In the circumstances, the Tribunal cannot consider that the Applicant, by learning that this operation was carried out in stages and over a reasonable period of time in view of the practical problems involved in any transfer of this type, discovered a new fact capable of casting doubt on the legal basis of Judgement No. 172.

VII. The Applicant claims to have discovered another new fact, namely, that certain locally recruited staff members of the European Office of UNICEF were "transferred" to UNESCO at the suggestion of the Respondent, and he requests the Tribunal "to revise its judgement . . . in the light of the discovery of this last fact".

The Tribunal observes that, under Staff Rule 109.1 *(c)* (ii) *(b),* the Applicant was not entitled to consideration for posts outside UNICEF. The Tribunal therefore decides that the alleged discovery is irrelevant to the case.

VIII. With regard to the Applicant's request that the Tribunal should rectify that part of its Judgement relating to the drawing up of a certificate of service, the Tribunal, while deploring the delay by the Respondent in providing the Applicant with a certificate of service which conforms to the terms of Judgement No. 172, notes that the request is not covered by the procedure envisaged in article 12 of the Statute.

IX. For these reasons, the application is rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding

MUTUALE TSHIKANKIE
Member

R. VENKATARAMAN
President

Jean HARDY
Executive Secretary

Geneva, 26 April 1974

STATEMENT BY MR. VENKATARAMAN

I have participated in the discussions and read the draft English translation of the Judgement and I concur with the decision.

(Signature)
R. VENKATARAMAN

Geneva, 26 April 1974

Judgement No. 188

(Original: English)

Case No. 163:
Sule

Against: **The Secretary-General of the United Nations**

Request for revision of Judgement No. 170.

Article 12 of the Statute of the Tribunal.—Condition relating to the discovery of a new fact.—That condition not having been met, the application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Sir Roger Stevens;

Whereas, by a letter dated 8 February 1974, the Applicant filed with the Tribunal an application requesting, under article 12 of the Statute, revision of Judgement No. 170 rendered in his case on 30 March 1973;

Whereas the application read as follows:

> "*Appeal Against Judgement 170*
>
> "In accordance with Article 12 of the Administrative Tribunal, I would like to appeal against the above judgement.
>
> "I am not convinced that the reasons for rejection of my application are legally valid, bearing in mind the amount of irregularities in the evidence of the defendant, failure on the part of the Tribunal to exercise its powers in respect of Staff Rule 106.5 and failure on the part of the Tribunal to keep itself within the ambit of Para. 3 *(a)* of the Local Staff conditions of service.";

Whereas, his attention having been drawn to the requirements of article 12 of the Statute with regard to the discovery of some fact previously unknown to the Tribunal and to the party claiming revision, the Applicant provided the following clarification on 26 March 1974:

> "Paragraph two of my letter of 8th February, 1974, are my discoveries. I am sorry I did not make this sufficiently clear. It purports an application for revision of judgement No. 170 under article 12 of the statute.
>
> "I may also add (1) that by repetition of one year fixed term contracts for four consecutive times, after the first fixed term contract, a subsection of the Local staff conditions of Service is being violated. (2) When it comes to the question of non-renewal of contract and subsequent replacement, the lack of any proof of unsatisfactory service immediately calls into question the objective and rational basis on which the decision is made since it is common knowledge that any administrative decision in respect of a staff member who has successfully completed his probationary period must rest on evidence on record.";

Whereas the Respondent filed the following answer on 3 April 1974:

> "...
>
> "Although Mr. Sule's request refers to Article 12 of the Tribunal's Statute he has failed to allege any newly discovered fact which could have been decisive. Rather, he has indicated disagreement with the legal basis for the Judgement.
>
> "Accordingly, there appears to be no basis cognizable under Article 12 for the Tribunal to consider the request for revision.";

Whereas the Applicant submitted written observations on 25 April 1974;

Whereas, on 27 May 1974, the Applicant informed the Executive Secretary of the Tribunal that he was "desirous of presenting [his] case personally";

Whereas, on 27 August 1974, the President of the Tribunal decided that no oral proceedings would be held in the case;

Whereas the facts in the case have been set forth in Judgement No. 170.

The Tribunal, having deliberated from 26 September to 4 October 1974, now pronounces the following judgement:

I. The Applicant requests that Judgement No. 170 be revised under article 12 of the Statute of the Tribunal which reads:

> "The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature

as to be a decisive factor, which fact, was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

II. Article 12 permits the Tribunal to revise a prior judgement when the party claiming revision presents to the Tribunal some fact previously unknown to the Tribunal and to the party claiming revision.

III. The Applicant's letters dated 8 February and 26 March 1974 do not, however, present any newly discovered fact. Rather the Applicant presents again his arguments as to the legal interpretation of relevant Staff Rules and of provisions of the Conditions of service for locally recruited staff members of the UNDP Office in Nigeria. Those arguments were fully considered and passed upon by the Tribunal in its Judgement No. 170.

IV. For the above reasons, the application for revision of Judgement No. 170 is rejected.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Vice-President

Roger STEVENS
Member

Jean HARDY
Executive Secretary

New York, 4 October 1974

Judgement No. 189

(Original: English)

Case No. 189:
Ho (Reassignment, and charges of prejudice and harassment)

Against: **The Secretary-General of the United Nations**

Request that the Tribunal declare receivable an appeal against a decision to reassign the Applicant and order the rescission of that decision.—Request that an investigation be held to consider the alleged prejudice and harassment.

Request that the judgement be drawn up in Chinese.—Competence of the Tribunal to determine in which official language a judgement shall be drawn up.—Request rejected, the Tribunal having decided that the judgement would be drawn up in English.

Request for the hearing of witnesses.—Decision of the Tribunal to hear as witness the Chief of the Security and Safety Section.

First principal request.—Reasons why the Joint Appeals Board decided that the Applicant's appeal against the decision to reassign him was not receivable.—Consideration by the Tribunal of the questions when the decision to reassign the Applicant was taken and when the Respondent informed the Applicant