

Decision No. 78

Charlotte Robinson,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jiménez de Aréchaga, President, P. Weil and A. K. Abul-Magd, Vice Presidents, and R. A. Gorman, E. Lauterpacht, C. D. Onyeama and Tun Suffian, Judges, has been seized of an application, received June 24, 1988, by Charlotte Robinson, against the International Bank for Reconstruction and Development. The usual exchange of pleadings took place. At the Applicant's request the Respondent produced a requested document. The case was listed on March 2, 1989.

The relevant facts:

2. The Applicant, a United States citizen, retired from the Bank on October 31, 1986 and exercised the option to withdraw a "commuted" portion of her pension in the belief that that lump sum would be free from taxation under U.S. law. This belief derived in part from a seminar she attended in April 1986 which had been sponsored by the Personnel Management Department in order to guide and assist prospective retirees to plan and prepare for retirement.

3. During the seminar, on April 14, 1986, a Pension Information Assistant from the Staff Retirement Plan Department explained to the participants the different aspects of the Bank's retirement plan including the post-retirement options available to them concerning commutation of pensions. In this regard the Pension Information Assistant stated that commutation up to one's individual pension contributions would be tax-free under current U.S. tax law. In particular he stated that under the "cost recovery" method then in effect there was an exclusion period without tax until the time that the retiree was paid through his pension an amount equal to his previous contributions (which had when originally earned been treated as taxable income). In this regard he made himself available for providing to those who were interested the figure representing the amount of their contribution. He stated:

This (the cost recovery method) is the method that is going to be changed. It's going to be eradicated because of current legislation. Now when it's going to change I don't know, but at least this is an appropriate method, probably for the remainder of this year.

He made himself available for calculating the impact of a commutation on an individual basis, and concluded by mentioning that those interested in having any specific information on taxability should contact an Assistant Pension Administrative Officer.

4. Two days later at the seminar, the Chief Counsel, Administration Unit, Legal Department made a presentation on "Taxation in the U.S." He began by saying:

The Tax Code of the United States, as you know, is subject to constant revision, it seems, certainly constant discussion, and you no doubt may have read in the papers that a major tax reform is underway. The reason I mention that in this connection is that there have been for many years, certainly since the enactment of the Internal Revenue Code of 1954, two ways of taxing pensions. One of these is called the cost recovery method and the other is called the exclusion ratio method. The cost recovery method, at least in one of the proposed bills, would be abolished but since it is the principal means of taxing people who have been U.S. citizens on their pensions while they were employed by the Bank and of course anyone

else to whom the system applies, I want to describe the cost recovery method and then describe the exclusion ratio method. There is no way of knowing whether the cost recovery method of taxation will be abolished nor is there any way of knowing whether it will be abolished in a way that will keep people who have already begun to be taxed under that method in the same tax situation or whether a new tax situation will apply to them.

With regard to commutation of pensions he stated:

If you commute part of your pension into a lump sum, you will get that tax free to the extent that you do not get an amount that exceeds your contribution and that will have an effect, of course, on how quickly your remaining pension payments begin to be taxed and it also may even affect whether those payments are taxed under the cost recovery method or under the exclusion ratio method.

5. The Chief Counsel answered a number of questions, one of which pertained to the elimination of the cost recovery method and whether he had any information on the work of the U.S. Congress on this subject. He replied:

I can only give you a guess and believe me, it's nothing more than that and I don't want you to take it as anything more than that. My guess is that what they will do is provide that, if, from the time the new legislation becomes effective, if it ever does, if you haven't recovered your contributions by that date, then you will be made to establish an exclusion ratio which will probably be, well, who knows whether it's beneficial, it depends on the individual case, it could be in the postponement of some tax, but my guess is that they'll probably require you to establish an exclusion ratio based on your life expectancy at the time the law becomes effective and the amount of contributions remaining which you have not recovered. But that's pure speculation, which I probably shouldn't do.

6. When the Applicant decided to retire in October 1986, she met with the Pension Information Assistant on August 8, 1986. At that meeting the Applicant told him that she did not want to take any commutation that would be taxable as income. He assured her that no portion of the commuted pension would be taxable. Consequently, the Applicant decided to take as a partial commutation of her pension the amount of \$31,528.40.

7. Throughout 1986, at the time of both the April seminar and the August meeting between the Applicant and the Pension Information Assistant, the United States Congress was considering a major revision of the federal income tax laws. A tax revision bill was passed by the House of Representatives in December 1985, and a different bill was passed by the Senate in June 1986; although the latter bill provided for the repeal of the "cost recovery" method for taxing pension payments, neither it nor the House bill provided for retroactive application to amounts paid prior to December 31, 1986. On August 16, 1986, the differences between the two bills were reconciled by a Conference Committee, and an unofficial summary of the agreement within the Committee reached the Respondent on August 25; that summary referred to the repeal of the cost recovery method but made no mention of a retroactive effective date. The full text of the Conference bill, which in fact provided for a retroactive effective date of July 2, 1986, was not printed until the third week of September, shortly before the Houses of Congress approved the bill on September 25 and 27. The bill was signed into law on October 22, 1986, and the final text of the law reached the Respondent on November 3. Between those dates, on October 31, the Applicant retired from the Bank.

8. On December 18, 1986, the Staff Retirement Plan Department sent a letter to the Applicant stating that the amount of \$28,865.60 of the commutation payment she had received was taxable; that the Internal Revenue Service had proposed regulations that might affect the calculation of the amount of her commutation and pension that was excluded from tax; and that these regulations might be implemented with retroactive effect and might, therefore, become applicable in her case.

9. The Applicant apparently received this letter in February 1987, and immediately contacted the Pension Information Assistant, who told her that the tax law had been changed retroactively and that there was nothing

the Bank could do for her. The Applicant then met with a representative of the Bank's Staff Association, who expressed concern for her situation but could not offer her any solution or guidance. She also contacted the American Association of Retired Persons and her Congressman's office and was informed that both were working on some action regarding the new tax law.

10. Early in June 1987 the Applicant consulted the Ombudsman who advised her that a similar claim of a retired staff member was then pending before the Appeals Committee; that he (the Ombudsman) had been assured by the Vice President, Personnel and Administration, that whatever the outcome of that appeal, it would apply equally to all staff in a similar position; and that the Applicant should, therefore, wait for that appeal to be decided.

11. On August 19, 1987 the Applicant filed an appeal with the Appeals Committee. Later, in an undated report, the Appeals Committee stated that the Bank in its April seminar had adequately discharged its responsibility to advise retirees of the U.S. tax laws as applicable at the time of retirement and that, although it was unfortunate that those laws were subsequently modified in such an unusual manner, the Bank could not be held responsible for changes occurring after the seminar. The Committee concluded that such seminars were valuable for staff members and urged the Bank to continue them and to make all reasonable efforts to keep seminar participants supplied with current and accurate information as it became available.

12. On January 26, 1988 the Senior Vice President, External Affairs and Administration, informed the Applicant that he had accepted the Committee's recommendations.

The Respondent's main contentions on the jurisdictional issue:

13. The Tribunal should dismiss the application as inadmissible. The application is not founded on an administrative decision; the Applicant did not exhaust all the internal remedies available to her; and her appeals to the Appeals Committee and the Tribunal are not timely.

14. The Applicant cited the outcome of her meeting on August 8, 1986 with the Pension Information Assistant as the administrative decision giving rise to her appeal. However, neither her statement of appeal before the Appeals Committee nor her application to the Tribunal stated what relief she had asked for during that meeting. Therefore, since there had been no administrative decision made or asked for, the application should be dismissed as moot.

15. The Applicant failed to take specified steps required to complete administrative review and the Respondent had no responsibility to inform her about the pertinent provisions of published Rules. The impact of the Ombudsman's advice on the Applicant's pursuit of her internal remedies is irrelevant, since the time limit for initiating administrative review had lapsed by June 1987, before she consulted the Ombudsman.

16. There is no credible evidence that the Applicant was prevented from filing a timely appeal with the Appeals Committee. Moreover, the Applicant in her statement of appeal to the Appeals Committee admitted that her appeal was not timely.

17. The Respondent did raise before the Appeals Committee the issues of the untimeliness of the Applicant's appeal as well as her failure to exhaust internal remedies. Even if the Respondent had failed to raise these issues, its acceptance of the Appeals Committee recommendation on the merits adverse to the Applicant, without express reservations, did not preclude the Respondent from raising these same issues before the Tribunal because the proceedings in the Tribunal are de novo.

The Applicant's main contentions on the jurisdictional issue:

18. The Tribunal has jurisdiction to consider the Applicant's request for relief on its merits. The Applicant's delay in pursuing internal remedies was not the result of her lack of diligence, but was instead caused by the Respondent's failure to respond adequately and in timely fashion to her inquiries as to available remedies.

Therefore, under the equitable doctrine of estoppel, the Respondent should not be permitted to raise any jurisdictional objections.

19. The Applicant did exhaust the internal remedies available to her. The Respondent did not consider that any "administrative decision" had been taken in the Applicant's case and, consequently, it did not inform her of any procedure for administrative review that was available to her.

20. The Respondent also took the position that a procedure for administrative review was not available to the Applicant, because the appeals process did not apply to the Pension Fund Office. Consequently, the timeliness of the Applicant's appeals to the Appeals Committee should not be considered.

21. In any event, the Respondent failed to preserve the questions of exhaustion of internal remedies and timeliness of appeal because it accepted without reservation the recommendation of the Appeals Committee on the merits of the case.

The Applicant's main contentions on the merits:

22. The Respondent had assumed and undertaken the responsibility of advising its retiring staff members on the applicable tax law in the United States at the time of their retirement. However, in the case of the Applicant the Respondent has failed to discharge that responsibility adequately because it omitted to include any caveat when it assured the Applicant that her commuted pension was not taxable.

23. Since the Respondent had represented itself to the Applicant as an expert to be relied upon, its failure to ascertain the retroactive effect of the law on pension commutation and to inform the Applicant promptly constituted a negligent breach of the obligation to advise, which obligation it had undertaken without reservation during the retirement seminar as well as during the Applicant's meeting in August with the Pension Information Assistant. Had the Respondent determined that it could not adequately discharge such an obligation to advise, it should have renounced that obligation, but it cannot do so retroactively.

24. On August 16, 1986 the United States Congress Conference Committee approved the amendment which would make the Applicant's pension commutations taxable and the Act was signed into law on October 22, 1986, over a week prior to her retirement. The Respondent should have known about this major change which had affected over 20 million American workers, and informed her in time.

25. The Respondent is liable to the Applicant for the damages she suffered for having reasonably relied on that advice when she decided to take a partial commutation of her pension upon retirement on October 31, 1986.

26. The Applicant is entitled to recover the tax-loss caused by the high rate at which her commutation was taxed as well as to collect damages related to the unexpected nature of her tax loss.

27. The Applicant requested the following relief:

- compensation in the amount of \$43,937.12 for damages she suffered as a consequence of the Respondent's breach of its obligations to the Applicant; and
- attorney's fees and associated costs in the amount of \$1,434.18.

The Respondent's main contentions on the merits:

28. If this application were admissible and considered on its merits, it should be dismissed because the Respondent has committed no breach of the Applicant's contract of employment or terms of employment.

29. The Respondent did not misinform her nor did it violate any obligation to inform her about changes in U.S. tax law. It had not assumed a responsibility or a legal obligation to advise staff members about personal tax or

legal matters and had not induced staff to rely on any such advice. The Respondent acted reasonably given the legislative and political climate as well as the complexity and the scope of the Tax Reform. It gave the staff information it had and believed to be useful.

30. At the April 1986 retirement seminar, the speakers informed the participants of the possibilities of new U.S. legislation being adopted and important changes in the law being made. The possibility and even the likelihood of the repeal of the “cost recovery method” was specifically mentioned more than once, although without specific reference to the taxation of commuted pensions. At that time, there was no expectation that any change in the taxation of commuted sums would have a substantial impact on persons retiring in 1986.

31. At the retirement seminar the Pension Information Assistant referred the audience to the Assistant Pension Administration Officer for specific tax information on an individual basis. However, the Applicant did not get in touch with this officer.

32. The Respondent should not disseminate information so volatile that it is likely to change before it can be disseminated. It must exercise discretion to decide what information to disseminate to staff and when to leave the staff to the same information resources that are available to the general public when the public manages its own affairs. The volatility and uncertainty underlying the Tax Reform Act were well known to the general public in August, September, and October 1986, and it ought to have been known to the Applicant as well.

33. The Applicant should not be awarded damages in any amount, nor should she be given compensation for “intangible loss.” The Applicant has not suffered compensatable harm; she may have been inconvenienced by events over which neither she nor the Respondent had control, but that is not a basis for claiming damages.

Considerations:

34. The Respondent asserts that the Tribunal lacks jurisdiction to decide this case and that, in any event, the application lacks merit. Both contentions turn upon an appreciation of the dates that are central to the case. In April 1986, the Applicant attended a seminar given by the Bank on retirement issues, at which lecturers from the Bank pointed out that changes in determining the taxability of pension payments were under consideration in the ongoing congressional deliberations on tax reform. On August 8, 1986, in anticipation of her retirement on October 31, the Applicant consulted a Pension Information Assistant and was informed – accurately as of that date – that the Applicant could confidently withdraw a commuted sum from her pension shortly after retirement without fear that it would be subject to U.S. income tax. On August 16, a Conference Committee of the U.S. Congress tentatively agreed on a tax reform bill that would resolve differences between the House and Senate versions passed in the previous months; an unofficial summary of that tentative agreement, which apparently made no mention of the retroactivity of changes in the taxation of pensions, reached the Respondent on August 25. The full text of the Conference bill and the supporting committee report reached the Respondent on or about September 23, and was accepted by both the House and the Senate within four days thereafter. It was apparently only with the receipt of this bill and report that the Bank could have become aware that changes in taxability of pension payments were made effective for payments received after July 1, 1986. Approximately one month later, on October 22, 1986, the Conference bill became law, and the final text of the statute was received by the Respondent on November 3. The Applicant retired on October 31, 1986. The Respondent informed her at the turn of the year that the commuted pension payments she received in November and December 1986 would be subject in large part to U.S. income tax. In February 1987, she once again contacted the Pension Information Assistant, who informed her that there was nothing the Bank could do to help or advise her. The Applicant sought assistance from others, ultimately contacting the Ombudsman in June 1987 (who accurately informed her that a result favorable to the staff member in an appeal pending before the Appeals Committee would be extended by the Bank to her case as well) and filing an appeal with the Appeals Committee on August 19, 1987.

35. It is first necessary to consider the Respondent's challenge to the Tribunal's jurisdiction. The position of the Respondent in this regard has been ambivalent. On the one hand, it has contended that the Applicant, when she consulted the Pension Information Assistant in February 1987, neither sought nor received an

“administrative decision” from which an appeal could ultimately be taken to the Tribunal; she merely claims that the Pension Information Assistant failed to give accurate advice and there is no claim that she asked, and was denied, any income tax reimbursement or any form of relief or any other decision. On the other hand, the Respondent claims that the Applicant failed to invoke in a timely manner her internal administrative review, but such review applies only (under Staff Rule 9.01, para. 3.01) to “review of an administrative decision.”

36. Although, as the Tribunal will note shortly, its own jurisdiction is not limited to review of affirmative administrative decisions but can encompass as well certain omissions or failures to act, the reference in Staff Rule 9.01 to review of an “administrative decision” can obviously give rise to uncertainties on the part of staff members. In the circumstances of this case in particular, it is difficult to say what kind of specific relief or decision the Applicant could have expected from the Pension Information Assistant, in view of the fact that the revised U.S. tax law was indisputably applicable to her late-1986 commuted pension payments; she was indeed informed by him that there was nothing that the Bank could do for her. If, as the Respondent sometimes argues in this case, this did not amount to an “administrative decision” that this Tribunal can review, it is understandable that there could be uncertainty on the part of the Applicant as to whether the Bank’s internal administrative review provisions in Staff Rule 9.01 were applicable and as to whom the Applicant should turn to for recourse. She was therefore not unreasonable when she moved promptly to seek the advice of the Staff Association and then of the Ombudsman. The Applicant might well have moved equally promptly to file an appeal with the Appeals Committee had she not been accurately advised by the Ombudsman that she need not do so because of a pending appeal that the Bank had agreed to apply to her should the outcome favor the staff member. It is noteworthy, in any event, that when the Applicant did take her case to the Appeals Committee, the Bank challenged the Committee’s jurisdiction for lack of an “administrative decision” from which administrative review and ultimately appeal could be taken.

37. The Tribunal is of the view that Staff Rule 9.01 and its provisions for administrative review should not be construed in an overly technical manner. Those provisions are designed to rectify misunderstandings and to resolve a wide range of claims by staff members in an expeditious but essentially informal manner. Between the Bank and its staff members, there are often ongoing communications and exchanged letters and memoranda that sometimes render it unclear whether firm decisions have been made and time periods crystallized. As this case shows, there may be ambiguities about whether the administrative review procedures are intended to apply at all. Given the fact that these procedures were designed to be utilized by all categories of staff members, most of them lacking legal expertise and most of them presumably acting without the aid of counsel at this relatively early dispute stage, the Tribunal concludes that they should be applied flexibly in accordance with their terms and their spirit.

38. It is perhaps for these reasons that the Appeals Committee, despite the Respondent’s challenge to its jurisdiction for reasons similar to those raised here, decided to rule upon the Applicant’s appeal on the merits. The Tribunal also concludes that Staff Rule 9.01 should not provide a bar to the application in the circumstances of this case.

39. Not only does the Respondent contend that the Tribunal is without jurisdiction by virtue of the Applicant’s untimeliness and her failure to exhaust administrative review, but it also argues that this case is “moot” because there has been no “administrative decision” that the Tribunal has jurisdiction to review. The Statute of the Tribunal, however, does not limit its jurisdiction to the review of only affirmative decisions by the Bank. Article II, para. 1, of the Statute provides in part: “The Tribunal shall hear and pass judgment upon any application by which a member of the staff of the Bank Group alleges non-observance of the contract of employment or terms of appointment of such staff member.” Article XII, para. 1, of the Statute provides in part: “If the Tribunal finds that the application is well-founded, it shall order the rescission of the decision contested or the specific performance of the obligation invoked.” It appears clear that claims of nonfeasance are as much within the Tribunal’s jurisdiction as claims of improper affirmative decisions. Indeed, it is frequently illusory to make such a distinction, as the Bank’s action in failing to give a staff member a greater salary increase or in failing to grade a position at a higher level can be viewed either as an affirmative decision or as a failure to decide. If the contract of employment or terms of appointment of a staff member impose an obligation upon the Bank to act, and an improper failure to act results in injury to a staff member, the Tribunal is given the power to

redress that injury.

40. The Tribunal concludes that the Applicant has adequately framed her claim as one for the “non-observance of [her] contract of employment or terms of appointment.” Her claim is that the Respondent undertook to provide accurate tax advice to its retiring staff members, that she reasonably relied on this undertaking, and that the Respondent neglected to inform her in a timely manner of the retroactive change in the U. S. tax law so that she could accordingly conform her decisions regarding the commutation of her pension payments. These claims fall within the jurisdiction of the Tribunal to decide on the merits.

41. The Bank, commendably, has undertaken – through general informational seminars and through individualized counseling of staff members by Pension Information Assistants – to keep its staff members abreast of pertinent legal developments that bear upon their compensation and other terms of employment. By doing so, the Bank can properly be expected – using the language from its answer in this proceeding – “to act reasonably in the circumstances.” The Bank, therefore, may not intentionally or recklessly or carelessly give inaccurate information to its staff members, knowing that that information will be utilized by staff members in making important decisions regarding their employment. Neither, however, must the Bank be held to the standard of a guarantor of the unfailing accuracy of its advice or its predictions; it is expected only to act reasonably, and even reasonably offered advice will sometimes prove ultimately to be wrong.

42. The Tribunal therefore shares the view of the Appeals Committee that the comments and advice provided at the April 1986 seminar were reasonable; the lecturers informed the staff members in attendance of the possibility of legislative modification of the “cost recovery method” for taxing pension payments and of the uncertainty and unpredictability of that modification. But the Appeals Committee failed to consider the conduct of the Respondent after the April 1986 seminars.

43. Even so, the advice given by the Pension Information Assistant when the Applicant met with him on August 8, 1986 was also sound. The Applicant sought assurance that any commuted pension payments received by her after October 31, 1986 would be free of tax (to the extent they did not exceed her own contributions), and in providing that assurance the Pension Information Assistant acted reasonably. Such was the then current U.S. law, and it would have been unreasonable for him to anticipate at that time that any pertinent change in the tax law would be made retroactive, effective July 2, 1986.

44. But the record before the Tribunal demonstrates that the retroactivity feature that was incorporated in the Conference bill and report could reasonably have come to the attention of the Bank on September 23, 1986, and that its passage by both Houses of Congress had taken place by September 27. The Respondent had more than one month in which to become apprised of the retroactivity provision, to identify that this change was of pertinence to Bank staff members, and to contact the ten to fifteen staff members whose pension payment would fall within the statutory retroactivity period. Having known of the Applicant’s meeting of August 8 and of her intention to retire on October 31 with commuted pension payments, the Respondent should reasonably have been expected to alert the Applicant during the month of October 1986 to the important change in her tax liabilities.

45. It is true, as the Respondent contends, that the tax reform act was not formally signed into law until October 22, only a week before the Applicant’s retirement. But the passage by both Houses of Congress of compromise legislation a month before surely afforded a firm expectation of the imminent change in the statute. It is also true that all staff members could have had recourse to their own individual tax attorneys or advisers during the period of uncertainty in the legislative revision process, and that this was particularly true given the expressions of doubt and unpredictability on the part of the lecturers at the April 1986 seminar. But the Bank did hold out the Pension Information Assistants as providers of pertinent information in the period after the seminar, and it appears that at the meeting between the Applicant and the Pension Information Assistant on August 8, 1986, the advice that she was given – unequivocal as it was – provided her with no intimation that she needed any further advice to keep abreast of legislative developments.

46. For these reasons, and on the particular facts of this case, the Tribunal concludes that the failure to inform

the Applicant of the adverse tax consequences of her pension payments until December 1986 (and possibly, as the Applicant claims, even later, in February 1987) was a violation of the Respondent's duty to act reasonably in all the circumstances.

47. It remains for the Tribunal to determine the proper relief. The Applicant's request for compensation falls into several headings: reimbursement of the tax payment she had to make in 1987 on account of the commuted pension payments she received in late 1986; the increase in her mortgage interest rate and monthly mortgage payments resulting from the change in her home purchase plans dictated by the unexpectedly high tax paid in 1987; the cost of storage for the Applicant's personal belongings in the meantime; and intangible losses resulting from the unexpectedly higher taxation, including anxiety, diminished standard of living, and insecurity. Of these, the Tribunal concludes that only the first-mentioned is a proper element of compensatory relief. The allegedly adverse impact flowing from the change in her home-purchase plans is too remote and speculative, as is the alleged intangible injury.

48. It is, however, possible to measure the financial injury caused by the unexpected taxation of a substantial proportion of the Applicant's commuted pension payments in November and December 1986. The Applicant estimates her "commutation tax loss" as in excess of \$15,000, the amount paid by her in 1986 taxes. But this neglects to take into account that even under the revised tax law, there is to be no tax upon pension payments equal to her earlier pension contributions, and that the only difference is in the timing of the exclusion from tax. Under the previous law, the exclusion would have been total in late 1986 and later pension payments would have been fully taxable to the Applicant as income, whereas under the revised law, the exclusion will continue with respect to a portion of the Applicant's pension receipts throughout the remainder of her life. This tax exclusion in 1987 and in later years has not been reflected in the Applicant's claims for "commutation tax loss". Taking that exclusion into account, the Respondent calculates that the actual financial injury incurred by the Applicant is approximately \$4,700. The Tribunal endorses the approach taken by the Respondent to the calculation of the commutation tax loss, but the pleadings presently before it do not permit of a full and accurate calculation of the precise amount of that loss. This amount should also take into account the payment of interest beginning with the date on which the Applicant made the tax payments in question. The Tribunal is confident that such details can be determined by the parties to this proceeding, and relegates the question to them, subject to recourse to the Tribunal in the unlikely event that such will be necessary to resolve the matter.

49. The Applicant also requests that the Tribunal award her attorney's fees and costs. It is the decision of the Tribunal that the Respondent pay the Applicant \$1,000 in such fees and costs.

Decision:

For these reasons, the Tribunal unanimously decides:

- (i) that the Respondent shall pay the Applicant a sum equal to the difference between the Applicant's federal and state tax liability on her pension receipts as calculated according to the cost-recovery and exclusion-ratio methods, with interest;
- (ii) that the Respondent shall pay the Applicant the sum of \$1,000 for attorneys' fees and costs; and
- (iii) that the application is otherwise rejected.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C. F. Amerasinghe
Executive Secretary

At Washington, D.C., May 5, 1989