Decision No. 38

Damian von Stauffenberg, Evangeline Ganuelas, Lois Leach,
Applicants

v.

The World Bank,
Respondent

1. The World Bank Administrative Tribunal, composed of E. Jimenez de Arechaga, President, P. Weil and A.K. Abul Magd, Vice Presidents, and R.A. Gorman, E. Lauterpacht, C.D. Onyeama and Tun M. Suffian, Judges, have been seized of applications received October 16, 1984, by Damian von Stauffenberg and Evangeline Ganuelas against the International Finance Corporation, and by Lois Leach against the International Bank for Reconstruction and Development. On January 22, 1985, the Applicants filed a single Consolidated Memorandum in support of their applications. The Respondent's** For the purpose of this decision the terms "Respondent", "World Bank" mean the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation. answer was filed on March 28, 1985. A single reply and a single rejoinder were filed by the Applicants and the Respondent on August 20 and September 23, 1985, respectively. In response to the Applicants' request some additional documents were provided by the Respondent; an Order of the President, dated July 22, 1985, rejected other requests for the production of additional documents. The Tribunal decided to hold oral hearings under Article IX of its Statute. Oral hearings were held on October 22, 1985. At these hearings Counsel for the Applicants and the Respondent developed certain parts of their respective cases and answered questions put by the Tribunal. The Tribunal decided that the three applications be decided upon together. The cases were listed on February 3, 1986.

2. On April 8, 1986, the Applicants requested the Tribunal to defer issuance of its judgement until the Respondent made a decision on whether it would provide the same relief to its staff as that provided in February 1986 by the International Monetary Fund, thus rendering the case moot. On the same day the Respondent filed an additional statement of facts to reflect the recent factual developments, and on April 14, 1986, it filed its comments on the Applicant's request to stay the decision of the Tribunal. On April 22, 1986, the Tribunal decided to adjourn the case and gave the Parties the appropriate directions should the Applicants apply for resumption of the proceedings. Pursuant to an Order of the Tribunal of October 31, 1986, a supplementary consolidated memorandum and a brief in reply were submitted by the Applicants and the Respondent on January 23 and March 2, 1987, respectively. In response to the Applicants' request, and in accordance with an Order of the President of December 12, 1986, additional documents were provided by the Respondent; a request for the production of another document was rejected by the said Order. The cases were listed on August 4, 1987.

3. The Applicants' complaints have two aspects. In their initial applications the Applicants maintain that the increases in the headquarter's salary structure of 4% and 1.2% (according to category) recommended by the President of the World Bank on July 18, 1984, instead of the increases of 5% and 2% first recommended by the President on May 29, 1984, violated the principles governing staff compensation laid down by the Executive Directors on May 24, 1979, as well as the rulings of the Tribunal in the de Merode case. The Applicants argue that the Bank has thus not observed their contracts of employment or terms of appointment and request that the Bank revert to the increases initially recommended by the President. After resumption of the case the Applicants also maintain that in granting on June 10, 1986, general salary increases of 1.5% and 1.3% (according to category) effective May 1, 1986, instead of the increases of 1.6% and 0.5% retroactive to May 1, 1984, and 0.5% retroactive to May 1, 1985, decided by the International Monetary Fund, the Bank has violated the principle of parallelism between the Bank and the Fund in compensation matters. They

consequently request that the Tribunal award them retroactive adjustments in the same amounts as those decided by the Fund.

I. THE FACTS

(a) The facts relating to the 1984 decisions

4. On May 24, 1979, after considering the recommendations of the Joint Bank/IMF Committee on Staff Compensation Issues (the so-called Kafka Committee), the Executive Directors laid down certain principles governing staff compensation. With respect to levels of compensation the Executive Directors decided as follows:

> J-Q and A-I level staff compensation should be determined as follows:
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> (i) whilst in principle the market should be international, for pragmatic reasons the compensation of staff in levels J-M should at this time be set at a 10% quality premium in total compensation above the levels of a US market comprising a 50/50 mix of relevant quality private sector organizations and selected agencies of the US Civil Service, provided that the international competitiveness of such a market is kept under constant review;
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> (ii) until such time as a methodology for the precise quantification of benefits is developed the relationship should be expressed in terms of a 10% premium in direct pay;
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> (iii) the same basic principles should be used in the setting of A-I staff compensation, except that the mix of selected agencies of US Civil Service and quality private sector organizations should be based on the local Washington market ….
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> With respect to procedures of review the Executive Directors decided as follows:
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> Staff compensation should be reviewed in accordance with the following principles:
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> (i) there should be a comprehensive review of staff compensation every third year and in the intervening years pay should, in normal circumstances, be adjusted in the light of movements in the pay levels of comparator organizations in the chosen markets;
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> (ii) in abnormal situations as at present, pay adjustments in the intervening years should also take account of pay movements in real terms among comparator organizations in other countries and, in the case of the US market, should not be subject to sharp deviations from market forces as a result of changing US Government practice towards the pay of its civil service;
>
> (iii) there should be full Staff Association participation in the review process…

5. In order to implement these decisions the Respondent undertook in 1980 an in-depth survey of the actual compensation levels of selected public and private sector organizations. The survey covered comparator organizations in France and Germany, selected as representative of other high paying countries in addition to the U.S., as a check on the international competitiveness of the U.S. market for J-Q level staff. U.S. public sector data were adjusted to reflect full comparability with the generality of private sector pay as shown by the annual survey carried out by the U.S. Bureau of Labor Statistics intended to show the adjustments needed in U.S. Civil Service pay to achieve comparability with the generality of the private sector (the so-called PATC Survey).

6. In 1981 several staff members challenged the Bank's right to apply the comparator system decided upon in 1979 to staff members employed before its adoption. They contended that this was in breach of their conditions of employment which, so they maintained, required salary adjustments to reflect the full increase in the cost of living. In its judgement in de Merode (Decision No. 1 [1981]) the Tribunal reviewed the history of the salary increases since 1968 and concluded that "there did not exist in 1979, at the time of the alleged non-observance of the contracts of employment or terms of appointment, any decision or practice automatically to increase

salaries to a level equal at least to the rise in the cost of living so as to form part of the conditions of employment" (para. 109). The Tribunal held, therefore, that "accordingly the Bank was free in 1979, as it had been at any time, to choose the method which appeared to it the most appropriate for achieving the objectives of its personnel policy as defined by the Articles of Agreement" (Para. 110). However, the Tribunal added:

> In holding that the conditions of employment of staff members did not in 1979 contain any rule of law relating to the method of adjustment of salaries or to the taking into consideration of certain factors in preference to others, the Tribunal is not asserting that the conditions of employment contain no rules whatsoever regarding salary and adjustment. True, neither the letters of appointment and acceptance nor the Articles of Agreement, nor any written rule or regulation include any provision requiring the Bank as a matter of law to make periodic adjustments of salaries. However, the Tribunal considers that a consistent practice of periodic adjustment has been established, and that the Bank makes these adjustments out of the conviction that it is legally obliged to do so….
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> The Tribunal considers in consequence that the Bank is obliged to carry out periodic reviews of salaries, taking into account various relevant factors. The Bank is under no duty to adjust salaries automatically to increases in the cost of living and it retains a measure of discretion in this regard. This does not mean that the rises in the cost of living in a period of inflation constitute a factor that can be ignored or disregarded in the exercise of that discretion. On the contrary, the established practice, and statements confirming that practice, have created a legal obligation to make periodic adjustments reflecting changes in the cost of living and other factors. In the opinion of the Tribunal such an obligation is a fundamental element in the Applicants' conditions of employment which the Bank does not have the right to change unilaterally. (paras. 111-112).

7. In August 1983 the Executive Directors adopted the Principles of Staff Employment which, according to their words, "embody the general conditions and terms of employment with the Organizations and of the staff members…(and) set forth the broad policies in accordance with which the President shall organize and manage the staff of the World Bank and the IFC". In regard to staff compensation, the Principles provide as follows:

> 6.1 The basic objectives of the Organizations' compensation policy shall be to:
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> (a) enable the Organizations to recruit staff members of the highest caliber appropriate to job requirements and to retain them so long as there is reasonable coherence between their career interests and the evolving mission and circumstances of the Organizations;
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> (b) help motivate staff members to perform to the best of their abilities;
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> (c) provide levels of compensation that are equitable internally; and
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> (d) achieve these objectives with due regard to cost bearing in mind the responsibility of the Organizations to their members countries.
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> With these objectives in view, the Organizations shall:
>
> (a) establish and periodically review the general levels of staff compensation and adjust such levels as appropriate….

8. The second comprehensive review pursuant to the 1979 decision was done in 1984, with the assistance of Hay Management Consultants. The Hay Preliminary Report was submitted on May 23, 1984. It provided statistical comparisons of various approaches to determining compensation, and compared compensation paid by relevant public and private sector organizations in the U.S., France and Germany. The Report noted that "judgement underlies the whole process; it must be systematized and based on accurate information but it cannot be totally objective".

9. In a memorandum dated May 29, 1984 the President proposed for the consideration of the Executive Directors adjustments in staff compensation in the light of the findings of the Hay Preliminary Report. After reviewing the principles laid down in 1979 and the history of the adjustments in the intervening years since

these principles were adopted, as well as the rulings in de Merode, the President recommended salary adjustments to be effective May 1, 1984.

10. For J-Q (higher level) staff, the President noted that "the agreed principle is that Bank compensation be set at a 10% quality premium above the U.S. market comprising a 50/50 mix of leading public and private sector organizations provided the U.S. market is internally competitive". With regard to the principle laid down in 1979 that pay adjustments "should not be subject to sharp deviations from market forces as a result of changing U.S. Government practice toward the pay of its civil service", the President noted that, while "at the last major review in 1980 the U.S. public sector data were adjusted to the full extent indicated by the PATC survey", this survey "has been regarded as flawed by successive U.S. Administrations and is not directed at the full range of professional skills found in the Bank and IFC". The President concluded that “adjustment of the survey data in the light of the PATC survey may, therefore, only provide a broad indicator". Given the 10% quality premium, the salary increase would be, so the President's Memorandum indicated, 0% without adjustment of the U.S. public sector data, and 6% with full PATC adjustment. The amount of the increase, which was also to take account of the 5.5% rise in the Washington Consumer Price Index in the twelve preceding months, was, therefore, to depend on the extent to which account would be taken of an adjustment of the U.S. public sector data. The President proposed an increase of 5%, and explained this recommendation in the following terms:

> Our data base, however extensive and reliable, can only serve as a frame of reference for the exercise of judgement…. There is some uncertainty regarding the extent of adjustments to be made to U.S. public sector data for the gap between public and private pay in the U.S. is certainly unusually wide… In all circumstances we feel 5% to be a reasonable interpretation of the data and therefore propose an increase of that percentage in the salary structures for all J-Q positions.

11. The 5-1 (assistant level) staff were surveyed separately in the President's May 29, 1984 Memorandum because they had a separate grade and salary structure; the President noted, however, that these positions were to be incorporated in an overall grade structure in the near future. Taking into account the 10% quality premium, so the President indicated, the adjustment warranted by the Hay data would be 6.2% without any adjustment to U.S. public sector data, and 12.6% with full PATC adjustment. The President recommended an increase similar to that proposed for the J-Q (higher level) staff, i.e. 5%. He explained this recommendation in the following terms:

> The data would clearly indicate a higher adjustment but, bearing in mind the complications resulting from the extensive grandfathering of staff at these levels, we are recommending at this time the same increase in the salary structure as for J-Q level staff, namely 5%. We intend to take care of the competitiveness of our salary structure when incorporating the 5-1 level positions into the overall grade structure early next year.

12. Finally, with respect to A-H (secretarial level) staff, the President noted that the Hay data, taking into account the 10% quality premium, indicated a 0% rise without adjustment to U.S. public sector data, and 0.3% rise with full PATC adjustment. The President concluded:

> However viewed, the data provide little justification for any increase in the salary structure for A-H level staff. Nevertheless, it would be unrealistic from the point of view of prudent management to seek to bring the salaries for our secretarial staff into line abruptly, quite apart from the implications of the Administrative Tribunal decision… We, therefore, recommend an increase of 2% in the salary structure for A-H level staff.

13. At the end of his Memorandum the President drew the attention of the Executive Directors to the existence of "a practical problem of timing in implementing the reward system this year". If, "as would normally be the case in the interests of parallelism", the Bank were to wait to "start the process" until the IMF had taken its own decision, no decision could be taken by the Bank before August. The President therefore proposed "to go ahead with reaching tentative decisions", it being understood that "no final decision can be taken until both Boards have made their decisions". Accordingly, he recommended that the increases adopted by the Executive Directors should be "subject to review, if, as a result of co-ordination with the IMF, different increases in the structure are subsequently decided"; in that case, he observed, "managers would, of course, have to review

their initial decision".

14. For its part the Staff Association noted in a Memorandum of June 1, 1984, that the material in the Hay Report led to figures for the increases differing from those proposed by the President. The Staff Association admitted that "in interpreting the figures there are areas of judgement and subjectivity". It acknowledged, in particular, that "one area of judgment is in the use of U.S. civil service salaries for purpose of comparison". On this point its opinion differed from that of the President: "Although we are all aware of the limitations and imperfections of the PATC survey, in the absence of a better adjustment figure, we must rely on it". The Staff Association calculated that the Hay data warranted an increase of 9.6% for higher level staff, 12.6% for assistant level staff and 3.6% for secretarial level staff. The Staff Association added, however:

> Naturally, the Staff Association is acutely aware that the World Bank does not operate in a vacuum. Member Governments are trying to exercise pay restraint in their own countries. In that situation, to argue for increases…justified as their raises are by the comparator data, could be seen as insensitive and self-serving. Therefore, the Staff Association is willing to compromise and propose that these figures could be reduced…to give a structural adjustment of:
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> A-H 3.6%
> 5-1 0.6%
> J-N 6.6%

The Staff Association's view, that "the data obtained can be interpreted in many ways" and that the Hay survey justified greater increases but that in a spirit of compromise the Staff Association was ready in the circumstances to accept the above percentages, was confirmed by it in a further Memorandum dated June 14, 1984.

15. On June 11, 1984, the Hay Final Report was forwarded to the Executive Directors for consideration at their June 14 meeting; the data presented was the same as in the Preliminary Report submitted earlier. According to the Minutes of the meeting, the Executive Directors "considered the President's Memorandum; in the course of an extended discussion, a number of Executive Directors indicated their support for management's proposals largely because they were consistent with the Principles of Staff Compensation but many of them also stated their support was subject to the same decisions being reached by the Fund in the interest of parallelism". The Minutes also relate that "other Executive Directors opposed the proposals or expressed serious reservations". Their "concerns" were based on various considerations: the need to be sensitive to the austerity measures undertaken by many member governments in both the public and private sectors; the difficulty of adjusting the data for the U.S. civil service in view of the "flawed methodology" of the PATC survey; and the need for parallelism with the International Monetary Fund. In the light of this discussion the Chairman stated that no clear consensus existed on the recommended adjustment. A deferral, he said, would give more time to pursue the matter with the Fund, and to return to the Board with a package more likely to meet with a consensus. The Executive Directors decided, accordingly, "to defer action on the recommendations" submitted by the President in his May 29 Memorandum.

16. On June 26, the U.S. Treasury Secretary, who is also the U.S. Governor of the Bank, sent a telex to certain Governors of the Bank and the Fund. In that telex he expressed the view that a number of staff "are currently paid in excess of their public and private sector counterparts"; that "a large number of employees do not deserve any increase"; and that, in view of the austerity measures taken in many member States, sometimes at the initiative of the two organizations, "the failure of the Bank and Fund to practice what they preach by providing unwarranted increases in staff salaries can only undermine their credibility and effectiveness." The U.S. Governor, therefore, urged his colleagues to instruct their representatives at the Bank and the Fund "to oppose any salary increases."

17. In response to questions raised by the Executive Directors during their discussion on June 14, the Compensation Department prepared two Technical Notes. The first Note, dated July 9, 1984, analyzed the salary administration system since "the adoption of the principle of comparability in 1979", which "commanded

the support of the Executive Directors" and "had been followed for the 1984 salary adjustment proposals". The second Note, dated July 10, 1984, dealt with the problem of the use of U.S. civil service salaries"; it observed that "there is still no perfect mechanism to assess the extent to which U.S. civil service salaries fall short of comparability with their market" and that the PATC survey, "despite its imperfections, is the only yardstick presently available or in sight". That is why, the Note explained, the President had presented figures both on the basis of U.S. public sector data unadjusted and after full PATC adjustment. The increase proposed by the President, so the Note concluded, was "less than the increases indicated on the basis of the adjusted U.S. market".

18. On July 17, the IMF Executive Board decided that the salary structure for higher level staff should be increased by 4% and for the other staff by 1.2%.

19. On July 18, the President of the Bank submitted to the Executive Directors a Memorandum which, after reporting the decision taken by the IMF the previous day, stated: "We have carefully reviewed the situation with which we are faced in the light of concerns expressed by several Executive Directors during our discussion of staff compensation on June 14, 1984". The President summed up "what led us to make the original proposals", and wrote as follows:

> Although we believe our original proposals were reasonable in all the circumstances, we must reach a consensus without further delay. I, therefore, propose that we adopt essentially the same decisions as taken by the IMF, namely:
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> (a) an adjustment in the Headquarters salary structure of 4% for J-Q levels. This is 20% below our original proposal of 5% in recognition of the need for restraint; I propose the same adjustment for 5-1 levels which were not reviewed separately by the IMF but for whom the Bank's survey findings indicate a significantly larger adjustment;
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> (b) an adjustment in the Headquarters salary structure of 1.2% for A-H levels. This is 40% below our original proposal of 2%, recognizing the need both for restraint and for some adjustment for inflation in keeping with the spirit of the Administrative Tribunal's 1981 decision ….

20. On July 19 the Executive Directors considered the President's new recommendations. According to the Minutes of the meeting, in summarizing the sense of the discussion the Chairman "stated that the majority of the Executive Directors had supported the revised proposal, but most of them, as well as Management, had done so with reservations". A number of Executive Directors "would have preferred Management's original proposal, because it seemed to indicate a lesser departure from the comparator system than the present compromise". Others voiced the same concerns as at the June 14 meeting, particularly with respect to parallelism with the IMF, and some expressed "considerable reservations about the appropriateness either of any increase at all or of the proposed levels". As an outcome of this discussion, the Executive Directors "approved the recommendations" of the President's July 18 Memorandum, and added that:

> [M]anagement would submit for the consideration of the Executive Directors further adjustments, if any might be needed, when introducing the revised grade and salary structure on the completion of the ongoing Job Grading Program. Such further adjustments would be retroactive to May 1, 1984.

21. The decision of the Executive Directors was conveyed to the staff on the same day by a letter from the President. In this letter the President said:

> For J-Q and 5-1 staff the adjustment is 4%, which is moderate in light of the market data. For A-H staff, where the survey findings indicate that our existing pay levels are already very competitive indeed, an adjustment of 1.2% has nevertheless been decided upon … I recognize that there may be some disappointment at this outcome….

22. The staff was apprised of the method of implementation of the 1984 salary adjustments by Administrative

Circular AC/71/84 dated July 26, 1984.

23. On October 16, 1984, three staff members of the World Bank filed applications with the Tribunal contesting the decision reached. Each Applicant is a member of one of the three classes of staff affected by the decision. Together these three classes comprise the entire staff of the Bank, excluding local staff in field missions. The Respondent has agreed, and has informed the staff and the Tribunal, that:

> To the extent that these applications are disposed of on the basis of general principles of law rather than particular facts relating to the application of a given individual, the Bank and IFC will treat all staff members similarly situated in accordance with the Tribunal's decision, whether or not an individual has made application or intervened in the proceedings before the Tribunal.

24. The Applicants requested that the Tribunal declare null and void the President's recommendation of July 18, 1984, and order the rescission of Administrative Circular AC/71/84 of July 26, 1984. The Applicants also request that the Tribunal direct the Respondent to amend the July 19, 1984, decision of the Executive Directors so as to reinstate the President's original recommendation of May 29, 1984. In the alternative, the Tribunal is requested to direct the President to reformulate his proposal and present a new recommendation to the Executive Directors consistent with the conditions of employment of the Applicants.

(b) The adjournment and resumption of the case

25. On April 8, 1986, when the Tribunal, after having heard oral presentations on October 22, 1985, was about to give its judgment in the cases, it was informed by the Applicants of certain recent factual developments. In January 1986, so the Tribunal was told, the Executive Board of the International Monetary Fund had decided, as a result of the job grading program just completed, to distribute the amounts which had been set aside at the time of the 1984 and 1985 compensation reviews in order to deal with possible consequences of job grading. This distribution resulted in a general salary increase of 1.6% for professional staff and 0.5% for support staff retroactive to May 1, 1984, and a further increase of 0.5% for all categories retroactive to May 1, 1985 (i.e., a cumulative increase of just over 2.1% for professional staff and just over 1% for support staff). The Tribunal was also informed that the Bank, which had set no money aside when deciding the 1984 reduced increase, was considering some action as a result of the completion of its own job grading program and in the wake of the Fund's decision. "If the Bank were to follow the decision of the IMF", so the Applicants stated, "and grant Bank staff the same or similar salary adjustments, it would provide the Applicants with a remedy very similar to what they have requested …., and for all practical purposes their cases would be moot". The Applicants therefore asked the Tribunal to defer judgment until the Bank had reached a decision on this issue.

26. On April 9, 1986, the Respondent filed a statement to bring to the attention of the Tribunal the above-mentioned factual developments. In that additional statement of facts the Respondent indicated that the Bank was considering "what actions, if necessary, should be taken in view of the policy of parallelism between the Bank and the Fund in compensation matters … However, no decision has yet been reached".

27. On the same day the President of the Tribunal invited the Respondent to submit its comments, if any, on the Applicants' request to stay the proceedings. On April 14, 1986, the Respondent filed its comments and, while observing that in its view the legality of the impugned decisions of 1984 could not be affected by later developments in 1985 and 1986, deferred on the matter of adjournment to the wisdom of the Tribunal.

28. On April 22, 1986, the Tribunal decided to adjourn the case and ordered that, if the Applicants were to apply for the resumption of the proceedings, they should file a

> pleading "indicating the manner in which they contend that events subsequent to October 16, 1984, have affected their applications of that date and the supporting arguments put forward by them in the written and oral proceedings", and the Respondent would have 30 days to file a supplementary brief in reply.

29. On June 10, 1986, the Executive Directors, after considering the problems created by the Fund's actions, decided on the basis of the principle of parallelism to adjust salaries effective May 1, 1986, at the rate of 1.5%

for staff at level 18 and above and 1.3% for staff at levels 11 to 17.

30. In view of these rates, clearly below those granted by the Fund, and of the absence of any retroactivity, the Applicants requested on October 31, 1986, a resumption of the proceedings. They ask for adjustments matching exactly the figures decided upon by the Fund, including retroactivity.

(c) The facts relating to the 1986 decision

31. Having recounted the procedural episode of the adjournment and resumption of the case, the Tribunal must closely look at the chain of events that ended with the decision of June 10, 1986, to grant without retroactivity to the Bank's employees an adjustment in an amount below that granted by the Fund to its staff.

32. Pursuant to the recommendation of the Joint/Bank Committee on Staff Compensation (the Kafka Committee) in 1979 both the Bank and the Fund had initiated in 1982 a job grading program with a view to ensuring that all positions were graded properly and fairly so as to ensure equal pay for work of equal value and fair salary differential between work of different values. This exercise was carried on in active consultation between the two institutions so as to achieve, as far as possible, substantially identical grade and salary structures. Both the Bank's and the Fund's decisions relating to the 1984 compensation review were made with provision for possible future adjustments when implementing the results of the respective job grading programs. To that effect, the Fund set aside amounts to be used for any salary adjustments which might be indicated by the results of the job grading exercise. The Bank, for its part, did not set aside any monies but it was provided, as seen above (para. 20), that Management would submit for consideration of the Executive Directors further adjustments, if any might be needed, upon introduction of the revised grade and salary structure. In both institutions any such adjustments were to be retroactive to May 1, 1984. For 1985 the Bank and the Fund agreed on a salary adjustment of 2.6% for all staff, and in both institutions an amount equivalent to 0.5% was set aside for possible adjustments in view of the results of the job grading program; any such adjustments were to be retroactive to May 1, 1985. The 0.5% set aside by the Bank in 1985 had, however, been fully used to help cover the continuing costs in fiscal year (FY) 86 of the individual retroactive increases given to staff whose positions were upgraded as a result of job grading.

33. At the Bank the job grading program was completed in August 1985. The President's recommendations of July 12, 1985, were approved by the Executive Directors on August 1, 1985. The Fund was not in a position to make its own decision before January 1986. On February 7, 1986, the Fund's staff was informed that on January 30 the Executive Board of the Fund had approved two measures arising out of this exercise. One of these decisions was to distribute retrospectively to staff all the amounts set aside in 1984 and 1985. This resulted in general salary increases of 1.6% for professional staff and 0.5% for support staff retroactive to May 1, 1984, and a further 0.5% for both categories retroactive to May 1, 1985.

34. In a Memorandum dated March 4, 1986, the President of the Bank invited the Executive Directors "to decide how to address the breaches of parallelism created as a result of different decisions taken by the Boards of the two Institutions." The President detailed what he called "the procedures in effect since 1973 for the maintenance of parallelism at the Board level" (see para. 57, below) and regretted that they had not been complied with by the Fund, thus leading to a number of "anomalies". Among those unwarranted differences, the President referred to the Fund's decision to distribute retroactively the full amount of the monies set aside in 1984 and 1985. As a result, he noted, "the large majority of IMF professional staff have received retroactive salary increases totalling just over 2.1% on a cumulative basis and support staff of just over 1% which are not matched by comparable salary increases for Bank staff." The President added that:

> [T]his is all the more serious since…average salaries of IMF staff at all but one grade are higher than those of their Bank counterparts. Overall, on a weighted average basis, IMF professional salaries are some 3.9% higher and support staff salaries 11.5% higher… As a result, staff of the Bank and IMF are now treated differently by the same member Governments in the two Institutions.

Using the same methodology for the Bank as for the Fund, the President observed, would indicate the need for

salary increases 0.7% greater in the Bank than in the Fund. The Fund's decision, the President said, "places Management in an impossible situation", because it is impossible to "explain to our staff the reason for this breach of parallelism or advance any reason why they should be paid less than their IMF colleagues with whom a more intimate collaborative relationship is to develop". The President added that “quite apart from the fact that they are impossible to explain to the staff, the differences constitute a clear breach of parallelism”. Accordingly, the President invited the Executive Directors to

> [R]eaffirm that parallelism should continue to govern staff compensation … (and) suggest how we should proceed to correct the anomalies that have arisen…

35. The President's Memorandum was to be considered by the Executive Directors on March 27, 1986. The Executive Directors also had before them a presentation by the Director of the Compensation Department. The Director's paper drew the attention of the Executive Directors to the "most unfortunate state of affairs" resulting from “the most serious breach of parallelism in recent years”. Parallelism, noted the Director, "is certainly not a mandate for identical treatment at all times and under all circumstances," because "there are a number of perfectly legitimate differences between the two Institutions that call for somewhat different approaches." The Director asserted, however, that the differences that have arisen from the Fund's decision of January 30, 1986, can in no way "square with any reasonable definition of parallelism," since it is "inescapable that there must be comparable pay for comparable work in the two Institutions"; they involve "unilateral departures from established practice"; they constitute a fait accompli in that the Fund's papers on set-asides "were distributed to the Executive Board before we had an opportunity to comment on them." The Director recalled that Fund staff are already paid more than Bank staff of comparable qualifications and experience; support staff, for example, are paid in the Fund more than 10% above those of their Bank counterparts. In spite of this already considerable difference, the Fund's decisions will result in substantial individual salary increases for Fund staff. "Where is parallelism?", the Director asked, adding that "unless action of some sort is taken, we shall clearly be faced with an increasingly disgruntled staff." The Director expressed the wish that these "anomalies" will not continue and that the Executive Directors "will today reaffirm that parallelism must continue to be the major governing factor in staff compensation.”

36. According to the Minutes of the Executive Directors' meeting of March 27, 1986, the Directors:

> [U]nanimously indicated that it was vital that parallelism should continue to govern staff compensation, although it did not necessarily imply comparable decisions unless the circumstances were comparable.

Certain Directors viewed the Fund's decision as a "serious breach of parallelism, in both substance and in deviation from recognized procedures in effect since 1973." In response to the question by a Director whether "the procedures in place since 1973 were legally binding to both Boards", the General Counsel of the Bank stated that:

> [T]hese procedures did not express contractual arrangements between the two Institutions and that they were not enforceable in a legal sense. They were arrangements of cooperation, however, and as such it could be expected that each Institution would do its best to meet them.

With respect to the "anomaly" resulting from the Fund's decision on across-the-board distribution to all staff, most Directors thought that "although there might have been more justification for such action on the Bank side," the Fund's decision "did not justify identical action on the Bank side"; nevertheless, "it was felt that some action was probably necessary." The Executive Directors agreed consequently that "the Management would work with the Bank Board Committee on Staff Compensation and come back to the Board with specific proposals." It might be recalled that it is in view of this decision of the Executive Directors to take some action in the wake of the Fund's decision that the Applicants on April 8, 1986, requested the adjournment of the proceedings.

37. The "weight" of the principle of parallelism was once more referred to by some Executive Directors during a meeting of the Board on May 22, 1986.

38. The President's proposals intended "to address anomalies that have arisen as a result of differences in the arrangements for the implementation of the job grading program in the Bank and IMF" were submitted to the Executive Directors in a Memorandum of May 29, 1986. The President mentioned the decisions made since 1984 by the two institutions on compensation review and recalled that on March 27, 1986, most Executive Directors felt that "some action was probably necessary, particularly since average salaries in the IMF are above those in the Bank by some 3.9% at higher levels and 11.5% at support levels"; he also stated that, "even though there might have been greater justification for such action on the part of the Bank, … most Executive Directors … felt that the IMF decision did not necessarily justify identical action on the Bank side." The President informed the Executive Directors that "Management does indeed believe that some action now is unavoidable", since the Fund's decisions had brought about a further widening of the already existing discrepancy between average salaries in the Bank and IMF and application to the Bank of the methodology used in the Fund "would suggest the need for slightly larger salary adjustment in the Bank than in the IMF."

39. Although "the Executive Directors placed strong emphasis on parallelism," the President expressed the view that the Bank's action:

> [S]hould be related to the Bank's circumstances rather than replicate exactly the IMF action for which there can be no rationable other than a blind application of parallelism.

Accordingly, the President recommended a general increase of 1.5% at higher levels and 1.3% at support levels effective May 1, 1986, i.e. without retroactivity. The President explained this proposal as follows:

> This option is based on the differences between Bank Management's original recommendation at the 1984 and 1985 Compensation Reviews and the structural adjustments actually approved by the Executive Directors:

		1984			1985		Total
	Rec.	Appr	Diff.	Rec.	Appr	Diff.	Differ.
Higher Levels	5%	4%	1%	3.1%	2.6%	0.5%	1.5%
Support Levels	2%	1.2%	0.8%	3.1%	2.6%	0.5%	1.3%

> The rationable is not intended to imply that the 1984 or 1985 Board decisions were improper or inadequate under the principles of staff compensation. It rests on the premise of parallelism in that, subsequent to the 1984 and 1985 decisions being taken, the IMF has further adjusted salaries on implementation of their Job Grading Program and on the fact that Management's original recommendations were considered most appropriate.

40. On June 4, 1986, in response to a question put in writing by an Executive Director, the Vice President, Personnel and Administration (PA), gave the following explanations on the issue of retroactivity:

> In the best of circumstances, to provide for a prolonged period of retroactivity in this way is administratively complex and costly, particularly where staff have changed jobs during the period covered by the retroactivity. It would be virtually impossible for the Bank to follow this approach today since, unlike the IMF which implemented these arrangements at the same time as introducing a revised grade and salary structure, the Bank introduced its own revised grade and salary structure in October 1985 and the former grade and salary structure no longer exists.

In practice, therefore, the Vice President noted, if the Bank were to contemplate retroactivity, this would have to be done in the form of a one-time non-pensionable lump-sum. The difference between the two approaches was that under the IMF approach the salary increases would qualify for pension purposes whereas the lump-sum payment would not.

41. In a letter to the members of the Board dated June 5, 1986, the Staff Association recommended that "Management's recent proposal be supplemented by a one-time lump-sum payment of 3.7% to all staff in lieu of retroactivity. This would overcome the difficulties in implementing a truly retroactive adjustment, difficulties which the Staff Association fully appreciates." The Association regarded, however, any proposal which would provide no retroactivity as unacceptable: "it is difficult, so it wrote, to imagine how the Bank's circumstances can be so different as to justify substantially disparate treatment on the set-aside issue."

42. The President's proposal of May 29 was considered by the Executive Directors on June 10, 1986. According to the Minutes of the meeting, the Executive Directors:

> [S]trongly reaffirmed their support for the principle of parallelism …. They regretted that the Fund's action … had placed the Bank Board and Management in a particularly difficult position of being forced into a situation that now required the Bank Board to revise its original decision, even though that decision was correct.

On the set-asides issue views were divergent. While "there was a clear majority for supporting Management's recommendations in the interest of parallelism," some Directors were prepared to go further and advocated identical actions to those taken by the Fund, and others did not support any increase at all. The President's proposals were, therefore, approved.

43. Although the Applicants do not ask for the rescission of the decision of the Executive Directors, but rather request that the Tribunal award them adjustments identical to those granted by the Fund to its staff in January 1986, it is in effect the legality of the decision of June 10, 1986, that the Applicants' dispute in their pleading subsequent to the resumption of the proceedings. According to the principle laid down on a number of occasions by the International Court of Justice, "if [the Tribunal] is to remain faithful to the requirements of its judicial character …, it must ascertain what are the legal questions really in issue in questions formulated in a request" (Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, I.C.J. Reports 1980, p.88, para.35; Application for Review of Judgment No.273 of the United Nations Administrative Tribunal, I.C.J. Reports 1982, p.349, para.48). This Tribunal will, accordingly, approach the issue which has arisen at the resumption of the proceedings as turning on the problem of an alleged non-observance of the Applicants' conditions of employment by the Bank's decision of June 10, 1986.

II. THE JURISDICTIONAL ISSUE

44. The Respondent raises two objections of a preliminary character which must be addressed before examining the merits.

45. First, concerning the 1984 compensation review, the Respondent contends that the decisions on salary adjustments are taken by the Executive Directors and that the President's recommendations are not binding and do not create rights or obligations as between the Bank and the staff. The Applicants, for their part, maintain that the Executive Directors, in this case, enacted precisely what the President recommended and that it was the President, not the Executive Directors, who reduced the original proposal. The Tribunal believes that this difference of view between the parties does not matter. According to the Articles of Agreement, the President is selected by the Executive Directors and is their Chairman. "Subject to the general control of the Executive Directors, he shall be responsible for the organization, appointment and dismissal of the officers and staff" (Article V, Section 5(b)). In practice, decisions relating to adjustments in salary structure are taken by the Executive Directors in the form of an approval of a recommendation made by the President, as is observed in the Technical Note of July 9, 1984, referred to in para. 17 above. This procedure has been followed in the present case. The Applicants do not maintain that this is contrary to any provision of the Articles of Agreement or any general principle of law.

46. The issue of whether the applications should have been directed against the decision of the Executive Directors rather than against the recommendation of the President seems equally to have no relevance. Under Article II of its Statute the Tribunal has jurisdiction to hear and pass judgment upon any application alleging

non-observance of a staff member's conditions of employment, whatever the organs or officials of the Bank involved. The only question before the Tribunal in the present case is whether the Organization, as such, violated the Applicants' conditions of employment when it reached its decision on the salary structure adjustments. Since the applications allege non-observance of the contracts of employment or terms of appointment of the Applicants, the Tribunal decides that it is competent to determine these matters.

47. The second jurisdictional objection raised by the Respondent relates to the Applicants' plea subsequent to the resumption of the case. The initial applications, the Respondent argues, were directed against decisions made in 1984 and relating to the 1984 compensation review. It is, therefore, on these decisions only that the Tribunal is requested, and has jurisdiction, to rule. The decision made on June 10, 1986, is totally different from the 1984 salary adjustment decisions; if the Applicants wished to impugn the 1986 decision, they should have done so by separate applications filed within the time-limit provided for in the Statute of the Tribunal. Moreover, the Respondent maintains, the pleading filed by the Applicants after the resumption of the proceedings relies on an alleged breach of the principle of parallelism, while the pleadings filed against the 1984 decisions were based on an alleged violation of the principles on staff compensation laid down in 1979 and of the rulings of the Tribunal in de Merode; it constitutes, therefore, so the Respondent argues, an attempt to establish a new cause of action. Finally, the Respondent contends, to the extent that the Applicants refer to the use of amounts set aside by the Bank in the 1985 compensation review, this is not an issue before the Tribunal; any cause of action based upon the 1985 salary adjustment decision should be dismissed since no application challenging the 1985 salary adjustments has been filed and the time period for bringing such action has expired. In sum, so the Respondent alleges, the Tribunal has no jurisdiction to rule on any decision other than the 1984 decisions, and should therefore reject any plea addressed, or referring, to any subsequent decision.

48. In approaching the Respondent's arguments the Tribunal is fully alive to the fact that events subsequent to the filing of an application can have no bearing on the validity of the decision impugned by that application and that a decision reached in 1986 should not be reviewed within the framework of applications filed in 1984 against decisions made in 1984. The Tribunal is also aware of the fact that the arguments raised by the Applicants against the 1986 decision in their Consolidated Memorandum of 1987 are different from those they have raised against the 1984 decision in their first written pleadings; in particular, the question of parallelism, which was only one of the issues raised during the first stage, becomes the only argument after the resumption of the case. Furthermore, far from having indicated, as ordered by the Tribunal, the manner in which the events subsequent to the filing of the applications have affected those applications and the supporting arguments put forward in them, the Applicants may seem to have done no more than add an application against the increase decided upon in 1986 to their initial application against the increase decided upon in 1984; the initial applications and the supporting arguments stand unchanged. Finally, the rulings which the Tribunal is going to make on the two decisions might be different: while the Tribunal may uphold or annul both decisions, it might alternatively uphold one of them and annul the other.

49. Nonetheless, impressive though these considerations may seem, they are not ultimately inclusive. Even though technically distinct from the 1984 decisions, the June 10, 1986, decision is in fact, as the record clearly demonstrates, closely connected with it. It is the Executive Directors' decision of July 19, 1984, deciding the reduced compensation adjustment for 1984 disputed in the initial applications which at the same time provided that "Management would submit for the consideration of the Executive Directors further adjustments, if any might be needed, when introducing the revised grade and salary structure on the completion of the ongoing Job Grading Program." The Executive Directors' decision of June 10, 1986, may in this respect be viewed as a result of or an implementation of their decision of July 19, 1984. Thus, the 1986 decision is part of the 1984 salary adjustment. It might be added that in its additional statement of facts filed on April 9, 1986 the Respondent itself presented the measures taken in January 1986 by the Fund and the action then contemplated by the Bank in the light of the policy of parallelism as linked to the 1984 compensation review, and that the applications filed against the 1984 decisions would obviously have become moot depending on what was going to be decided by the Bank in the near future. This was precisely the rationale of the Applicants' request for adjournment, and this was also the reason behind the Tribunal's order to stay its judgment. Were it not for this adjournment, the Applicants would in all likelihood have filed within the prescribed time-limit

separate applications against the June 10, 1986, decision.

50. As to the 1985 compensation review, the Tribunal notes that the Applicants in no way dispute its legality or even level any criticism against it; nor do they request any redress with respect to the decisions made in 1985. They only refer to the 1985 salary adjustments insofar as they have been referred to by the Bank, alongside with the 1984 salary adjustments, as the background of the 1986 action and as a basis for the calculation of the 1986 increase.

51. Bearing in mind that, according to the view expressed by the Permanent Court of International Justice and the International Court of Justice, a judicial body "whose function is international is not bound to attach to matters of form the same degree of importance which they might possess in municipal law" (Mavrommatis Palestine Concessions, P.C.I.J. Series A, No.2, p.34; Northern Cameroons, I.C.J. Reports 1963, p.28), the Tribunal concludes that it would not fulfill its judicial mission if it were, for procedural and purely formalistic reasons, to limit itself to the review of only one aspect of the case. The Tribunal, therefore, decides to take up the case as a whole. The jurisdictional objection raised by the Respondent with respect to the Applicants' plea subsequent to the resumption of the case is, consequently, rejected.

III. PARALLELISM

52. Before turning to the legality of the disputed decision, the Tribunal deems it necessary to address the issue of parallelism, which has given rise to much controversy between the parties. The bearing of this issue is not exactly the same on the two aspects of the case. With respect to the 1984 decisions and the initial applications the question of parallelism is only one amongst others, since these decisions are disputed by the Applicants on a number of grounds and also because the reduced adjustments ultimately decided upon by the Bank were prompted by several motives including, but not limited to, the principle of parallelism. The legality of the 1986 decision, on the contrary, turns exclusively on the question of parallelism.

53. On this crucial issue both parties modified their positions at the resumption of the proceedings. In their initial pleadings and the oral hearings the Applicants maintained not only that parallelism with the Fund was not a sufficient motive for the reduction of the increases first recommended by the President, but suggested that parallelism was not even a relevant factor to be taken into account by the Bank. The Respondent, for its part, argued that "it had the right and duty to observe the principle of parallelism with the Fund" and suggested that under this principle the President had to reduce his initial proposal for the purpose of bringing it into line with the decision made in the meantime by the Fund. Now, however, contrary to their original position, the Applicants maintain that the Bank was in 1986 under a legal obligation to take exactly the same action as the Fund and that since the June 10, 1986, increases did not match the increase decided by the Fund it was therefore in violation of the rule of parallelism; whereas the Respondent maintains that it was not legally bound to take the same action as the Fund and that it could legitimately reach its own decision independently of the decision of the Fund. The Applicants rely heavily on the inconsistency of the Respondent's legal argument. The Bank cannot, so they argue, invoke the principle of parallelism in order to justify the reduced salary adjustment of 1984 and, at the same time, hold the opposite view to justify the reduced increase of 1986; in other words, the Bank cannot have it both ways. The Tribunal must observe, however, that the inconsistency and reversal of arguments are the same on the Applicant's part. For this reason, the Tribunal will first of all analyze the content and the legal scope of the concept of parallelism on the basis of available evidence in order to put it in proper perspective.

54. The policy of parallelism was initiated by a Memorandum of the President to the Executive Directors dated December 2, 1972. Its purposes, as described in that Memorandum, have been confirmed ever since in numerous documents from the Management as well as by the Executive Directors:

> [G]iven the propinquity and similarity of purpose of the two sister institutions, which to a very large extent rely on similar staff skills, the arguments for identity of compensation policies on all matters governed by comparable circumstances are overwhelming:

(i) perceived equity from the point of view of staff;

(ii) the very real concern of the two managements of member Governments alike to avoid leapfrogging in salaries and benefits;

(iii) the fact that in the minds of large segments of the public the two institutions are indistinguishable; action by either affects the image of both.

The Respondent confirmed these objectives in its letter to the Tribunal dated April 14, 1986, adding that:

> [C]ompensation actions taken in one institution are bound to be known and analyzed by the staff in the other and, if no clear justification for different treatment is apparent, problems of morale and unrest must be expected to arise.

In the words of the Respondent, "parallelism is not an empty theoretical construct for sister organizations operating in close physical proximity and employing staff with similar characteristics."

55. With these objectives in mind, the President submitted to the Executive Directors a "statement of policy" which, in his words, was to "embody my philosophy":

> I am determined to ensure that differences shall be avoided in the policies of the World Bank Group and the International Monetary Fund regarding salaries or staff benefits, except to the extent that such differences are clearly warranted by circumstances which are not comparable in the two institutions, be they external factors or internal factors such as differences in organization structure, size or the type of skills required…

The principle was thus laid down of the "greatest feasible parallelism in salaries and staff benefits", while at the same time provision was made for "differences… clearly warranted by circumstances."

56. Having been endorsed by the Executive Directors in 1972, the policy of parallelism was applied consistently both in procedure and in substance.

57. According to the President's Memorandum of March 4, 1986, the procedures in effect since 1973 for the maintenance of parallelism provide:

(a) each Board will consider comparable recommendations at about the same time;

(b) the decision of the Board which first considers the recommendations should not be implemented until the second Board has had an opportunity to consider them. The action of the first Board would be made known to the second Board during the course of the latter's deliberations;

(c) when the views of the second Board differ, the first should be given an opportunity to reconsider before any implementing action is taken.

Thus, the so-called Kafka system was developed by a Joint Bank/Fund Committee and was adopted at the same time by the two institutions. Likewise, both the Bank and the Fund initiated their job grading program at about the same time in 1982 and the exercise has been conducted in close consultation between the two institutions and with a view to achieving similar results.

58. If one turns from procedure to substance, it appears that over all these years parallelism in most cases led to identical policies and similar measures. The comparator system recommended by the Kafka Committee (see para.4 above) was adopted by both institutions; the Kafka system was in effect, as the Respondent pointed out in the oral hearings, an expression of the policy of parallelism. Likewise, the same system governed the carrying out of the job grading program in both the Fund and the Bank. As the Respondent notes, "the IMF adopted the same salary review system at the same time and continues to apply it. Parallelism and the salary review system exist together." This is borne out by a table in the Applicant's second Consolidated

Memorandum (p. 11), from which it appears that since 1972 the structural adjustments of the salaries in the two institutions have been virtually identical. In 1984 in particular, the Hay Report, which provided the basis for the 1984 Compensation Survey in both organizations (see paras. 8 and 15 above), was common to both, and the adjustments initially proposed by the President of the Bank were reduced in order, inter alia, to bring them into line with those previously adopted by the Fund. The policy of parallelism was in effect applied in many areas of staff compensation: salaries, benefits, pensions. Quite understandably, therefore, the unilateral action taken by the Fund in January 1986 and the discrepancies in salaries resulting therefrom were seen by the Bank as unilateral departures from established practices both in procedures and in substance (see paras. 35 and 36 above).

59. However consistent the policy and practice of parallelism have been since 1972, in many cases they led only to broadly conceived harmonization which admitted of differences between the two institutions.

60. The possibility of exceptions to parallelism "warranted by the circumstances" had been foreseen from the outset by the President in his 1972 Statement of Policy (see para. 54 above) and confirmed ever since by both the Management and the Executive Directors. During the Executive Directors' meeting of July 19, 1984, the President suggested that in any future approach to parallelism in compensation matters, "it should be understood that, unlike the Fund, the Bank had an Administrative Tribunal, which has already developed a doctrine that the Bank could not legally ignore changes in the cost of living and other factors in adjusting staff salaries." In his presentation before the Executive Directors on March 27, 1986, the Director of the Compensation Department noted that "there are a number of perfectly legitimate differences between the two Institutions that call for somewhat different approaches." Parallelism, he said, "is certainly not a mandate for identical treatment at all times and in all circumstances." For example, he said, the Bank must recruit predominantly highly experienced staff in mid or late career, whereas the Fund is more like a normal career based organization, recruiting from professionals in early career. In his Memorandum to the Executive Directors of May 29, 1986, the President clearly rejected the idea of “blind application of parallelism.” The Executive Directors fully shared this view, as appears from the Minutes of their meeting on March 27, 1986: while they "unanimously agreed that it was vital that parallelism should continue to govern staff compensation," they nevertheless added the proviso that parallelism "did not necessarily imply comparable decisions unless the circumstances were comparable."

61. These views are actually reflected in a number of differences between the Fund and the Bank, both in procedure and in substance. As noted by the President during the Executive Directors' meeting of July 19, 1984, in response to the Kafka Committee's recommendation the Bank had set up a Board Committee on Staff Compensation Issues, but the same had not occurred in the Fund. In his Memorandum to the Executive Directors of March 27, 1986, the President observed that, while the Bank had been "constantly striving to eliminate unwarranted differences… and to avoid new ones" between the sister organizations, "our counterparts in the Fund clearly do not feel the same compulsion." On various matters of compensation, benefits and pensions, there have always been, and still are, significant differences in the measures taken by the two institutions. The most striking example is the discrepancy which existed already, before the controversial measures of 1986, between the salary levels in the Bank and the Fund, a discrepancy to which the Bank's authorities have drawn attention on a number of occasions (see paras. 34, 35, 38 above). While the Bank's decision not to set aside any money at the same time illustrates, on the other hand, a more flexible approach to parallelism.

62. In the light of the foregoing the Tribunal is now in a position to define the legal status and the substance of the principle of parallelism. It is not within the jurisdiction of the Tribunal to rule on the relationship between the Bank and the Fund under the principle of parallelism. The Tribunal will confine itself to the relationship between the Bank and its staff and, more precisely, determine whether the principle of parallelism is, or is not, part of the conditions of employment and, if the answer is in the affirmative, what rights and duties it entails as between the Bank and its employees.

63. The Tribunal held in de Merode as follows:

> The practice of the organization may …, in certain circumstances, become part of the conditions of employment … the integration of practice into the conditions of employment must … be limited to that of which there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation, as was recognized by the International Court of Justice …. (para. 23).

And, having reviewed the factual background, the Tribunal concluded that:

> [T]he established practice, and statements confirming that practice, have created a legal obligation to make periodic adjustments reflecting changes in the cost of living and other factors (para. 112).

64. At the time of its formulation by the President and the Executive Directors in 1972, parallelism was clearly no more than a statement of policy and objectives, a declaration of intention without any legal character or binding force. It appears, however, from the subsequent events that a practice has emerged of harmonizing to a certain extent the Bank's compensation policy with that of the Fund. The Bank's action both in 1984 and 1986 fully confirms that practice, whose objectives, as has been seen, remain unchanged since 1972. The Management and Executive Directors frequently referred to “established practice," or "recognized procedures in effect since 1972," and they regarded the situation created by the difference in compensation between the Bank and the Fund as an "anomaly," to which an end should be put in the interests of both the staff and the organization.

65. To this consistent pattern of conduct repeated statements by the Bank add the element of legal commitment or obligation referred to in de Merode. "The Bank," so the President stated before the Executive Directors on August 10, 1984, "historically has been, and still remained, strongly supportive of a joint approach to staff compensation issues". On March 27, 1986, the President invited the Executive Directors to "reaffirm that parallelism should continue to govern staff compensation," and on the same day the Director of the Compensation Department expressed the Management's confidence that the Executive Directors "will today reaffirm that parallelism must continue to be the major governing factor in staff compensation and indeed that it must become more effective in its implementation." That is exactly what the Executive Directors did: "All of the Executive Directors," so the Minutes of the March 27, 1986 meeting read, "shared the view that parallelism should continue to govern staff compensation decisions in the two Institutions." On May 22, 1986, the Executive Directors referred to "the weight the principle of parallelism had been given by the Board"; and on June 10, 1986 the Directors once more "reaffirmed their support for the principle of parallelism." The Respondent's statements in the instant case fully concur with these statements by the Management and the Board. In its written pleadings prior to the adjournment of the case, the Respondent stated, as already mentioned, that "parallelism and the salary review system exist together," thus recognizing that both are part of the conditions of employment of the staff; parallelism, the Respondent added, "was not repealed or even drawn into question by the 1984 salary decision nor by the adoption of the present salary review system in 1980." During the oral hearings, also prior to the adjournment of the case, the Respondent confirmed that "the policy of parallelism with the IMF predates the Kafka salary review system." The Respondent's view in this regard appears unaltered after the resumption of the case. Far from disputing the binding character of the principle of parallelism, the Respondent's supplementary brief strongly and unequivocally reaffirms its adherence to it.

66. The Tribunal, therefore, concludes that the established practice confirmed by consistent statements has created a rule of parallelism which has become part of the conditions of employment of the Bank's employees.

67. The legal character of the principle of parallelism having thus been established, it is necessary to emphasize that neither the practice followed since 1972 nor the statements from the Bank point to a strict interpretation of this rule. Rather, both practice and statements most consistently reflect a flexible approach. The principle of parallelism implies first and foremost a duty of consultation between the Bank and the Fund, an attempt at cooperation and harmonization in matters of compensation. Should, however, the Fund act unilaterally, that is to say, either without prior consultation with the Bank or before exhaustion of the consultation process or after failure of such process, the Bank would then be obliged vis-à-vis its employees to consider whether any action on its part would be necessary. To construe parallelism as meaning that once the

Fund has made a decision the Bank is bound exactly to follow suit would entail that the Fund could impose its views on the Bank. That can certainly not be the scope of the rule of parallelism. In any event, whether after consultation with the Fund or when making its decision after the Fund has made its own, the Bank is never obliged exactly to reach the same decision as the Fund. The circumstances may warrant a decision on the same general lines but with a different content or even quite a different decision.

68. Thus, parallelism does not mean identity of decision in all circumstances and at all times. What parallelism does mean is that the Bank is vis-à-vis its staff under a legal duty not to act as if the Fund did not exist, without paying attention to the Fund's actions, without having regard to what had occurred, is going on or is in the making in the Fund. The Bank must assess the stated reasons that may have prompted the Fund to act as it did, and then determine to what extent they are relevant, or not, to the Bank's situation. The Bank must also bear in mind the consequences on recruitment, staff morale, functioning of the institution, etc. which might flow from a separate decision. Having done that, the Bank in each case has to make and explain its own decision in view of its own situation. The governing considerations in this highly judgmental process are the specific needs of the Bank, the pursuit of its objectives and "the paramount importance of securing the highest standards of efficiency and technical competence" (Articles of Agreement, Article V, Section 2(d)). The principle of parallelism should, in particular, be applied with a view to avoiding unwarranted discrepancies between Fund and Bank compensation policies or levels, because such discrepancies could be harmful to the morale of the staff or to the recruitment of qualified personnel, and thus could jeopardize the proper functioning of the organization.

69. It is up to the Bank in each case to determine, in the light of all the factors, whether the circumstances call for identity of decisions or warrant a more or less different decision. The ruling of the Tribunal in de Merode regarding the unilateral power of amendment of the conditions of employment holds true here:

> This power is discretionary, and it is not for this Tribunal to substitute its judgment for that of the competent organs of the Bank in exercising that discretion. However, the Bank's power… may be exercised subject only to certain limitations. Discretionary power is not absolute power.

The definition of a compensation policy, in particular, is an administrative responsibility, and it does not fall within the judicial mission of the Tribunal to decide whether in any specific case the interests of the organization require mirror-like imitation of the sister organization or, rather, a different decision, and which one; unless, of course, the Bank has committed a misuse or abuse of discretion.

70. It remains to examine the application by the Bank of the principle of parallelism thus defined to the two aspects of the case – amongst other factors with respect to the 1984 decisions, and as the sole determining issue insofar as the 1986 decision is concerned.

IV. THE ADJUSTMENTS OF 1984 IN THE SALARY STRUCTURE

71. Since the Applicants rest their case against the 1984 decisions primarily on an alleged violation of the principles governing staff compensation laid down by the Executive Directors on May 24, 1979 (the so-called Kafka system), the first question that the Tribunal must examine is whether these principles established conditions of employment for the staff; and if they did, the Tribunal must determine the content of these conditions with a view to assessing whether the Bank has observed them in making its decisions.

72. In its judgment in the de Merode case the Tribunal held that to determine the respective rights and duties of the Bank and its staff one must look not only to the Articles of Agreement of the Bank and to the By-Laws, but also, "depending on their content, to certain manuals, circulars, notes and statements issued by the management of the Bank as well as to certain other sources" (Decision No. 1 [1981], para. 18), including the practice of the organization and certain general principles of law. The Tribunal added:

> Not all the provisions of these manuals, notes, statements are included in the conditions of employment. Some of them have the character of simple statements of current policy or lay down certain practical or

> purely procedural methods of operation. It is, therefore, necessary to decide in each case whether the provision constitutes one of the conditions of employment (para. 22).

The Tribunal applied this distinction in de Merode and in several later judgments (for example, Buranavanichkit, Decision No. 7 [1982], para. 4; Salle, Decision No. 10 [1982], para. 29; van Gent, Decision No. 11 [1982], para. 18).

73. In the present case the Tribunal has no doubt as to the legal nature of the principles governing staff compensation laid down by the Executive Directors on May 24, 1979. The Minutes of the meeting state that "the Executive Directors … adopted the following decisions." The content of these "decisions" was brought to the knowledge of the staff on the next day, May 25, by Administrative Circular AC/23/79. Subsequently Administrative Circular AC/13/80 of March 14, 1980, referred to the "May 1979 decision." In his Memorandum of May 29, 1984, containing his original recommendation to the Executive Directors the President also used the word "decision"; and in his second Memorandum on July 18, 1984 he mentioned "adherence to the system carefully designed by a Joint Bank/Fund Committee and accepted by both Boards and by our staffs." In the course of these proceedings, the Respondent indicated that it conceived the principles laid down in 1979 as decisions creative of legal rights and duties. There can, therefore, be no doubt that a violation of the rules laid down in 1979 would amount to non-observance of the conditions of employment of the Applicants under Article II of the Statute of the Tribunal.

74. Before going further the Tribunal notes that the fact that the 1979 principles have since their adoption been part of the conditions of employment of the staff does not mean that these principles are sacrosanct and may never be changed. As the Tribunal stated in de Merode, "it is a well-established principle that the power to make rules implies in principle the right to amend them." (Decision No. 1 [1981], para. 31). Changes made by the Bank by way of exercise of its power of amendment can be applied to existing staff members only within the limits laid down in de Merode. This means that changes in the fundamental and essential elements of the conditions of employment cannot be applied without their consent to those members of the staff already employed. The only changes unilaterally made by the Bank in the conditions of employment which may be imposed on them are those relating to the non-fundamental and the non-essential elements of the relationship. As to these the Bank possesses a discretionary power. However, as with every discretionary power, the power of modifying the non-fundamental conditions of employment of the staff is subject to limits and conditions. That is why the Tribunal has decided that it "must satisfy itself in each case that the Bank's power to change the non-fundamental elements in the conditions of employment of its employees has not been exercised either retroactively or in an arbitrary or otherwise improper manner" (de Merode, Decision No. 1 [1981], paras. 45-48).

75. In their written pleadings the Applicants seem to have argued that the second proposal of the President and the decision of the Executive Directors which approved it violated the rules laid down in de Merode, either because they infringed essential and fundamental elements of the Kafka system or because they altered non-essential and non-fundamental elements in this system in a manner not compatible with the limits and conditions set by de Merode. During the oral proceedings, however, Counsel for the Applicants, in reply to a question from the Tribunal, stated that in the opinion of the Applicants the Bank did not have the intention in 1984 of amending the principles established in 1979 and did not in fact do so. In the words of Counsel for the Applicants, the contested 1984 decision on staff compensation “was an attempt at implementation of the Kafka system that failed because of arbitrariness."

76. For its part, the Respondent has maintained all along in both the written and the oral proceedings that, far from constituting a modification of the Kafka system, the second proposal of the President, as well as his first one, are both to be seen as an implementation of the 1979 principles. In the words of the Respondent, "the present case does not involve a unilateral decision to change the method of fixing staff compensation." The Bank's intention to remain within the framework of the Kafka system also appears from the two Memoranda of the President of May 29 and July 18, 1984, and from the Minutes of the meetings of the Executive Directors of June 14 and July 19, 1984. It was confirmed with particular strength in the oral pleadings on behalf of the Respondent.

77. It is clear, therefore, that in the opinion of both parties the present case does not raise the problem of the Bank's power unilaterally to amend the conditions of employment vis-à-vis existing staff. Of course, the Tribunal is not bound by the analysis of the parties, even though concordant, and is under a duty to satisfy itself, on the basis of the evidence, of the legal character of the disputed measures. But in the present case the Tribunal finds no difficulty in sharing the view of the parties. It will presently be shown that not only did the Bank intend to implement the principles relating to salary adjustment laid down in 1979 without amendment, just as it had done in previous years and as it seems to have the intention of doing in the course of the following years, but that in actual fact it did so. The problem of the power of unilateral amendment of conditions of employment of existing staff, which was at the heart of the de Merode case, therefore, does not arise in this case.

78. Accordingly, the Tribunal now turns to the task defined in paragraph 71 above, namely, that of defining the legal content of the Kafka system, in order to determine if the rules thus laid down were observed in 1984.

79. The first element included in 1979 in the conditions of employment of the staff is the comparator system. As the Tribunal noted in de Merode, before 1979 the conditions of employment did not "contain any rule of law relating to the method of adjustment of salaries or to taking into consideration certain factors in preference to others," apart from the obligation which flowed from a consistent practice to "carry out periodic reviews of salaries taking into account various relevant factors," including the change in the cost of living (Decision No. 1 [1981], paras. 111-112). The parties are in agreement that the adoption of the Kafka system by the 1979 decision of the Executive Directors now "obligates" the Bank, in the words of the Respondent, to base staff compensation on the comparator system. The Tribunal fully shares this view. It is not contested that the 1984 adjustments were actually based on that system. Thus no difficulty arises in respect of this first element of the Kafka system.

80. The second obligation flowing from the 1979 principles was defined by the Respondent in terms which the Applicants did not contest and which appear to the Tribunal to be correct. They are as follows:

> - for J-Q staff, the selection of comparator organizations on the basis of a 50/50 mix of relevant quality private organizations in the U.S. and selected agencies of the U.S. civil service; a cross-check on the international competitiveness of the U.S. market; a 10% quality premium in direct pay until such time as a methodology for the precise quantification of benefits be developed;
>
> - for A-I staff, the same principles apply, except that the mix of selected agencies of U.S. civil service and quality private sector organizations is to be based on the local Washington market, and there is no international cross-check.

81. Both parties agree that amongst the components of this second element the quality premium occupies a special place. The Applicants see in it one of the "principal features" of the system, since it is intended "to assure the continued high quality of the Bank staff." In his oral argument the Bank's representative listed the quality premium as one of the elements which the 1979 decisions "obligate … the Respondents to consider … in deciding upon staff compensation." The importance of this element was recognized by the Bank from 1979 onwards, since in the circular of May 25, 1979, which announced the decisions to the staff the Vice President, Administration, Organization and Planning (AOP), wrote:

> Among the most important matters, the Executive Directors have agreed that:
>
> > the same basic principle of premium on compensation over mixed private and public sector markets will apply to J-Q and A-I level staff.

It must, however, be recalled that under the 1979 decisions the quality premium is obligatory only "until such time as a methodology for the precise qualification of benefits is developed."

82. Though the Parties agree on the existence of the rule of quality premium, they disagree on whether this

rule has been respected by the 1984 decisions. The Tribunal notes that it was certainly the intention of the Bank to take account of a 10% quality premium for the 1984 adjustments. In a letter addressed to staff members on March 8, 1984, the Vice President, AOP, wrote:

> On the basis of the survey data, the Executive Directors will decide what adjustments in our salary structure are needed in order to provide a 10% quality premium above the compensation levels of the comparator organizations we are surveying.

In his Memorandum of May 29, 1984, containing his first recommendation, the President observed with regard to J-Q staff that:

> [T]he agreed principle is that the Bank compensation be set at a 10% quality premium…

As regards 5-1 and A-H level staff he said:

> The relationship of Bank compensation to the market and the adjustments needed to restore the agreed 10% premium are summarized as follows:

The tables which appeared in the Memorandum incorporated the premium and proposed on that basis two variants – one with, the other without, PATC adjustment. In the course of the oral proceedings, the representative of the Respondent said that the 10% quality premium had also been respected in the President's second proposal approved by the Executive Directors. Counsel for the Applicants did not contradict this assertion and did not revert to the complaint of violation of the quality premium. Nothing permits the Tribunal to conclude that there has been a non-observance of the rule relating to the quality premium.

83. As regards the principles governing periodic compensation review, several rules were established by the 1979 decisions of the Executive Directors. The Tribunal proposes to examine each of them in turn.

84. No difficulty arises in the present case with respect to the rule which provides that there must be "a comprehensive review of staff compensation every third year" and that adjustments must be made "in the intervening years … in the light of movements in the pay levels of comparator organizations in the chosen markets." On the subject of the triennial periodicity of comprehensive review, the representative of the Respondent said that "this condition of employment was changed by the Executive Directors in 1982 to a period of four years until the second comprehensive review," which explains that the second in-depth survey was made in 1984 while the previous one went back to 1980. This minor change in periodicity related to a non-essential element in the conditions of employment and the principle of periodic comprehensive review was not affected. The Applicants made no issue out of this.

85. Nor does the second rule laid down in 1979, namely, the participation by the Staff Association in the review process, give rise to any difficulty in the present case. There again the principle was respected (see para. 14 above), and no complaint has been made in this regard by the Applicants.

86. The third rule relating to periodic reviews is that "in abnormal situations … pay adjustments in the intervening years … should not be subject to sharp deviations from market forces as a result of changing U.S. Government attitudes towards the pay of its civil service". It appears from the Technical Note of July 10, 1984, (see para. 17 above) as well as from the President's Memorandum of May 29, 1984, that the Bank did not limit its consideration of U.S. civil service data to the adjustments of the "intervening years" and that of its own initiative it decided also to take account of this factor at the time of the major reviews. This is what it did in 1980 and again in 1984. This is an extensive interpretation of the 1979 principles which is undoubtedly favorable to the staff.

87. Study of the President's Memorandum of May 29, 1984, shows that in formulating his proposal he intended to act in accordance with the obligation to "avoid sharp deviations." To carry out this duty, the President referred to the PATC survey, which was "the only external yardstick available to assess the comparability of

U.S. civil service pay"; yet he did not consider it possible blindly to follow the indications given in this survey because of its imperfections and the criticisms of it made even within the U.S. administration. The PATC survey, the President said, could "only provide a broad indicator." It was in this perspective that the President submitted to the Executive Directors, as has already been seen, two extreme percentages: one without adjustment to the U.S. civil service data and the other with full PATC adjustment. The President noted that: "Our data can only serve as a frame of reference for the exercise of judgment" (see paras. 9-12 above) and, accordingly, recommended percentages resulting from a balancing-up of the various relevant factors.

88. The Applicants concede that no reference to the PATC survey appears in the 1979 decisions. They also admit that the indications provided by the PATC survey are debatable and that some doubt was expressed about them in the United States. However, they maintain that in the absence of a better method the Bank was legally obligated to use this survey. The Staff Association adopted a comparable position in June 1984 (see para. 14 above). Consequently, the Applicants contend that the PATC formula is impliedly included in the 1979 principles and is an integral part of the Kafka system. In support of their contention asserting the compulsory character of reference to the PATC formula, the Applicants add an argument drawn from the practice of the Bank. They note that at the time of the in-depth review of 1980 the Bank had adjusted the U.S. public sector data to the full extent warranted by the PATC survey, and they maintain that since the Bank considered this criterion as appropriate in 1980 it should have adopted the same approach in 1984. The Applicants maintain that, while the original proposal of the President respected this requirement, his second recommendation did not and that, as a result, the Respondent has failed to observe the Applicants' conditions of employment.

89. The Tribunal cannot accept this contention. It appears from the clear terms of the 1979 decision of the Executive Directors that the only duty placed upon the Respondent in this regard is to take those measures that are appropriate to avoid "sharp deviations" arising from U.S. policy regarding civil service pay. Only "sharp deviations" have to be avoided; the Bank is not obligated to correct any deviation, however minor, nor to correct all of the deviation. In this respect the Bank possesses a measure of discretion. On the other hand, no particular method of procedure is imposed upon the Bank, which remains free to choose whatever appears to it to be the appropriate means of correction. The Bank referred to the PATC formula at the time of the 1980 major review, but did not have recourse to it in the intervening years 1981, 1982 and 1983 because, amongst other reasons, of the criticisms to which this formula had been exposed even within the U.S. administration. It is not possible, in these circumstances, to speak of a practice capable of generating rights and duties between the Bank and the staff (see de Merode, Decision No. 1 [1985], paras. 23, 98, 108, 112). In this connection one should recall that the Staff Association itself admitted that "one area of judgment is in the use of U.S. civil service salaries for purpose of comparison" (see para. 14 above). In sum, the PATC formula does not form part of the conditions of employment of the staff, whether by reason of the 1979 principles or of any subsequent practice. Provided that it does not commit a manifest error or abuse of discretion, the Bank remains, therefore, free at the time of each periodic review, to choose the appropriate method or procedure of correction.

90. This discretionary power the President had already exercised in his original proposal, contrary to what the Applicants now contend. For J-Q level staff, he proposed 5%, although the PATC adjustment would have led to 6%. For 5-1 level staff, he proposed to keep the increase in line with that of J-Q level staff, namely, 5% instead of the 12.6% which the PATC adjustment would have justified. This was because of the peculiar structure of this class destined for absorption within the structure of J-Q. As to A-H level staff, he proposed 2%, although the full PATC adjustment would have authorized no more than 0.3%. The President's second proposal was limited to reducing the 5% for J-Q and 5-1 level staff to 4%, and the 2% for A-H level staff to 1.2%. It did not involve any change of principle in relation to the PATC methodology, which had not been applied by the President any more in his first than in his second recommendation. The Tribunal finds it inconsistent for the Applicants, on the one hand, to say that they are satisfied with the original proposal to the point of requesting its reinstatement and yet, on the other hand, to criticize the second proposal as violating the alleged condition of employment of use of the PATC survey, when neither of the two proposals has recourse to this method in order to discharge the Bank's obligation "to avoid sharp deviations from market forces" as a result of U.S. civil service pay.

91. The Tribunal is, therefore, satisfied that in making the adjustments without fully conforming to the PATC

survey data the Respondent has not violated the Applicants' conditions of employment.

92. The Tribunal, therefore, concludes that the principles governing staff compensation laid down by the Executive Directors on May 24, 1979, include in various respects a margin of flexibility and that the Respondent, in adopting the contested decisions of 1984, did no more than exercise the discretionary power conferred on it by the system established in 1979.

93. The 1979 principles, however, are not the only source of the staff's conditions of employment as regards compensation and salary review. Another important rule, binding the Bank even prior to the adoption of the Kafka system and independently of the principles laid down in 1979, is that which was endorsed in de Merode (see para. 6 above) which places the Bank under the legal obligation to carry out periodic reviews of salaries, taking into account various relevant factors, including changes in the cost of living. It is for the Bank to determine in each case what are the factors which it considers are to be taken into consideration and to accord to each the weight which it regards as proper. As the Tribunal has said, the Bank "retains a measure of discretion in this regard."

94. Thus, the implementation of periodic salary reviews involves a discretionary power both under the principles governing staff compensation laid down in 1979 and according to the de Merode decision. Under the Kafka system it is for the Bank to determine the method to be used for the purpose of avoiding the "sharp deviation" due to US policy on salaries in the public sector. According to the de Merode decision the Bank "retains a measure of discretion" in the choice and the balancing-up of a "wide range" of relevant factors (see Decision No. 1[1981], paras. 103 and 112). Neither the technical data provided by the Hay Report nor the guidance given in de Merode lead automatically to exact figures and the decision ultimately to be taken necessarily involves some exercise of judgment. As has been seen, this was recognized by the Hay Report itself (see para. 8 above). This was also emphasized by the President in his Memorandum of May 29, 1984: "Our data base, however extensive and reliable, can only serve as a frame of reference for the exercise of judgment." This opinion was fully shared by the Staff Association which acknowledged that "in interpreting the figures there are areas of judgment and subjectivity" and that "the data may be interpreted in many ways" (see para. 14 above).

95. From this follows an important consequence. Since the Kafka system and de Merode leave to the Bank a margin of discretion, the same technical data are capable of leading, after interpretation and an exercise of judgment, to a variety of solutions, that is to say, to several rates of adjustment, none any less legally valid than any other. The two Parties agree on this cardinal point. The Applicants have developed the concept of a "band of legality" for purposes of implementing the Kafka system. The Respondent has insisted on the existence of a "range of choices and of permissible solutions".

96. It is clear, however, that the Bank's discretionary power, within the framework both of the implementation of the 1979 decisions and of the obligation to take into account at the time of periodic reviews various relevant factors including cost of living, is not an arbitrary one. As with every discretionary power, it is subject to limits on which the Tribunal has to exercise its right of review. In the de Merode case the Tribunal defined the restrictions on the discretionary power of the Bank with regard to the unilateral amendment of the non-essential and non-fundamental conditions of employment of the staff (Decision No.1 [1981], paras. 46-47). This definition is valid also for the exercise by the Bank of its discretionary power in every other respect, including the implementation of the method of compensation adopted by the Executive Directors in 1979 and the implementation of the de Merode ruling.

97. There is a dispute between the Parties on the subject of the burden of proof relating to the misuse of discretion. The Tribunal need only recall the position it adopted in Salle (Decision No. 10 [1982]):

> It is incumbent on both the Applicant and Respondent to provide the Tribunal with all the available evidence in order to allow it to pass judgment upon the Applicant's allegations of non-observance of his conditions of employment; and it is for the Tribunal to determine, in the light of the evidence made available to it, whether the Applicant's conditions of employment have, or have not, been observed. (para. 35).

98. The Applicants maintain that, while the President correctly exercised his discretion in making the original recommendation of May 29, he abused his discretion by amending that proposal and formulating on July 18 a reduced proposal. The Applicants criticize this second proposal both as to its intrinsic content and as to the circumstances in which it was made. The Tribunal will examine separately each of these two complaints.

99. First, as regards the content of the second recommendation (and, through it, the decision of the Executive Directors approving it), the argument of the Applicants is that the rates of adjustment contained in this second recommendation are too low to be treated as a reasonable application of the rules governing staff compensation.

100. The Tribunal has some difficulty in understanding why the Applicants see a violation of their conditions of employment in the rates of adjustment proposed on July 18 while they admit the legality of the original proposal of May 29, the reinstatement of which they seek from the Tribunal. The adjustments proposed on May 29 were already – as the Applicants do not deny – considerably lower than those which might have been based on the Hay data; they did not include a full PATC adjustment – and were far from doing so. The Applicants admit, nevertheless, that these adjustments were reasonable and fell within the framework of a correct exercise of the discretionary power of the President. The 5% originally proposed by the President for J-Q level staff is regarded by the Applicants as falling fairly closely within a logical range. The 2% proposed for A-H level staff seems to them to be the fruit of a “reasoned judgment.” With the 5% proposed for 5-1 level staff, they say, the extreme limit of the “band of legality” was reached; the Applicants are nevertheless ready to acknowledge the reasonable character of this proposal. The President, they observe, “weighted the objective data in light of such judgmental factors as ‘the extensive grandfathering of the staff at these levels’ and the projective incorporation of the ‘5-1 level positions into the overall grade structure’ in 1985.” In short, the Applicants maintain that the first proposals of the President were “reasonably related to an interpretation of the data” and “the implementation in May 1984 was rationally within the band of legality for implementing the Kafka system.” Why, if the increases of 5% and 2% originally proposed were the result of a reasonable exercise of the discretionary power of the President, should the increases finally proposed, and adopted, of 4% and 1.2% be regarded as the consequence of a misuse of discretion?

101. To this question the Tribunal has not received a satisfactory reply. As is shown by the graphs produced by the Applicants themselves in their written Reply, the difference is much greater between the figures which the Hay data could have justified with full PATC adjustment and those proposed by the President in his first Memorandum than between the latter and those which he proposed in his second Memorandum. If the definitive increases had been completely insignificant and manifestly bore no relation to the technical data set out in the Hay Report, the Tribunal could have concluded that there had been a non-observance of the conditions of employment due to abuse of discretion. But that is certainly not the case with respect to increases as substantial and as near to those which had been proposed in the first place and which the Applicants themselves consider reasonable.

102. The Applicants also contend that the circumstances in which the President made his revised proposal of July 18, 1984, show, independently of the intrinsic content of this second recommendation, an abuse in the exercise of the discretionary power left to the Bank by the Kafka system and by the de Merode ruling on periodic salary reviews.

103. The Applicants make several complaints in this connection. First, they allege that once the President has decided, as he did in his first proposal, to reduce staff compensation below the level warranted by the data, he had no room for future maneuvering. They maintain also that "none of the factors rightfully considered by the President in his original conclusions … can credibly be said to have changed in the thirty-four days between June 14 and July 18, let alone to have changed so drastically as to justify the reduction of the increases originally proposed by the President." They maintain that since the President has himself declared in his second recommendation that his initial proposal appeared to him “reasonable in all the circumstances,” this implies a contrario that one could not so regard his second proposal. They argue that, in contrast with the first proposal, the second one of July 18 was not preceded by any study, any consultation with the Staff

Association, or any new examination of the facts. They suggest that in seeking to achieve parallelism with the Fund, in insisting on the necessity to reach a consensus and in relying on the austerity policy of Member States and of the Bank, the President took into consideration irrelevant factors. According to the Applicants, the true reason behind the change of attitude of the President is to be found in the political pressure exerted by the United States, expressed in particular in the telex from the Secretary of the Treasury. In bowing to this pressure, the President, so the Applicants conclude, allowed the views of a Member State to prevail over the interests of the institution and this violated the provisions of Article V, Section 5(c) of the Articles of Agreement. Accordingly, the Applicants say, the second recommendation of the President constitutes, quite independently of its content, an abuse of his discretionary power under the criteria set out in paragraph 47 of the de Merode decision. It rests, they suggest, on “reasons alien to the proper functioning of the organization and its duty to ensure that it has a staff possessing ‘the highest standards of efficiency and of technical competence’”; it is not “based on a proper consideration of relevant facts”; it is not “reasonably related to the objectives which (it) is intended to achieve”; it is not “made in good faith” but is prompted by improper motives, and it inflicts “excessive and unreasonable harm” to the staff.

104. None of these criticisms withstands scrutiny. First, the Tribunal notes that, contrary to the argument of the Applicants, the attempt to achieve parallelism with the Fund, the taking into consideration of the austerity policy of Member States and of the Bank and the search for a consensus amongst the Executive Directors do not constitute improper motives which the Bank had no right to take into account. The Tribunal considers that these three factors were legally relevant and that the Respondent could legitimately take them into consideration amongst others in balancing the various relevant factors.

105. This is beyond doubt regarding parallelism. Not only is parallelism one of the factors which the Bank was entitled to take account of, but it is a factor to which the Bank was legally bound to pay attention – and the Applicants strongly so contended upon the resumption of these proceedings. To the application of the rule of parallelism in the case in point the Tribunal will revert in due course (paras. 113 ff. below).

106. As regards the austerity policy, the Applicants maintain that such a factor “has no place in an economic analysis of staff salaries; the staff is not responsible for the financial difficulties of member governments.” Counsel for the Applicants stated that in a number of sectors the Bank did not adhere to the austerity policy, which has, therefore, been invoked, counsel said, in a selective manner contrary to the interests of the staff. The Tribunal cannot see why this consideration, even if not binding on the Bank, could not be included amongst the other factors which the Bank might consider in determining staff compensation. Were the Bank to follow vis-à-vis its staff a policy conflicting with the “need for restraint” that it had recommended to its members, it would then lose credibility, and it is, therefore, legitimate for it to take this concern into consideration with a view to ensuring the efficient functioning of the institution. The Staff Association appears to share this view, since in June 1984 it proposed a compromise formula taking into account the pay restraint practiced in numerous Member States (see para. 14 above). Finally, it must be noted that the President said in his second Memorandum on July 18 that amongst the reasons for his original proposal of May 29 were "the prevailing climate of economic austerity in many member countries and the need for restraint on our part." No more than parallelism with the Fund is the taking into consideration of the austerity factor specific to the revised recommendation of July 18; if this element constituted improper motives, as the Applicants allege, it would already have vitiated the initial recommendation of May 29, the reinstatement of which, however, the Applicants are seeking.

107. The Applicants also criticize the Respondent for having attached importance to the desirability of achieving a consensus amongst the Executive Directors. In order to justify the amendment of his original recommendation, the President took note of the “concerns expressed by several Executive Directors” and said that “we must reach a consensus without further delay.” The Applicants see this as a legally irrelevant factor, which cannot stand as a valid reason for reducing the salary adjustment originally proposed. The Tribunal does not share this view. The seeking of a consensus, rather than putting matters to a majority vote, has become a frequent practice in international organizations and conferences. For the Bank in particular this practice is generally followed in regard to the decisions of the Board of Governors and of the Executive Directors. It is true that it is not compulsory, and in certain cases decisions have been taken by vote. But consensus is not

prohibited and has the advantage of not allowing the views of those States advantaged by the system of weighted voting always to prevail. So it is perfectly proper for the President to have attached importance to the "concerns" expressed by certain Executive Directors regarding his first proposal, and to have decided to develop another one, capable this time of achieving a consensus.

108. Secondly, the Tribunal notes that neither the President in his proposal nor the Executive Directors in their decision can be regarded as in any way having yielded to “political pressure.” The U.S. Secretary of the Treasury had said that he was against even the principle of the comparator system and had requested the Executive Directors to refuse “any proposed salary increases” (see para. 16 above). The President, quite to the contrary, recommended, and the Executive Directors approved, a substantial increase; and the A-H class even benefitted from an increase that the technical data did not demand. Neither the President nor the Executive Directors can, therefore, be regarded as having bowed to political pressure. It should be added that the Secretary of the Treasury was acting in his capacity as a member of the Board of Governors and that there is nothing improper in a Governor or an Executive Director inviting his colleagues to take this or that position on a given problem. An international organization is composed of States and each Member State is entitled to seek the adoption of its views within the governing bodies of the organization, on condition, of course, of respecting its constituent instrument.

109. No more can the Tribunal accept the argument that the President had in some way exhausted his power of proposal when he presented his Memorandum of May 29. Once the Executive Directors refused to approve his original recommendation, the President had no other alternative than to put forward some different recommendation which he might hope would be accepted by the Executive Directors. The only reason for the second proposal of the President, as well as its legal justification, is to be found in the duty of the President to submit to the Executive Directors after the rejection of the first proposal a new one capable of obtaining their approval. If the President had not acted in this way he would have paralysed the functioning of the institution by frustrating the adoption of any decision on the salary adjustments for 1984. Far from adopting an attitude of a “political” nature the President was acting in accordance with his responsibilities under the Articles of Agreement when he altered his initial proposal in such a way as to take account of the “concerns” which had led to its rejection. It should not be forgotten, moreover, that in his first Memorandum of May 29, the President had explicitly envisaged the possibility of changing his proposal, should the Fund adopt different increases, and of then returning to the Executive Directors with a revised proposal (see para. 13 above).

110. Nor can the Tribunal accept the contention of the Applicants that the second proposal was not preceded by any study or consultation and that in contrast with the original proposal it was, therefore, entirely arbitrary. In supporting this argument the Applicants neglect a point which they have themselves made, namely, that the data provided by the Hay survey was open to several interpretations and that the Bank's decision was to rest on judgment. Neither the principles laid down in 1979 nor the de Merode ruling on periodic salary reviews impose a uniquely predetermined solution. The President in his Memorandum of May 29 proposed what appeared to him "a reasonable solution", which did not exclude the existence of other solutions which might also be reasonable. It is a non-sequitur to suggest that since his first proposal appeared to the President "reasonable in all the circumstances" his second proposal must, therefore, be seen as unreasonable. As has just been observed, the President himself reserved the possibility of later presenting a different proposal in the light of what might in the meantime be decided by the Fund. The studies and consultations which preceded the proposal of May 29 also served as the basis for the modified proposal of July 18. This second proposal rested on the same technical data as the first. It took into account the same factors to which it added new factors which had surfaced in the meantime, in particular the refusal of the Executive Directors on June 14 to approve the original recommendation because of the “concerns” expressed by some of them and the decision taken on July 17 by the Fund. Contrary to the contentions of the Applicants, the second proposal of the President benefitted from the same studies and consultations as the first and therefore the second can no more than the first be regarded as arbitrary.

111. Finally, the Tribunal must recall that the reduction in the initial proposal appears – in the language of the International Court of Justice in another context – “to have been kept within the bounds of what is moderate and reasonable” (Norwegian Fisheries, I.C.J. Reports 1951, p. 142), since the increase ultimately granted was

far from insignificant (see para. 100 above).

112. The foregoing examination of the matter satisfies the Tribunal that the decision finally taken by the Bank is not an abuse of discretion either by reason of its content or by virtue of the circumstances in which it was adopted.

113. Besides the Kafka principles and the de Merode ruling on periodic salary reviews, there is another rule governing the legal relationship between the Bank and its employees, namely the principle of parallelism. The Tribunal has already dealt with the meaning and scope of this rule, and it only remains here to examine whether the Respondent has complied with it in connection with the disputed 1984 decisions.

114. The Tribunal has held that under the principle of parallelism the Bank was legally obligated, when making its 1984 compensation decision, to seek cooperation with the Fund and to aim at harmonization of its decision with that of the Fund. Had the Bank simply ignored the Fund's position and decision, had it acted without regard for the Fund's action without taking into account, among other factors, the possible discrepancies which might arise from separate actions, the Bank would then have violated the principle of parallelism, one of the conditions of employment of the staff. But this is obviously not what the Bank did. Quite to the contrary, during the whole of the 1984 compensation review the Bank paid the greatest attention to the Fund's action - and it is precisely with this that the Applicants reproach the Bank. In his initial Memorandum of May 29, 1984 the President reserved for himself the possibility of later modifying his recommendation to take account of decisions which might subsequently be adopted by the Fund. In his second Memorandum of July 18 the President confirmed that his initial proposal had been influenced by, amongst other matters, concern for parallelism with the Fund. The Executive Directors were no less so influenced, and were as much aware of the problem of parallelism as the Management was. Far from being ignored, parallelism was taken into account to such an extent as ultimately to bring about a decision by the Bank exactly modelled on the decision of the Fund. Regarding the 1984 decisions, compliance with the principle of parallelism is beyond doubt.

115. The more serious issue here, however, is whether the Respondent gave not too little weight to parallelism but rather too much. As the Tribunal has noted above, parallelism admits of differences. The Fund's action did not deprive the Bank of its power and duty to reach its own decision in the light of all the relevant factors, including of course the pursuit of harmonization to the extent warranted by the circumstances. The Bank could, of course, as it in effect did, reach the conclusion that mirror-like parallelism was the appropriate action. The fact that under the principle of parallelism identity of decisions is not mandatory does not entail that identity of decisions is in itself illegal. On the other hand, a considered view of the situation could quite as well have led the Bank to a different decision, without ipso facto violating the principle of parallelism.

116. Obviously, the Bank acted having due regard for the Fund's action. However, in suggesting that legally it must grant to its employees exactly the same percentages in salary adjustment as those of the Fund, the Bank ignored the measure of discretion inherent in the principle of parallelism. If the 1984 decision was based solely on the Bank's belief that it was legally obliged to mirror precisely the Fund's decision, this decision would then have rested on an error on a question of law. The record, however, shows that the decision was prompted by a number of factors, including parallelism. In addition, the Bank's decision was not in all respects identical to the Fund's decision. While the percentages of the adjustments were modelled on those of the Fund, the two organizations made different decisions on a related issue: the Fund set aside monies to face possible future adjustments following the job grading exercise; the Bank did not, but was content with providing for future consideration of the matter. In the Tribunal's judgment, therefore, the Respondent's decision is not vitiated by error of law.

117. The Applicants maintain that the decision made by the Bank in June 1986 to pay additional salary increases as a result of the Fund's decision retroactively to distribute the amounts it had set aside on the occasion of the 1984 and 1985 adjustments constitutes an admission that the 1984 and 1985 adjustments in the Bank had been inappropriate and that the Applicants had then been underpaid.

118. The Tribunal is unable to accept this contention. As indicated earlier (para. 39 above), the President of the

Bank, when explaining the rationale of his 1986 proposal to the Executive Directors on May 29, 1986, expressly stated that, even though the proposed increases were calculated on the basis of the difference between Management's original recommendations in 1984 and 1985 and the adjustments actually approved by the Board, that was “not intended to imply that the 1984 and 1985 Board decision was improper or inadequate under the principles on staff compensation.” On March 4, the President had already indicated that “on compensation policy grounds” there was no justification for further salary increases in view of the results of the Bank's job grading program. The Bank's 1986 decision was prompted by the Fund's action, and was based on the principle of parallelism; it had nothing to do with an admission of an earlier illegality and was not meant to make up for a wrong decision. This results clearly from the Minutes of the Executive Director's meeting of June 10, 1986: the Executive Directors, in their own words, acted “in the interest of parallelism,” because “the spirit of parallelism should be honored”; and they regretted that the Bank was “forced into a situation that now required the Bank Board to revise its original decision, even though that decision was correct.” In no way can the salary increase of 1986 be regarded as an admission of the unlawfulness of the 1984 salary adjustments.

119. The Tribunal concludes that the recommendation formulated by the President on July 18, 1984, and the approval of this recommendation by the Executive Directors on July 19 are in accordance with the principles governing staff compensation decided upon by the Executive Directors on May 24, 1979, as well as with the other applicable rules, in particular with the Bank's obligation to make periodic salary reviews taking into account various relevant factors, including changes in the cost of living and the principle of parallelism. The President, in formulating his recommendation of July 18, 1984, and the Executive Directors, in approving that recommendation on the next day, all exercised the discretionary power given to them by the principles laid down in 1979 and the other relevant rules. Neither the content of the contested decisions nor the circumstances of their adoption constituted a misuse or abuse of their respective discretions. In deciding the salary adjustments for 1984, therefore, the Respondent did not commit any non-observance of the conditions of employment of the Applicants.

V. THE SALARY INCREASES OF 1986

120. The Applicants maintain that in granting on June 10, 1986, salary increases below those earlier decided by the Fund, and without retroactivity, the Respondent has, as they put it, "unilaterally abandoned parallelism." While it is true that the principle of parallelism was in 1986, as it already was in 1984, a legal rule embodied in the conditions of employment, the Tribunal cannot share the Applicants' view that in 1986 parallelism was abandoned, or ignored, by the Respondent. The factual background of the 1986 decision points to the contrary and shows beyond question that no more than in 1984 did the Bank reach its decision in disregard of the Fund's action. In effect the Bank's action in 1986 was all along, and almost exclusively, prompted by the concern for parallelism.

121. The President's Memoranda of March 4, March 27 and May 29, 1986, the statement by the Director of the Compensation Department on March 27, and the Minutes of the Executive Directors' meetings of March 27 and June 29 (see paras. 34-42 above) all demonstrate beyond doubt that it was with parallelism in mind that the Bank acted. The Bank made it clear that it did so reluctantly, regretting that the Fund had acted unilaterally, thereby placing the Bank in a difficult, if not impossible, situation. The concerns voiced by management and the Executive Directors were exactly those which lie at the heart of the principle of parallelism and are related to its objectives as defined since as long ago as 1972 (see para. 54 above). The average salaries were already much higher in the Fund than in the Bank: 3.9% for professional staff, and 11.5% for support staff. Any further discrepancy, apart from being in itself unjustified, would imperil the morale of the staff and, consequently, the proper functioning of the institution. The existing gap would be widened if the Bank did not take some action of its own. While some differences between the Fund and the Bank were legitimate, this one certainly was not and would be impossible to explain to the staff. Therefore, even though the adjustments of 1984 and 1985 were appropriate and did not call for any correction, some action was necessary to put an end to the “anomaly” resulting from the Fund's decision. Without the Fund's action in January 1986, the Bank would not have taken any action in June. It was clearly with a view to abiding by the principle of parallelism that the Bank made its move. In the words of the Respondent in its supplementary pleading of 1987, “far from constituting a breach of the principle of parallelism, as Applicants contend, this action by the Executive Directors demonstrates their

adherence to the goals of parallelism." The evidence fully supports this statement.

122. The Applicants complain, however, that the increases eventually decided upon by the Bank fall short of those granted by the Fund and that this difference amounts in itself to a breach of parallelism. Insofar as the Applicants' argument is to the effect that parallelism mandates identity, it rests on a misunderstanding of this principle. As shown earlier (paras. 58 ff. above), the rule of parallelism cannot be construed as meaning that the Bank has automatically, and in all circumstances, to make the same decisions as the Fund, without any margin of discretion. Some flexibility is allowed to the Bank to adapt its decision to its own requirements. Other factors come into play and may warrant a different decision. Accordingly, the mere fact that the June 10, 1986, decision of the Bank was not identical to the January 30, 1986, decision of the Fund cannot be regarded as a breach of the principle of parallelism vitiating the decision made.

123. Alternatively, the Applicants' argument can be understood as questioning not so much the possibility in principle of a separate decision under the rule of parallelism as the appropriateness in the present case of the measures adopted on June 10, 1986. As said before (para. 69 above), the question whether, and to what extent, the circumstances warrant a separate decision, are for the organization to decide, and not for the Tribunal. The Bank could, of course, have decided increases in the same amount as those granted by the Fund, and with retroactivity. Once it had decided that this was not the appropriate course, it had to make its own decision, and in particular to make a choice on the amount of the increases and on whether or not these increases would be retroactive. As in 1984 there existed in 1986, in the words of the Parties, "a band of legality," "a range of choices and of permissible solutions." In the President's own words in his Memorandum of May 29, 1986, it is only "after considering a number of options" that he chose the option that was subsequently approved by the Executive Directors. The question whether the decision reached as a result of the balancing of the various factors was the best possible is a judgmental one and rests within the discretion of the organization. It is a question of policy and appropriateness, not of law; and it is not for the Tribunal to override the Bank's considered judgment and to replace it with its own. As it did on previous occasions, the Tribunal deems it necessary carefully to draw the line between a judgment on law, which falls within its province, and a judgment on practical appropriateness or policy, which does not.

124. It was, therefore, the responsibility of the Bank to determine, in the light of the circumstances and the relevant factors, the amount of the increases it regarded as appropriate, and whether or not these increases should be retroactive. Provided the Bank did not abuse or misuse its discretion, the substance of its decision will not be reviewed by the Tribunal. In the instant case, the Tribunal does not see any abuse or misuse of discretion. The Bank explained that in making its decision it took into account a number of factors: the fact that the Bank had not set aside any money in 1984 and that the money set aside in 1985 was already used up for other purposes; the budgetary impact of the various options; the administrative difficulties raised by retroactive increases. None of these factors is legally irrelevant. The decision made was not prompted by improper motives, but by the concern of narrowing the discrepancy in salary levels without ignoring the other factors involved. The decision was made in a reasonable manner, seeking to avoid unnecessary harm to the staff. This is brought out by the fact that, while the increase was lower than that granted by the Fund at professional levels (1.5% instead of 1.6%), it was higher at support levels (1.3% instead of 0.5%) because of the much wider discrepancy between Bank and Fund salaries at support levels than at professional levels. The decision was a result of careful study, as is demonstrated by the Management's Memoranda and the Minutes of the Executive Directors' meetings. The better treatment accorded to support staff confirms the balanced character of the decision made; so does also the fact that, unlike the Fund's treatment of grandfathered staff, the increases granted by the Bank also applied to grandfathered staff's salaries above the maximum of their salary range. As the Respondent rightly notes, on this particular issue it is to the benefit of the Bank's staff that the Fund's actions were not blindly followed. For all these reasons the Tribunal is satisfied that the conditions for a proper exercise by the Bank of its discretionary power according to the standards set out in de Merode (see para. 96 above) were fulfilled.

125. The Applicants request the Tribunal to grant them retroactive increases in the amount of those decided by the Fund. Insofar as this request may be construed, according to Article XII of the Statute of the Tribunal, either as a request for the rescission of the Executive Directors' decision of June 10, 1986 as applied to the

Applicants or as a request for specific performance because of an alleged failure of the Respondent to fulfill its obligation, the request cannot be granted since no violation of any rule or obligation has been established.

126. The Tribunal is fully aware of the discrepancies which have existed for some time and even before the contested 1986 decision, between Bank and Fund salaries at comparable levels. The Tribunal is also alive to the fact that, having followed the Fund downwards in 1984, the Bank decided in 1986 not to follow it upwards even though, according to the Bank's own statements, there might have been more justification for such increases in the Bank than in the Fund. Equally the Tribunal notes that the fact that, while the President and the Executive Directors regarded the increases actually granted in 1984 as adequate under the principles of staff compensation (see para. 118 above), the President, nevertheless, considered his original proposals of 1984 as “reasonable in all circumstances” (Memorandum of July 18, 1985: see para. 19 above) and “most appropriate” (Memorandum of May 29, 1986: see para. 39 above). Without question, the principle of parallelism, although applied both in 1984 and 1986 in a legally unobjectionable way, has actually operated in each case to the disadvantage of the staff. However, so long as the Tribunal is satisfied that there has been no abuse or misuse of discretion, it does not fall within its jurisdiction to determine whether or not the Bank has gone far enough towards narrowing the discrepancy between compensation levels in the Fund and the Bank; still less does it fall within its jurisdiction to issue a ruling on any further steps that might appear appropriate. As previously emphasized, while it falls within the judicial mission of the Tribunal to rule on matters of law, it is not within the Tribunal's purview to make findings on matters of policy, or to substitute its own judgment for that of the governing bodies of the Bank. It is for the Bank to decide whether, in the light of the principle of parallelism and of other factors, it deems it appropriate to take any further step to bridge, or at least to narrow, the gap which its Management and the Executive Directors themselves acknowledged as regrettable. Different measures might appear appropriate for different categories of staff. The issue remains before the Bank.

DECISION:

For these reasons, the Tribunal unanimously decides to dismiss the applications.

E. Jiménez de Aréchaga

/S/ Eduardo Jiménez de Aréchaga
President

C. F. Amerasinghe

/S/ C.F.Amerasinghe
Executive Secretary

At London, England, October 27, 1987