on 4 May 1982. In a preliminary outline of facts, the Panel established that the Applicant had distributed to his colleagues, on 29 and 30 April 1981, a paper critical of the "Davidson report" for the reorganization of the Department of Public Information and had requested some of his colleagues to forward this paper to delegations with which they were familiar. The paper was "essentially the same" as the paper later distributed to the Committee on Information by the Yemen Arab Republic.

The Panel's conclusions were as follows:

"21. The Panel has concluded that the Yemeni Mission received considerable help from within DPI in preparing its proposal, and that some of that help came from Mr. Jabri. Neither he, nor any other witness, nor the Yemeni Mission in its letter of 3 March 1982, named or suggested anyone else who gave any assistance directly to the Mission. As to the fact and extent of Mr. Jabri's contribution, there is only his own testimony. In distributing the draft plan to his colleagues on 29/30 April, Mr. Jabri may have given the impression that he had authored or at least contributed heavily thereto - but in context any such (at least implicit) boasting cannot be held to be more definite proof than can otherwise be established. There would thus appear to be no way of definitely establishing, from sources within the Secretariat

itself, other than his own admissions, the extent to which Mr. Jabri assisted the Yemeni Mission. In view of what is stated in paragraph 8 above, the Panel did not examine whether there was any impropriety in Mr. Jabri's actions."

Under a heading entitled "Collateral Matters", the Panel concluded that the Applicant should probably have consulted with, or at least informed his supervisors when the Mission of the Yemen Arab Republic "repeatedly" requested his assistance "even if only of a technical nature" in order to prepare the "Yemen plan". He should also have "promptly informed his supervisors when he received copies of the completed plan, instead of merely distributing it to his colleagues". The Panel concluded that the Applicant "showed a lack of judgement" by not clarifying "the provenance of the paper he was distributing" and that his conduct "inviting colleagues to lobby for a proposal not sanctioned by the Secretary-General" was "certainly injudicious". The report contained a partial dissent by the Chairman of the Panel and another by one of the members.

On 10 June 1982 the Assistant Secretary-General for Personnel Services recommended to the Secretary-General that the Applicant's case be referred to the Joint Disciplinary Committee for advice under Staff Rule 110.1 on disciplinary measures.

On 6 July 1982 the Assistant Secretary-General for Personnel Services requested the advice of the Joint Disciplinary Committee "as to the disciplinary measures, if any, to be taken against Mr. Tarek Jabri in connection with the findings of the Panel". In addition she noted the two partial dissents from the report and stated in this connection: "The Secretary-General believes that the partial dissent by the Chairman [of the Panel] gives a correct interpretation of the evidence gathered by the Panel, as outlined in the Report".

On 6 July 1982 the Applicant received from the Chief, Staff Service, a memorandum reading as follows:

"The Secretary-General has decided to refer your case to the Joint Disciplinary Committee under Staff Regulation 10.1 and Staff Rule 110.3, on charges of having acted improperly by distributing among your colleagues an unidentified document that turned out to be a Government proposal, without prior knowledge or authorization of the Secretary-General, and by seeking their assistance in lobbying with other delegations for the proposal, thereby undermining the Secretary-General's responsibility for the submission of his own proposal to the Committee on Information. The Secretary-General further believes that your cumulative record reveals a pattern of unsatisfactory conduct, involving instances of unwarranted solicitation of support and intervention by delegations in your behalf, unsubstantiated and serious

accusations against senior officials, and difficult relations with your colleagues."

The Joint Disciplinary Committee adopted its report on 18 February 1983. Its unanimous conclusions and recommendations read as follows:

"46. On the basis of the evidence referred to under the preceding sub-heading of this report, the Joint Disciplinary Committee has reached the following conclusions.

47. Regarding the issue investigated by the Panel of Investigation of Mr. Jabri's alleged involvement in the preparation of the Yemen Plan, the Committee concurs with the Panel that it is not possible to ascertain that the assistance provided by Mr. Jabri to the Yemen Delegation in the preparation of their proposal for regionalizing the Radio and Visual Services Division of DPI went beyond what is normally provided by the staff members of the Division to governmental delegations upon their request in the course of performing their regular duties.

48. The Committee accordingly recommends no disciplinary measures against Mr. Jabri in this connection.

49. Regarding the specific charge brought against Mr. Jabri by the Assistant Secretary-General for Personnel Services of 'distributing among his colleagues an unidentified document that turned out to be a Governmental proposal, without prior knowledge or authorization of the Secretary-General', the Committee concludes:

(1) That Mr. Jabri, without identifying it as such, gave or made available to several of his colleagues copies of a preliminary version of the Yemen Plan.

(2) That while it is correct that Mr. Jabri did neither consult nor inform his supervisors of his repeated contacts with the Yemen delegation at the time of the preparation of their proposal, or of his distributing among his colleagues the unofficial preliminary proposal that had been given to him, it is also true that when his supervisors became aware of his activities, they did not approach him to discuss the matter with him.

50. In the circumstances, the Committee, while not able to exonerate Mr. Jabri of all responsibility to keep his supervisors informed of his work and consult with them in matters of importance, agrees with the Panel of Investigation that the hiatus in communications and the situation in his Department explained why Mr. Jabri might have been uncertain about his proper conduct in the given circumstances.

51. The Committee accordingly recommends no disciplinary measure against Mr. Jabri in connection with the charge of distributing among his colleagues the unofficial preliminary version of the Yemen Plan without knowledge or authorization of the Secretary-General.

52. With respect to the specific charge against Mr. Jabri of 'seeking their [i.e. his colleagues'] assistance in lobbying with other delegations for the proposal thereby undermining the Secretary-General's responsibility for the submission of his own proposal to the Committee on Information', the Committee concludes:

53. That Mr. Jabri while giving the document to some of his colleagues for information purposes only, did seek the assistance of others to promote it among delegations.

54. The Committee considers these actions of Mr. Jabri, particularly in view of the fact that he had sufficient grounds to suspect that the position of the Secretariat might materially differ from that taken by the Yemen Plan, to be injudicious and not in keeping with the standard of conduct expected of a United Nations staff member.

55. The Committee accordingly recommends that a written censure be authorized by the Secretary-General in connection with Mr. Jabri's initiatives in promoting the Yemen plan. However, considering the already mentioned unsatisfactory aspect of Mr. Jabri's position in his Division for which the management of the Department should also bear the responsibility and which requires corrective measures as soon as possible, the Committee also recommends that this written censure be struck out from his conduct record after a lapse of six months of satisfactory conduct on the part of Mr. Jabri."

On 1 July 1983 the Assistant Secretary-General for Personnel Services informed the Applicant as follows:

"The Secretary-General has decided to impose on you a written censure as a disciplinary measure under Staff Regulation 10.2 and Staff Rule 110.3(b), in accordance with the recommendation of the Joint Disciplinary Committee ...

Such decision was based on the Secretary-General's finding that, as determined by the Joint Disciplinary Committee, by distributing among your colleagues an unofficial preliminary version of a governmental proposal (the so-called 'Yemen plan'), omitting to mention its provenance and without prior knowledge or authorization of your superiors, you had allowed yourself to become an instrument of unauthorized communication between a Delegation and the Secretariat, and that, in seeking the assistance of your colleagues to promote a governmental proposal that contained a criticism of the report commissioned by the Secretariat, and which you had sufficient grounds to believe might materially differ from the Secretary-General's proposal, you failed to subject your personal preferences, opinions and beliefs to the interests of the Secretariat spelled out by the Secretary-General, as required by Staff Regulations 1.1, 1.3 and 1.4. These actions of yours, particularly in view of the fact that you had sufficient grounds to suspect that the position of the Secretariat might materially differ from that taken by the Yemen Plan, were injudicious and not in keeping with the standard of conduct expected of a United Nations staff member.

The Secretary-General noted that the Joint Disciplinary Committee considered, and rejected, your allegations that you had been the 'victim of prejudice and bias' both prior to and during the Committee's proceedings.

...

In the exercise of his discretionary authority to determine the nature and severity of disciplinary measures, the Secretary-General, notwithstanding his belief that the disciplinary measure of written censure recommended by the Committee was too lenient in view of the seriousness of the acts of misconduct committed by you, decided to accept the Committee's recommendation in this respect, in the hope that the moral effect of a strongly worded written censure will be sufficient to prevent the recurrence of this type of behavior in the future.

He did not accept the additional recommendation that the written censure be struck out from your record after six months of satisfactory conduct, since there is no provision to that effect in the Staff Regulations and Rules. Disciplinary measures are in principle a permanent part of a staff member's cumulative record of service and, in accordance with Personnel Directive PD/3.55 (para. 4), they must be recorded in the official status file. However, their impact on the staff member's future career will be a matter for discretionary assessment, taking particularly into account the seriousness of the acts of misconduct and the time that has elapsed since they took place.

In compliance with the Secretary-General's decision, I am addressing you this letter of censure, copy of which shall be included in your official status file."

On 26 August 1983 the Applicant requested direct submission of his appeal to the Administrative Tribunal. On 16 September 1983, his request was denied and his letter of 26 August 1983 was treated as his letter of appeal to the Joint Appeals Board, in accordance with Staff Rule 111.2 (e).

The Joint Appeals Board adopted its report on 4 December 1984. Its conclusions and recommendations read as follows:

"Conclusions and Recommendation

69. The Panel concluded that the contested decision to impose a written censure on the appellant was taken after the JDC had found, in essence, that the two charges brought against the appellant were well founded. While the appellant had intimated that prejudice or bias had affected the proceedings leading to the contested decision, he had failed to show that this had been the case. Due process standards appeared to have met in these proceedings. The findings of the JDC were supported by the record and the oral testimony which the Committee had taken. The Panel could find no fault with the qualification according to which the appellant's actions as described in the

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JDC's findings were injudicious and not in keeping with the standard of conduct expected of a United Nations staff member. The Panel also could not find that the imposition of a written censure was disproportionate with that qualification. Though the modalities of the decision to impose a written censure and the letter of censure itself differed in certain aspects from the recommendations of the JDC, these differences were well within the discretion of the Secretary-General under the relevant staff rule.

70. In view of the above conclusion, the Panel makes no recommendation in favour of the appeal."

On 18 December 1984 the Secretary-General decided to "take note of the Panel's report and decide[d] to maintain the contested decision".

Whereas on 29 November 1985 the Applicant filed the application referred to above;

Whereas the Applicant's principal contentions are:

1. The Panel of Investigation initially established by the Respondent to investigate the charges against the Applicant was biased and partial. The reconstituted Panel also had members of questionable impartiality and, thus, the Applicant was deprived of due process.
2. The Panel refused to examine evidence from outside the Secretariat, as requested by the Applicant. It could not reach a conclusion with respect to the Applicant's guilt or innocence because it lacked supporting evidence.
3. The Assistant Secretary-General for Personnel Services unilaterally decided that the Chairman of the Panel's dissenting opinion was correct and referred the matter to the Joint Disciplinary Committee, adding charges that did not directly relate to the investigation.
4. The decision by the Joint Disciplinary Committee to sanction the Applicant with a written censure was not supported by facts and evidence available to it. The Committee might not have recommended that sanction had it known that it was not legally possible to strike the sanction from the Applicant's record.
5. The decision by the Secretary-General to censure the Applicant was flawed and unfair because it was not accurately based on all relevant facts.

Whereas the Respondent's principal contentions are:

1. The Secretary-General has wide discretionary powers in imposing

disciplinary measures and may impose a disciplinary measure different from that recommended by the Joint Disciplinary Committee.

2. The decision to censure the Applicant was taken after the procedures prescribed in Staff Rule 110.3 were followed. These procedures afforded the Applicant due process and fully respected his rights.

The Tribunal, having deliberated from 13 October 1986 to 7 November 1986, now pronounces the following Judgement:

I. The Tribunal notes that the Applicant requests: damages for the mistreatment he allegedly received as a result of the misapplication of the Staff Regulations and Rules; the restoration of his status and benefits; and promotion retroactive to 1 April 1980. The Applicant did not submit these complaints to the Administration. He refers to no explicit or implicit decision of the Secretary-General that he has previously submitted to the Joint Appeals Board in accordance with Staff Rule 111.2.

In application of article 7.1 of its Statute, the Tribunal therefore decides that the Applicant's pleas concerning these complaints are irreceivable.

II. The Applicant requests the Tribunal to rescind the decision taken by the Secretary-General on 1 July 1983 to impose on him written censure, a measure provided for in Staff Regulation 10.2 and Staff Rule 110.3 (b). By virtue of Staff Rule 111.2 (b), the Applicant filed an appeal against that decision with the Joint Appeals Board. The Board rejected his appeal in its report dated 4 December 1984. The Secretary-General maintained the disciplinary measure by a decision of 31 December 1984.

III. These decisions are the outcome of adversary proceedings in the course of which the facts in the case were examined successively by the Panel of Investigation established by the Assistant Secretary-General for Personnel Services, in November 1981, by the Joint Disciplinary Committee and lastly by the Joint Appeals Board.

The Tribunal considers that the facts which prompted the disciplinary sanction were established with the greatest care by these bodies and in addition were acknowledged by the Applicant.

The Applicant has, however, maintained throughout this case that he was the victim of bias on the part of all those called upon to consider it. The Tribunal notes that he provides no evidence of such bias.

IV. The Applicant entered the service of the United Nations in 1969. Since 1976, at the P-4 level, he has exercised the functions of Chief, Arabic and Middle East Unit, Radio and Visual Services Division, Department of Public Information.

V. In 1980 the General Assembly, in its resolution 35/201, requested the Secretary-General to report to the Committee on Information on a plan for regionalizing the Radio and Visual Services Division (hereinafter referred to as the Division).

VI. When the plan was being prepared, the Department of Public Information requested a Canadian consultant, George L. Davidson, to prepare a preliminary report for the Committee on Information. At the same time, the Chief of the Division asked the staff of the Division for ideas concerning the envisaged reform. The chiefs of the various regional units of the Division held consultations to that end. On 13 January 1981 the Applicant addressed to the Under-Secretary-General for Public Information a letter in which he set forth his personal views on the regionalization and expressed his disagreement with the recruitment of a consultant. Various internal drafts were prepared and discussed informally within the Division.

VII. The Committee on Information met from 27 April to 15 May 1981. The Secretary-General submitted to it the report and proposals of Mr. Davidson. The delegation of Yemen presented a plan which constituted an alternative to the "Davidson report".

During the discussion in the Committee on Information, the representative of Yemen expressed his appreciation for the assistance he had received from elements within the Department of Public Information in preparing the "Yemen plan". He presented his plan as "a product of joint and constructive efforts of elements from within DPI and from the diplomatic community at the United Nations". The United Kingdom representative observed that his delegation "did not believe that individual members of the Department of Public Information have a right to help draft papers for delegations on their own authority".

VIII. After the session of the Committee on Information had ended, the Director of the Radio and Visual Services Division informed the

Under-Secretary-General for Public Information of those statements in a letter dated 3 June 1981. He recalled that a plan "virtually identical" to the "Yemen plan" had been brought to his attention and that he had given it to the Under-Secretary-General on 30 April 1981. He added that the plan had reportedly been prepared by Mr. Tarek Jabri (the Applicant). He suggested that an inquiry should be initiated within the Department of Public Information to establish whether staff members of that Department had been involved in the preparation of the "Yemen plan". He also asked the Under-Secretary-General for Public Information what action should be taken under the Staff Regulations and Rules if such involvement were established. The Under-Secretary-General in turn informed the Assistant Secretary-General for Personnel Services. After the circumstances of the case had been examined and the Applicant heard, a panel of investigation was set up to establish the facts.

IX. The Tribunal notes that the administrative inquiry within the Department, like the subsequent inquiries by the Panel of Investigation, the Joint Disciplinary Committee and lastly the Joint Appeals Board, did not find any evidence that a staff member of the Department of Public Information actively assisted in the preparation of the "Yemen plan".

X. With regard to the Applicant in particular, the inquiries merely made it possible to establish that he had provided the Yemeni Mission with documentary information that could help it in its research.

XI. On the other hand, it was confirmed that the Applicant had in fact received from the Mission of Yemen on 29 or 30 April 1981 10 or 12 copies of a preliminary draft which subsequently became the plan submitted by the Mission to the Committee on Information. The Applicant had distributed that draft informally to some of his colleagues who might be interested. In giving them the draft, he did not hide his view that the plan was good, better than anything prepared within the Department of Public Information.

XII. The Applicant invited his colleagues to discuss the paper among themselves and with ambassadors and heads of mission. The Panel of Investigation noted those facts in its report of 4 May 1982 (para. 15).

"There is no doubt that, in respect of the paper Mr. Jabri distributed on 29/30 April, he requested or at least encouraged his colleagues to lobby for it with delegations. This was affirmed by several witnesses

(Mr. Andriananjason; Mrs. Chen; Mr. Reiner - all of whom declined to do so), and was in effect admitted by Mr. Jabri."

XIII. The Tribunal notes that the Applicant, Mr. Jabri, did in fact distribute to his colleagues the preliminary version of the "Yemen plan", and that he did compare it with the drafts prepared within the Department and comment favourably upon it. The Applicant acknowledged these facts in his letter of 7 July 1982 and in his testimony before the Panel of Investigation. However, he admits only indirectly having suggested lobbying with the missions represented in the Committee on Information. In his testimony before the group established by the Panel of Investigation to hear witnesses he stated:

"I said take it, discuss it with your ambassadors or anyone else"
(JDC report 68, 18 February 1983, annex IV, p. 21).

XIV. For its part, the Joint Disciplinary Committee did not take into account the testimony of Mr. Andriananjason on this point before the Panel of Investigation, after noting the letter of retraction which he sent to the Applicant on 22 October 1982 and hearing that witness again. After examining the other testimony and hearing the witnesses, the Joint Disciplinary Committee in turn concluded that the Applicant "had sought the assistance of some of his colleagues to promote the proposal contained in the unidentified document that turned out to be a preliminary version of a Yemen Plan for the regionalization of the Radio and Visual Services of DPI" (JDC report 68, 18 February 1983, paras. 29-32) (emphasis added). The Joint Disciplinary Committee preferred the term "to promote" to the term "to lobby" as characterizing Mr. Jabri's activities more precisely and exactly.

XV. The Joint Disciplinary Committee concluded that the Applicant had given the document of the Yemeni Mission to some of his colleagues for information purposes only, but had sought the assistance of others "to promote it among delegations" (JDC report 68, para. 53).

XVI. Lastly, the Joint Appeals Board, after a detailed examination of the Joint Disciplinary Committee file, considered that the Committee's findings were reasonably based on the testimony received. It therefore acknowledged that the facts as thus described had been duly established.

XVII. The Tribunal notes that the facts on which the Secretary-General based his 1 July 1983 authorization of the disciplinary measure of written censure against the Applicant did not differ appreciably from those established by the Panel of Investigation, the Joint Disciplinary Committee and, following the decision of the Secretary-General, by the Joint Appeals Board, or from those acknowledged by the Applicant. They involve the Applicant's distribution of a preliminary version of the "Yemen plan" to his colleagues without indicating its origin and without requesting the permission of his supervisors and his promotion of a government draft that included criticisms of the Davidson report and was likely to conflict with the proposals of the Secretary-General.

XVIII. The Tribunal must therefore determine whether these facts reveal "unsatisfactory conduct" on the part of the Applicant and permit the Secretary-General to apply the disciplinary measures prescribed in Staff Regulation 10.1 and Staff Rule 110.3.

XIX. The Tribunal will first recall the basic obligations of staff members of the United Nations as set forth in Article 100, paragraph 1, of the Charter:

"In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization."

XX. The Staff Regulations set forth in greater detail the duties and obligations of members of the Secretariat:

"Regulation 1.1: Members of the Secretariat are international civil servants. Their responsibilities are not national but exclusively international. By accepting appointment, they pledge themselves to discharge their functions and to regulate their conduct with the interests of the United Nations only in view.

Regulation 1.2: Staff members are subject to the authority of the Secretary-General

Regulation 1.3: In the performance of their duties members of the Secretariat shall neither seek nor accept instructions from any Government or from any other authority external to the Organization.

Regulation 1.4: Members of the Secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall not engage in any activity that is incompatible with the proper

discharge of their duties with the United Nations. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status. While they are not expected to give up their national sentiments or their political and religious convictions, they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status.

Regulation 1.5: Staff members shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Secretary-General. ..."

XXI. The Tribunal also referred to the report on standards of conduct in the international civil service (COORD/Civil Service/5, 1965 edition).

"15. For his part, the subordinate official must recognize the importance of intellectual discipline and regulate his conduct accordingly. He must accept the obligation to put before his superiors all the relevant facts and considerations relating to a current question, without concealment. While he has the right, which should be safeguarded, to record his views in the official files, it is his duty to accept, carry out, and even defend decisions of his superiors once they are taken, whether or not they accord with his own opinions. Any public or repeated expressions of disagreement with such decisions can only weaken the organization.

...

27. There are many ways in which the staff member can render proper services to representative bodies or their members, and in so doing, serve the interests of his organization. Providing factual information, assisting with technical matters such as the preparation of draft resolutions in formal style, or giving technical advice - all these are useful and proper ways of furthering the effective functioning of the organization. It should be a universal practice, however, for the staff member who is requested to give such information or render such assistance to inform his superior officer and thus remove or minimize the personal factor."

XXII. In the light of those provisions, the Secretary-General considered that the Applicant's actions had been

"injudicious and not in keeping with the standard of conduct expected of a United Nations staff member".

This wording is the same as that used in the conclusions and recommendations of the Joint Disciplinary Committee (para. 54).

XXIII. The Joint Appeals Board in turn described the Applicant's conduct in the same terms.

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XXIV. The Joint Disciplinary Committee recommended that a written censure of the Applicant should be authorized by the Secretary-General. The Secretary-General authorized that disciplinary measure. The Tribunal notes that Staff Rule 110.3 (b) provides for suspension without pay, demotion or dismissal for misconduct as well as written censure. The Tribunal therefore considers that the measure authorized, the least serious of those provided for, is in no way arbitrary in character.

XXV. However, the Secretary-General did not see fit to accept the Joint Disciplinary Committee's recommendation that the disciplinary measure should be struck from the Applicant's file after a probationary period of six months of satisfactory conduct.

XXVI. In his letter of 1 July 1983 addressed to the Applicant, the Assistant Secretary-General for Personnel Services observed that by virtue of Personnel Directive No. 3/55 of 21 February 1955 disciplinary measures must be recorded in the staff member's official status file. He also noted that the Staff Regulations and Rules did not provide for the possibility of striking a disciplinary measure from a staff member's file. The Tribunal considers that this silence does not mean that the Secretary-General does not have the power to decide to strike a disciplinary measure from the file. In his answer, the Respondent did not maintain that the Secretary-General had no power to do so.

XXVII. The Tribunal decides, however, that it is not necessary for it to rule on this question. The Secretary-General's refusal to accept this recommendation of the Joint Disciplinary Committee is based on the degree of seriousness of the acts of which the Applicant is accused and for which the Secretary-General considered a more severe disciplinary measure than written censure should have been imposed. The Tribunal recalls that the Secretary-General has the power not to accept that part of the Joint Disciplinary Committee's recommendation.

XXVIII. Furthermore, if the Applicant's conduct is satisfactory in the future, the Secretary-General has the discretionary power to reconsider the Applicant's situation and terminate the effects which the disciplinary measure authorized might have on his career.

XXIX. The Applicant claims that the conduct of which he is accused is common in his service. According to the report of the Joint Appeals Board, the Applicant "asserted that lobbying was a common practice in RVSD and that at one time there had been instructions of the Chief of the Radio Service to lobby with delegations ..." (para. 38).

XXX. The Tribunal could not but deplore such practices which, if proved to exist, would call for severe disciplinary measures. Even if the existence of such practices was proved, however, it would not obliterate the Applicant's personal misconduct. The disciplinary measure imposed on him shows that the Administration is not prepared to allow the basic obligations of international civil servants to be disregarded and constitutes a warning to others. In his testimony before the Panel of Investigation, the Applicant himself expressed regret at having distributed the preliminary version of the "Yemen plan":

"In retrospect, it may have been best not to pass [it] on" (JDC report 68, annex IV).

XXXI. In conclusion, the Tribunal recalls its consistent doctrine, as set forth in Judgement No. 210 Reid (1976):

"The Tribunal observes that the reports of the Joint Disciplinary Committee and of the Joint Appeals Board are advisory and that the Respondent is entitled to reach a different conclusion from that of those bodies on a consideration of all the facts and circumstances of the case. However, the Tribunal is competent to review the Respondent's decision if such decision is based on a mistake of facts or is arbitrary or is motivated by prejudice or by other extraneous considerations." (para. IV).

Those rules have been fully respected in this case by the Respondent.

XXXII. For these reasons the Tribunal decides (1) to reject the request for rescission of the Secretary-General's decision of 1 July 1983; (2) to declare irreceivable all other requests by the Applicant.

(Signatures)

Samar SEN
President

Arnold KEAN
Vice-President

Roger PINTO
Member

New York, 7 November 1986

R. Maria VICIEN-MILBURN
Executive Secretary