

Decision No. 371**R,
Applicant****v.****International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Sarah Christie and Florentino P. Feliciano. The application was received on 19 December 2006. The Applicant's request for anonymity was granted on 8 January 2007.

Background Facts and Procedural History

2. The Applicant worked at the Bank from 1986 to 2005. His last position was that of a Senior Financial Analyst, Level G, in the Africa Region.

3. This application arises from events relating to an investigation of the Applicant by the Bank's Department of Institutional Integrity (INT). In 1999, while working at the Bank, the Applicant rendered consulting services to a U.S. corporation (X Corporation) which was an investor in his home country in Africa (Country Y). The consulting services apparently consisted of the review of draft documentation and assistance in setting up a cellular phone company in Country Y in joint venture with local investors. The X Corporation paid the Applicant \$15,000 for his services and \$2,000 for his expenses. Under cover of a letter dated 12 January 2000 addressed to the X Corporation, the Applicant returned the \$15,000 stating that he could only partially fulfill his undertaking. The Applicant states in his application that he "bowed out" of the project and had no further relations with its promoters.

4. In 2005, the U.S. Government filed criminal charges under the U.S. Foreign Corrupt Practices Act (FCPA) against the X Corporation for engaging in, among other things, bribery of foreign government officials in connection with certain investments in Country Y. The bribery allegedly consisted of remittance of large sums of money for use in the re-election campaign of the incumbent President of Country Y. The U.S. Securities and Exchange Commission (SEC) also filed a civil suit in March 2005 against the X Corporation alleging, *inter alia*, that

[o]n or about November 22, 1999, [the X Corporation] ... entered [into] a consulting agreement with a Senior Financial Analyst of the International Bank for Reconstruction and Development ... under which [the X Corporation] paid the consultant \$15,000, plus expenses, to assist in obtaining local investors for the ... project. ... The \$15,000 payment was wired to an account held not in the consultant's name, but in his wife's name. In addition to the \$15,000 payment, [the X Corporation] paid the consultant over \$2,000 in travel-related expenses. A former senior ... Africa executive [of the X Corporation] made these payments in cash because the World Bank official expressly asked [the X Corporation] not to document payment of his expenses.

5. The X Corporation in March 2005 pleaded guilty to the criminal charges and settled the criminal and the SEC civil charges by agreeing to pay nearly \$30 million in fines to the U.S. Government. The case was widely publicized in major newspapers, magazines and electronic media in the U.S.

6. In July 2005, INT commenced an investigation of the Applicant alleging mainly that, while a staff member of

the Bank, he had “engaged in a conflict of interest by entering into a business relationship with an outside entity [the X Corporation] without the approval of the Outside Interest Committee.” The Applicant resigned from the Bank effective October 2005, while the INT investigation was still under way. After the completion of the INT investigation, the Vice President of Human Resources determined on 24 July 2006 that the Applicant was guilty of misconduct. Since the Applicant had resigned approximately nine months earlier, the Vice President decided to impose a permanent bar on future employment of the Applicant with the Bank. The Applicant was so informed in writing. His application mentions that this decision is “currently being challenged in the Appeals Committee” and could be the subject of another application to the Tribunal.

7. In the meantime, on 14-16 February 2006, the Bank, as part of a training program for its managers and staff, organized and held a seminar on “Governance and Anti-Corruption” at its headquarters. INT was not involved in organizing the seminar but a former INT Officer, who at that time was working with a private U.S. firm, participated as one of the speakers at the seminar. The former INT Officer gave a presentation at the seminar on transnational corruption, and one of the examples he used was the X Corporation case. The Officer also briefly mentioned that a Bank staff member had provided services to the X Corporation. According to the Officer, he “prefaced [his] comments by saying words to the effect of: ‘this is public information’ and referred to a press article mentioning this matter.”

8. Among the participants in the seminar was a colleague of the Applicant’s wife. The colleague apparently asked the Applicant’s wife whether certain references to the X Corporation and a Bank staff member allegedly made during the seminar could have pertained to her husband. It appears that the Applicant’s wife then conveyed this question to the Applicant. On 17 February 2006, the Applicant’s counsel wrote to the Director of INT complaining in the following terms about an alleged breach of confidentiality during the seminar:

[The Applicant] has requested that I write to you about a breach of confidentiality in an investigation by your department. Information has reached [the Applicant] that he was identified in a seminar organized [by the Bank] as a staff member investigated for corruption in a case involving the [U.S.] Foreign Corrupt Practices Act and that the investigation was completed.

[The Applicant] was apparently not referred to by name, but was clearly identified to participants by reference to his current activities. That was an irreparable breach of the confidentiality that INT is obliged to maintain during and for that matter after an investigation. ...

It appears that World Bank staff are being given confidential information, are being misinformed about the status of the investigation and are being given information that is false as well.

I am requesting that any misuse of confidential information in his case be stopped immediately and that statements made in the seminar be retracted with the retraction circulated to all staff who organized or participated in the seminar, which includes outside presenters.

I note that the Bank is using [a former Senior Institutional Integrity Officer], who was several years in INT as a presenter. [That Officer] was recently engaged in forming a company ... and for him to use information obtained in his service with the Bank is an ethical breach and should be sanctioned. [Emphasis in original.]

9. According to INT, it did not receive the letter until April 2006 because the letter was sent as an attachment to other material mailed to the office of the Vice President of Human Resources. Responding on behalf of INT, a Senior Counsel from the Bank’s Legal Department wrote on 26 April 2006 to the Applicant’s counsel that “[i]n order to respond more effectively to your letter I would ask that you identify with specificity the confidential case information to which you allude. Please note in this respect that information extracted from public records is not confidential.” According to the Bank, the Applicant did not provide any additional information, nor did he contact INT to discuss his complaint.

10. On 8 May 2006, the Applicant’s counsel replied to the Bank Senior Counsel’s letter of 26 April 2006 stating:

We did not participate in the seminar, but understand from on [sic] such participant that the facilitator

informed the group that “a former Bank staff is now running for the President of [Country Y], and this same person is involved in a case with [the X Corporation] and has been the object of an investigation under the US Foreign Corrupt Practices Act.” That participant inquired of [the Applicant’s] wife whether there is another former Bank staff running for office.

While the Bank did not use [the Applicant’s] name, it might as well have as it had provided specific enough information for his identity to become known. His name may have been used publicly as a presidential candidate for [Country Y] but it was not used publicly in connection with [the X Corporation] or the Foreign Corrupt Practices Act. It was the Bank who made those connections for the participant’s using information that was gathered for the purposes of investigating misconduct charges. That same information has been made part of the INT draft report and is confidential. Releasing that information amounts to an impermissible breach of confidentiality

We would welcome the opportunity to review the materials provided to the seminar participants as well as the notes and materials used by the facilitator so that we might identify the improper disclosures with even more specificity.

11. On 23 May 2006, the same Senior Counsel of the Bank responded as follows:

Even if [the Applicant] has not been mentioned publicly by name as having been involved in the US government’s investigation into [the X Corporation], it would be unreasonable to conclude that such information could only have drawn from INT’s investigation and/or draft report. As you know, there has been extensive press coverage on the [X Corporation] matter and numerous references in the press to a World Bank Senior Financial Analyst in [Country Y] receiving payments from [the X Corporation]. Moreover, INT’s draft report and the information contained therein are accessible to only a small group of individuals with a need to know. Neither [the former INT Officer] nor [the organizer of the seminar] is included in this group.

12. In the meantime, on 17 May 2006, the Applicant filed a Statement of Appeal with the Appeals Committee challenging:

(i) the decision to release to participants of a World Bank workshop information about him that was gathered during a misconduct investigation; [and]

(ii) the decision to release to ... U.S. News and World Report information that [the Applicant] was under investigation for misconduct and certain other information that was gathered during the investigation.

13. The Bank raised a jurisdictional objection. On 24 August 2006, the Appeals Committee concluded that it did not have jurisdiction to rule upon the Applicant’s Appeal.

14. The Applicant filed his application with the Tribunal on 19 December 2006 claiming the following: (i) the Bank failed in its duty to protect the Applicant’s confidential personnel information in improperly disclosing confidential information about his investigation by INT to participants of a seminar organized by the Bank; (ii) the Bank also disclosed similar confidential information to a *U.S. News and World Report* reporter; and (iii) although he had complained to the Bank about the disclosures, the Bank failed to commence an investigation or to take proper action. The Applicant asserts that he has been irreparably harmed and that the Bank should pay him compensation and costs, and issue a public apology.

15. On 19 January 2007, the Bank raised a jurisdictional challenge stating in essence that there is no evidence that it took any action which could be construed as a breach of the terms or conditions of the Applicant’s employment. Therefore, the Bank argued, the application should be dismissed for lack of jurisdiction under Article II(1) of the Tribunal’s Statute. In *R*, Decision No. 368 [2007], the Tribunal dismissed the Bank’s jurisdictional challenge.

Contentions of the Parties on the Merits

The Applicant’s Claim No. 1: The Bank Improperly Disclosed Confidential Information to Participants in a Seminar Organized by the Bank

16. According to the Applicant, the Bank breached its obligation under Principle 2 of the Principles of Staff Employment by disclosing confidential information about him. At the time of the Bank's seminar on "Governance and Anti-Corruption" in February 2006, the Applicant was under investigation by INT for alleged misconduct in connection with the X Corporation. INT investigations are confidential, and information obtained in the course of an investigation is also confidential.

17. An examination of e-mail exchanges, the Applicant states, between his wife and her colleague, a senior staff member who had attended the seminar, shows that the Bank disclosed confidential information at the seminar. The staff member e-mailed the wife immediately after attending the seminar, stating that "I am just hearing now in this seminar that a former Bank staff member ... running for President of [Country Y] ... has been the object of an investigation under the [FCPA]." The staff member also stated that "it was presented as something on which all the investigation was done, work concluded and INT has formed a judgment."

18. This documented testimony shows, according to the Applicant, that the Bank has breached its duty by disclosing information about his investigation at the seminar. The Bank cannot avoid its liability by claiming that the information was disclosed by a former INT Officer. That officer had previously worked for the Bank and has since rejoined the Bank. The Bank denies that it shared any confidential information about the Applicant with the former INT Officer. But a reasonable inference can be drawn that INT improperly provided information to the Officer so that the seminar could appear timely and could validate INT's ongoing activities.

19. The Bank cannot evade its liability by claiming that the INT Officer's statements about the Applicant, the X Corporation and an investigation under the FCPA were already public knowledge. The various news reports about the X Corporation case only mentioned a "World Bank Analyst." This class of staff, to which the Applicant belonged, included thousands of members. But during the seminar, the Bank provided enough specific information for the Applicant's identity to become known to some seminar participants.

The Bank's Answer to the Applicant's Claim No. 1

20. The Bank has neither disclosed nor authorized anyone to disclose confidential information about the Applicant. The documents submitted by the Applicant do not demonstrate that the Bank disclosed any confidential information about him at the seminar. In support of his first claim, the Applicant provided two e-mails that he and his wife sent to the Applicant's counsel. The e-mails purport to describe what the colleague of the Applicant's wife supposedly heard, and contain quotes from e-mails that the colleague allegedly wrote to the Applicant's wife, but did not include any original e-mails from that colleague. The vague statements attributed to the colleague do not indicate clearly what was said at the workshop or who said it. They also make it difficult to assess the credibility of the colleague and the accuracy of the colleague's purported statements. Thus, the documents provided by the Applicant are little more than speculation.

21. The INT Officer in question had worked with INT from March 2000 to September 2005. He then joined a private U.S. firm, and in August 2006 he rejoined INT. Before he left for the private firm, he was not assigned to investigate the Applicant's case, nor did he have access to the investigative records. He used only publicly available information about the X Corporation case during the seminar. It is not in dispute that the X Corporation case was well-documented in public court filings, widely known in the corporate legal community, and discussed extensively during legal conferences and seminars in several countries.

The Applicant's Claim No. 2: The Bank Improperly Disclosed Confidential Information to the Press

22. Soon after the seminar, a reporter for *U.S. News and World Report* contacted the Applicant's counsel and asked about the INT investigation of the Applicant. The reporter was clearly informed about the ongoing confidential investigation and about the Applicant personally. The reporter could have gathered that information only if someone from the Bank had released it. This breach shows INT's misuse of or its gross negligence in securing confidential information.

The Bank's Answer to the Applicant's Claim No. 2

23. The Bank, and more specifically INT, did not authorize release of any confidential information about the Applicant to *U.S. News and World Report*, and the Applicant provides no evidence of such an authorization. He only speculates that someone at the Bank had told the reporter about the Applicant's misconduct case because the reporter contacted his attorney in connection with an article on which the reporter was working concerning fraud and corruption in international development projects. A great deal of information about the X Corporation was either publicly available or accessible to reporters through other sources. The Applicant's claim that the reporter's information came from the Bank is mere conjecture.

*The Applicant's Claim No. 3: The Bank Failed to Investigate
the Applicant's Complaint About the Disclosures*

24. Despite the complaint raised in the letter of 17 February 2006 from the Applicant's counsel, INT refused to undertake any investigation of the breach at the seminar, and of the alleged leak to *U.S. News and World Report*. The Tribunal should reject the Bank's argument that during the seminar in question the former INT Officer was an employee of an outside firm, and thus the Bank had no authority to investigate or sanction him. The Officer could have been sanctioned as an outside consultant for misusing confidential information, and since he has rejoined the Bank he is now subject to disciplinary action. Finally, the Bank refused to comply with the Applicant's request to provide him with all documents used at the seminar, and has obstructed his efforts to determine the details of the breach of confidentiality.

The Bank's Answer to the Applicant's Claim No. 3

25. INT's decision not to initiate a preliminary investigation of the Applicant's complaint was reasonable. In *Sjamsubahri*, Decision No. 145 [1995], the Tribunal confirmed that the decision whether to initiate a preliminary inquiry on a staff member's complaint is a discretionary one left to the judgment of INT. Before initiating such an inquiry, INT must balance its duty to the complainant to have potential wrongdoing investigated, and its duty to the accused to proceed with an inquiry only if there is some support for the allegation. That balance was appropriately struck in the Applicant's case.

26. The Bank receives dozens of allegations of staff misconduct every month. The complaints range from the credible and serious to the frivolous and nonsensical. Investigators must decide which allegations warrant an investment of resources, and which do not. Under INT's practice, certain kinds of considerations are commonly taken into account. These considerations are examined later in this judgment. The Bank's view is that the Applicant's allegation about the disclosure of confidential information at the Bank seminar did not meet any of the pertinent criteria, and INT accordingly decided not to conduct a preliminary inquiry into the Applicant's complaint about that alleged disclosure. Moreover, with respect to the alleged disclosure of confidential information to a reporter for *U.S. News and World Report*, the Tribunal should note that the Applicant did not file a complaint with INT about this alleged event. His submissions to the Tribunal do not show otherwise.

Considerations

The Alleged Disclosure of Confidential Information at the Bank Seminar

27. As his first claim, the Applicant states that a former INT Officer disclosed confidential information about his investigation by INT to participants in a seminar organized by the Bank. In *Malekpour*, Decision No. 322 [2004], para. 29, the Tribunal stressed that "an allegation is not a substitute for proof." A review of the record shows that no evidence has been adduced in support of the Applicant's claim.

28. The basis of the Applicant's claim is that a staff member, who is also a colleague of the Applicant's wife, after attending the seminar in question sent e-mail messages to the Applicant's wife stating:

I am just hearing now in this seminar that a former Bank staff member is now running for President of

[Country Y], and that this same person is involved in a case with [the X Corporation] and has been the object of an investigation under the US Foreign Corrupt Practices Act. Is there another former Bank staff member running? ...

[I]t was presented as something on which all the investigation was done, work concluded and INT has formed a judgment. ...

29. The Applicant has produced neither the originals nor copies of the above e-mail exchanges between his wife and her colleague. Instead, he produced copies of two e-mails that he and his wife sent to his counsel in which the above-quoted statements of the colleague of the Applicant's wife were apparently either copied and pasted or retyped. The two e-mail messages do not constitute either direct or corroborative evidence.

30. At the jurisdictional stage of this case when the Bank requested the Tribunal to dismiss the Applicant's claims as entirely speculative, the Applicant in his pleadings before the Tribunal stated that

Applicant reassures Respondent that – at the appropriate “merits” stage in this proceeding – Applicant can provide Respondent with any necessary emails from Applicant's wife's colleague, or any other direct evidence pertaining to Applicant's claims, including any other statements of the aforementioned colleague and/or other seminar participants, as well as any statement proffered by the U.S. News and World Report journalist who called [the Applicant's counsel] in February 2006.

...

Applicant will use his best efforts to, at the merits stage of this case, provide the Tribunal with additional testimony of at least one or two seminar participants about the content of the comments pertaining to Applicant. [Emphasis added.]

31. The Tribunal's jurisdictional judgment noted the Applicant's assurances. (*R*, Decision No 368 [2007], para. 26.) It is troubling that at the merits stage of the proceedings, the Applicant has not provided the promised copies of actual e-mails between the Applicant's wife and her colleague, nor any testimony from any participant at the seminar or any direct evidence. Nor has the Applicant sought to explain his failure to produce the promised evidence.

32. On the other hand, the Bank has submitted two declarations to the Tribunal, including one from the INT Officer accused of disclosing the confidential information. The Officer stressed in his declaration that he had spoken at the February 2006 seminar on “transactional fraud and corruption” in his capacity as an employee of a private U.S. firm and was introduced at the seminar as such. He also stated that he had worked with INT from March 2000 to September 2005, and had then joined a private firm and worked there until August 2006, when he rejoined INT. The Officer explained further that

One of the examples that I used during the presentation dealt with [the X Corporation]. ...

During my presentation, as a case study, I recall briefly mentioning that a Bank staff member provided services to [the X Corporation] in connection with the telecommunications deal in [Country Y]. While I do not recall the precise wording that I used as this event occurred more than 17 months ago, the information that I used with regard to [the X Corporation] and the Bank staff member was publicly available to me. I prefaced my comments by saying words to the effect of: “this is public information” and referred to a press article mentioning this matter. At no time did I identify [the Applicant] or mention him by name during the presentation nor did I use confidential Bank information.

When I mentioned that a Bank staff member was reported to have provided services to [the X Corporation] in connection with the [Country Y] telecommunications deal, someone in the audience said words to the effect of: “I think I know that person.” I did not see who said this, nor do I recall the precise wording, but I remember that a short side conversation ensued among a few participants who sat in the area where the voice came from. The conversation was not audible to me or to the general audience. I proceeded with my presentation and did not inquire about the group's discussion.

I informed the Bank that I did not refer to [the Applicant] by name in my presentation of the [X Corporation] case and said that this information was in the public domain. The fact that [the X Corporation] was charged with violations of the FCPA, and that an employee of the Bank entered into a consulting contract with [the X Corporation] was well documented in public court filings, widely known in the corporate legal community, and discussed extensively during legal conferences and seminars around the world. Since this was the largest case ever brought under the FCPA, the entire matter has and continues to receive close scrutiny in the legal community.

During my tenure as a Senior Institutional Integrity Officer, I was not assigned to investigate the misconduct allegations made against [the Applicant], nor did I access investigative records related to [the Applicant's] case. At the time of the workshop, I was not aware of the status of [the Applicant's] misconduct investigation nor had access to the file.

33. The other declaration was submitted by the Lead Institutional Integrity Officer of INT. He stated:

The Department of Institutional Integrity has not authorized anyone to release any confidential information about [the Applicant] to U.S. News and World Report, or during the workshop on fraud and corruption conducted at the Bank in February 2006. In addition, INT is not aware of any current or former Bank staff member making such disclosures.

34. The Applicant has not challenged the credibility of these declarations, nor has he explained why the Tribunal should disregard them. Considering the record of this case, the Tribunal must conclude that there is insufficient evidence to show that the Bank disclosed confidential information about the Applicant's investigation by INT to the participants in the February 2006 seminar.

Alleged Disclosure of Confidential Information to U.S. News and World Report

35. In the Applicant's own words, the basis of the second claim is as follows:

On February 22, 2006 [the reporter] of US News and World Report called [the Applicant's counsel] to discuss [the reporter's] then soon-to-be released article about the World Bank and fraud and corruption. In the conversation, [the reporter] questioned [the Applicant's counsel] about certain activities in [Country Y] regarding [the X Corporation] and a former World Bank financial analyst who was then a presidential candidate, who [the reporter] identified as [the Applicant (by name)] whom he understood to be under investigation for misconduct. [The reporter] could have gathered that information only if someone from the World Bank released that information.

36. There was, however, no public disclosure of the INT investigation of the Applicant in the media. The Applicant accepts that the reporter did not mention him by name in the published article in *U.S. News and World Report*. Thus, assuming that confidential information had been disclosed to the reporter, it was never released to the public. The Applicant's claim therefore is limited to the narrow allegation that INT improperly disclosed to the reporter information about his confidential INT investigation.

37. The Tribunal is aware that proving the source of a leak of confidential information may be difficult. A reporter is not expected to reveal his confidential source nor does the Tribunal have the authority to issue a subpoena to a reporter requiring such disclosure. Thus, to determine who leaked confidential information may often compel reliance on circumstantial evidence only. In the present case, the issue is whether it may be reasonably inferred from all the circumstances of the case that the source of information in the hands of the reporter was indeed INT, as the Applicant alleges, and not any other source.

38. Here, there was no publication of the alleged leaked information. Verification of the Applicant's claim is thus especially problematic. The Applicant has not explained why the Tribunal should disregard the declaration of the Lead Institutional Integrity Officer of INT quoted in paragraph 33 above. The Applicant contends that INT's motivation for the disclosure may have been to "validate INT's ongoing activities" and "it now appears that there were deliberate high level leaks of INT investigations to publicize World Bank anti-corruption activities promoted

by [the new President of the Bank].” If INT had wanted to draw attention to its activities, it could have disclosed the information in July 2005 when INT commenced its investigation, soon after the new President had joined the Bank, and expressed his strong desire to fight corruption in June 2005, only a few months after the X Corporation had pleaded guilty in March 2005. But the Applicant states that the reporter contacted him only on 22 February 2006, almost seven months after INT had commenced its investigation and almost eight months after the new President had joined the Bank. The Applicant does not explain what particular motivation INT had or could have had for its alleged disclosure around February 2006.

39. Nor does the record show that the Applicant made a specific complaint to INT, or asked INT to investigate this alleged leak to the reporter. The record contains news articles and public documents, such as the one quoted in paragraph 4 above, linking the X Corporation to a World Bank financial analyst. Aggressive reporters could have found information in court filings and other public documents linking the Applicant, who had also run as a presidential candidate in Country Y, to the X Corporation. The Tribunal cannot reasonably conclude on the basis of the circumstances of the present case that the source of the alleged leak to the reporter was indeed INT.

The Bank’s Failure to Investigate the Alleged Disclosures

40. The Applicant claims that despite the complaint of his counsel in the letter of 17 February 2006, INT refused to initiate investigations of the alleged breach of confidentiality at the seminar and of the leak to the *U.S. News and World Report*.

41. Whether or not to initiate a preliminary inquiry on a staff member’s complaint – the first step in a Staff Rule 8.01 investigation – is a discretionary decision necessarily left, in the first instance, to the judgment of INT. Staff Rule 8.01 (Disciplinary Measures), paragraph 4.02, states:

Where an incident of possible misconduct is reported, a preliminary inquiry *may be undertaken if necessary* to determine whether there is sufficient evidence to warrant further proceedings. [Emphasis added.]

A complaint by a staff member does not automatically compel INT to commence a preliminary inquiry. In *Sjamsubahri*, Decision No. 145 [1995], para. 9, the Tribunal stated:

It must, however, be understood that a complaint by a staff member ... cannot automatically trigger proceedings of the kind prescribed in Staff Rule 8.01. *The victim’s complaint is merely the starting point for consideration by the Bank of whether or not it will commence disciplinary proceedings.* Staff Rule 8.01, Section 5.01 [Section 4.02 in the current version] leaves the Bank an option. The Rule says: “Disciplinary proceedings *may* be initiated by the Bank”. It does not say that such proceedings “*shall*” be initiated by the Bank. *Before initiating disciplinary proceedings in such circumstances the Bank must, in a necessarily preliminary way, decide whether there is sufficient substance to the complaint in terms both of evidence and gravity to warrant taking the matter further.* Were this not so, it would be open to any staff member, by making accusations of no matter how flimsy a character, to compel the opening of a formal investigation by the Bank which it is easy to imagine could cause significant harm to a possibly innocent fellow staff member. If the procedure had to be initiated automatically upon complaint by the complainant staff member, the discretion vested in the Bank by the opening words of Staff Rule 8.01, Section 5.02 “Disciplinary proceedings may be initiated by the Bank Group....” would be negated. [Emphasis added.]

42. Neither Staff Rule 8.01 nor the Tribunal’s jurisprudence provides specific indications of the kinds of considerations that INT must examine before initiating a preliminary inquiry. The Tribunal has emphasized, however, that a preliminary inquiry cannot be launched on the sole basis of rumors or allegations from questionable sources. In *G*, Decision No. 340 [2005], para. 78, the Tribunal stated that

[t]he first matter to be considered is whether there must be a defined evidentiary basis for initiating a preliminary inquiry. It is difficult to articulate a positive standard. Neither Staff Rule 8.01, paragraph 4.02, nor INT’s Standards and Procedures for Inquiries and Investigations define any threshold in this regard; it appears to be a matter of discretion. A meaningful negative answer, on the other hand, was given by the Tribunal in *Koudogbo*, Decision No. 246 [2001], at para. 43, to the effect that a *preliminary inquiry cannot be*

launched on the basis of rumors or allegations from questionable sources. An inquiry may be disruptive. It should not be triggered merely because there have been isolated, anonymous, indirect, word-of-mouth tips. Such indications may be very valuable in law enforcement everywhere, but they must be considered critically. [Emphasis added.]

43. The Bank states that INT in its practice considers the following factors in deciding whether to open a preliminary inquiry: (i) the overall specificity and credibility of the complaint; (ii) the existence of corroborating evidence; (iii) the complainant's and witnesses' willingness to cooperate; (iv) the timing of and motivation for filing a complaint; and (v) its jurisdiction to investigate the matter. The Bank further states that "[a]ll of these criteria need not be satisfied in every case, but sufficient factors must be met to permit INT to conduct a reasonable and focused inquiry in a manner that is fair to the accused and the complainant."

44. The Tribunal finds that the above factors are not unreasonable in themselves. The Tribunal will now examine whether INT applied those factors in the Applicant's case in an arbitrary manner.

45. The Bank states that INT applied the criteria referred to above and decided not to conduct a preliminary inquiry with regard to the Applicant's complaint. In respect of the credibility factor, INT concluded that the Applicant's complaint was not credible in view of the following: (i) the INT Officer in question did not have access to the records of the Applicant's investigation; (ii) the Officer had expressly advised the INT management that the information he had used in his presentation did not come from the Bank, but from public records, and the INT management found his statement credible because the X Corporation case had been well publicized in the media; (iii) the Applicant's letter itself stated that his name had not been mentioned at the seminar; and (iv) the Applicant did not provide any information or evidence (not even the copies of the two e-mails the Applicant has submitted to the Tribunal) to indicate that the INT Officer disclosed any confidential information.

46. With respect to the existence of corroborating evidence, INT concluded that the Applicant's complaint did not satisfy this factor based on the following: (i) the Applicant's 17 February 2006 letter conveyed speculation about events at the workshop based on second- or third-hand information, but did not indicate what statements were made or why he believed those statements were confidential; (ii) the letter did not identify the source of the information and provided no way to assess the credibility of that source; (iii) the letter did not include any supporting documentation and did not identify any potential source thereof; (iv) INT had requested more specificity but the Applicant did not furnish anything more concrete to INT; and (v) the Applicant did not contact INT to elaborate on his claim, or to provide information that could serve as potential investigative leads, as is often done by staff members who file complaints with INT.

47. The Tribunal notes that the Applicant's counsel sent a letter dated 8 May 2006 to INT stating that he "would welcome the opportunity to review the materials provided to the seminar participants." However, even before hearing from INT, he filed a Statement of Appeal with the Appeals Committee on 17 May 2006. The Applicant does not explain why he did not provide INT with the copies of the e-mail messages supposedly sent to his wife by a staff member who attended the seminar. Nor does he explain why he did not provide INT with copies of the two e-mails that he and his wife sent to his counsel to describe what the staff member had allegedly told the Applicant's wife, even though he has made those messages available to the Tribunal. The Applicant also failed to inform INT of the name of his wife or that of the staff member who attended the seminar, or to identify anyone else as a potential witness.

48. Regarding the timing and motivation of his complaint, INT states that the Applicant made it clear to INT that he was angry about being investigated for his dealings with the X Corporation. The record is insufficient for the Tribunal to determine what motivated the Applicant to file his complaint. Still, it is puzzling why he included a claim regarding INT's alleged failure to investigate in his Appeal of 17 May 2006 before receiving INT's response to his letter of 8 May 2006, without inquiring about this letter and without providing further information or other available evidence.

49. With regard to authority to investigate, INT concluded that it did not have authority to investigate the INT

Officer in question because although he was a Bank employee some time before and after the seminar, at the time that the conduct in question occurred he was an employee of a private firm. INT had no authority to investigate or discipline him for actions that he took while working for an outside entity.

50. It is not necessary for the Tribunal to determine whether the Bank can avoid its duty to investigate an alleged disclosure of a staff member's confidential information simply because at the time of the alleged disclosure the person alleged to have disclosed the information was no longer a Bank staff member even though he was invited by the Bank to speak and the alleged disclosure happened at the Bank's premises. The Tribunal does not need to address this issue in the present case because the authority to investigate was not a major consideration in this case. According to the Bank, despite the jurisdictional question, "INT may have been willing to open a preliminary inquiry if there was some indication that [the INT Officer had] obtained confidential information while he was a Bank staff member and disclosed it improperly at the workshop, but there was no evidence to suggest this was the case."

51. The Tribunal considers that under all the circumstances of this case, INT neither abused its discretion nor acted arbitrarily in deciding not to conduct a preliminary inquiry.

52. Finally, the Applicant also complains that INT failed to investigate the alleged leak to the reporter for *U.S. News and World Report*. The Applicant contends that his counsel's letter of 17 February 2006 should be considered as his complaint to INT and as his request for investigation. The Tribunal has carefully reviewed this letter, the contents of which are reproduced in paragraph 8 of this judgment. This letter does not contain an allegation of INT leaking confidential information to the reporter for *U.S. News and World Report*, nor any request to investigate this alleged leak. The Tribunal has examined the Applicant's counsel's letter of 8 May 2006, the contents of which are reproduced in paragraph 10 of the judgment. This letter also does not allege any leak to the reporter or make any request for investigation. The record does not include any other letter or documents from the Applicant in fact complaining to INT about such a leak and requesting INT to investigate. INT cannot in these circumstances be taken to task for having failed to do so.

Decision

For all the above reasons, the Tribunal dismisses the application.

/S/ Jan Paulsson
Jan Paulsson
President

/S/ Zakir Hafez
Zakir Hafez
Counsel

At Washington, DC, 14 December 2007