

CONFIDENTIAL
Report No. 991
Case No. 92-66
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UNITED NATIONS JOINT APPEALS BOARD
REPORT TO THE SECRETARY-GENERAL

Case of Mr. Eugene Lapointe

1. The Panel of the Joint Appeals Board (JAB), consisting of
Mr. Nandasiri Jasentuliyana, Chairperson
Mr. Alexandre Titov
Member appointed by the Secretary-General
Mr. Nabil Abdel-Al
Member elected by the Staff

having considered the appeal of Mr. Eugene Lapointe (hereinafter the Appellant) against the decision not to renew his fixed-term appointment, hereby submits its Report to the Secretary-General.

Summary of the Facts

2. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) entered into force in July 1975. It provided for the establishment of three appendices:

- I. Species threatened with extinction which are or may be threatened by trade,
- II. Species which, although not necessarily threatened with extinction, may become so unless trade is strictly regulated, and
- III. Species which any Party considers to be in need of regulation.

It specified the manner in which international trade must be regulated in each category.

3. The Convention also provides for:

- a Conference of Parties (COP), consisting of the

states parties, which normally meets every two years, and

- a Secretariat, provided by the Executive Director (Exdir), of United Nations Environmental Programme (UNEP), which, inter alia, is to make recommendations with respect to the implementation of the provisions of the Convention.

A Standing Committee (SC), responsible for providing general direction to the Secretariat between meetings of the COP, was established by the COP in 1981. Its terms were further defined in a COP resolution of 1987 (A/2)1/.

4. Until 31 October 1984, responsibility for providing the Secretariat was delegated by UNEP to the International Union for Conservation of Nature and Natural Resources (IUCN), an NGO. Appellant was appointed Secretary-General of CITES by IUCN on 15 April 1982, following the recommendation of a selection committee of the SC to the Exdir, UNEP. On 1 November 1984, UNEP assumed its full responsibility for the CITES Secretariat, and Appellant was given a one-year fixed-term UNEP appointment at the P-4 level. In April 1985, the entry level grade was changed to P-5 on the recommendation of the UNEP APB and approved by the Exdir. The appointment was subsequently extended several times, sometimes for short periods with the notation "subject to availability of funds," and always "approved by the Executive Director."

5. In June 1989, the Chief of the Personnel Section, UNEP, wrote to Appellant informing him that the Exdir had approved the extension of his appointment until 31 December 1990, "subject to the availability of funds." (A/5).

6. In October 1989, the COP was to decide whether or not the African elephant should be transferred from Appendix II to Appendix I of the Convention, i.e., whether or not to impose a complete ban on the ivory trade. In June 1989, a UNEP publication, "The African Elephant" appeared; in its concluding section, it stated: "When 80 percent of the ivory trade is still illegal, it is too early to judge the effectiveness of the quota system. The alternative - a complete ban on the ivory trade - is unlikely ever to be successful because world-wide investment in the ivory business is too large." On 3 July 1989, the Exdir issued a press

1/Annexes to the appeal or Appellant's observations are designated by A/No.

release which concluded: "UNEP strongly hopes [the COP] will manage to agree on a world-wide ban on the ivory trade."

7. On 25 September 1989, Prince Sadruddin Aga Khan, President, Bellevue Foundation, wrote a letter to the Exdir complaining about the Secretariat of the Convention and its Secretary General. He accused the Secretariat of failing to fulfill its obligations and criticized it for having circulated, at the African Elephant Working Group meeting, draft resolutions advocating the continuation of the ivory trade, for having failed to implement controls over the ivory trade and for receiving funds from ivory dealers. He criticized Appellant for having publicly stated his opposition to the listing of the African elephant in Appendix I. (A letter making similar allegations was sent to the Exdir by twenty-eight NGO's.)

8. On 27 September 1989, Appellant sent comments on the Prince's letter to Mr. Mansfield, the Deputy Executive Director of UNEP. He stated that the Secretariat was obligated to make recommendations in the event that the Conference of the Parties should decide to authorize the continuation of the ivory trade; that as a result of the controls implemented, the amount of ivory traded had decreased substantially; and that, while it was true that the Secretariat had accepted financial support from the ivory trade associations, it had done so at the request and on behalf of CITES Parties. He noted that it was the media which had contacted the CITES Secretariat and that, as journalists had only a rudimentary knowledge of the subject, the Secretariat had found it necessary to explain to them the problems which the proposed listing might cause.

9. The Exdir replied to the Prince in a letter of 24 October 1989 (A/13), based, in part, on an inquiry conducted by Mr. Mansfield and by Mr. Brough, the Acting Assistant Exdir for Fund and Administration. He wrote:

"During their inquiry in Lausanne they found no evidence of wrong-doing or illegal behaviour on the part of the Secretariat. What they did find is clear indications of differences of views among the various participants in the Convention -- governments, conservation, and animal protection organizations and trade groups -- about how strongly the Secretariat should promote its recommendations and pursue certain of its responsibilities, especially on the African Elephant issue ...

"What is often overlooked in cases such as this is that the Secretariat is obligated by Article XII of the Convention to make its own recommendations to the Parties

on proposals submitted for implementation of the Convention. So the Secretariat is required to take a stand on the issues. But given the strong feelings that exist on these issues, there is clear ground that this issue must be handled with delicacy and diplomacy.

"It is true, as well, that the Secretariat receives funds from dealers. They also receive funds from conservation non-governmental organizations and governments. All these groups were requested by the Parties under Resolution (Conf. 6.13) adopted in Ottawa in 1987 to contribute funds to CITES and the Secretariat was instructed to receive such contributions. At last week's meeting it became clear that the Parties now want to be much more actively involved themselves in decisions to accept such funds. This is very helpful and it will be discussed in the next meeting of the Standing Committee.

"There was no indication from the Parties in Lausanne that the Secretariat circulated documents on the elephant issue that were not called for by the Parties or CITES working groups. There were more than the usual number of documents on the African Elephant this time -- 10 of the 45 documents prepared by the Secretariat. But given the interest in and complexity of the issue, my two senior colleagues did not find the quantity excessive.

"You mention the Secretariat has failed to implement controls over the ivory trade. In truth, under the Convention it is the Parties who must implement the Ivory Trade Control System. ... The Standing Committee set out the arrangements and procedures for the Secretariat to follow in the sale and monitoring of uses of confiscated Burundi ivory. There is no evidence, nor have the Parties or the Standing Committee stated that the Secretariat went beyond or breached the arrangement or instructions approved by the Parties or the Standing Committee, on this matter.

"Your statement that fake licenses have been recognized as valid allowing illegal ivory to enter Hong Kong is very serious, since it clearly challenges the honesty of the Secretariat and a Party. My colleagues found no evidence of this during their inquiry, and I would request that you send details of the specific case. You can be sure they will be investigated fully and immediately."

The Exdir stated that he had made a similar request to the signers of the NGO letter. He also noted that the COP had

agreed to transfer the African Elephant from Appendix II to Appendix I.

10. On 8 February 1990, the Chairman of the CITES SC wrote to the Exdir (A/17) informing the latter of certain decisions of the SC at its February 1990 meeting. He said:

"In response to the general allegations of mismanagement by the Secretary General, the Standing Committee believes that it has a role to play in addressing such allegations since it works closely with the Secretary General and his staff and therefore has knowledge as to how the business of the Convention is being conducted. As a consequence, the Standing Committee has approved of a process whereby the performance of the Secretary General can be assessed objectively on an annual basis against a work plan which has been agreed to by both Parties. ...

"In response to the allegations of perceived conflict of interest by the Secretariat, the Standing Committee has acted quickly to eliminate this type of accusation in the future by approving Guidelines which are effective immediately, and these are attached for your consideration.

"A "crisis of confidence" was generated at the seventh Conference of the Parties in Lausanne against the staff of the Secretariat, and the credibility of the Convention has been placed at risk. None of the allegations of corruption have been proven and with the implementation of the guidelines noted above, the Standing Committee has every confidence in the Secretary General and his staff to conduct the business of the Conference of the Parties in an honest and effective manner."

11. On 12 March 1990, the Vice-Chairman of the CITES SC circulated a confidential note to all members of the SC about an informal SC meeting with the Exdir (A/22h). Excerpts from that report follow:

- 1) The Chairman, on behalf of the SC thanked Dr. Tolba for having consented to the request by the SC to discuss the future of the Secretary General, Eugene Lapointe. The Chairman pointed out clearly to Dr. Tolba that:

- (i) it had come to the knowledge of the SC that Dr. Tolba was considering the removal of Mr. Lapointe from his post, possibly within 6-8 months time.

(ii) the SC was unanimous in its concern that, if this was true, Mr. Lapointe be removed in such a manner that it would not reflect poorly on CITES as a whole, the Parties, UNEP, the staff of the Secretariat and Mr. Lapointe himself.

Dr. Tolba responded by praising Mr. Lapointe in a fulsome manner on all matters relating to the management of Secretariat and the furtherance of CITES. He also stated that accusations of some NGOs last October had been investigated. No proof had been forthcoming and Mr. Lapointe and staff had been cleared of any and all allegations of wrong-doing. However, Dr. Tolba stated that his only reason for wanting to replace the SG rested on his (Tolba's) claim that the SG had lobbied in the media, before the meeting of the Conference of the Parties, to further his (Lapointe's) point of view on proposals put forward on the future status of the African elephant. He viewed this as unacceptable and a breach of the Secretary General's neutrality as a servant of the Parties. Dr. Tolba was adamant that Lapointe must go, but he did not want to be perceived to be "giving in" to the NGOs who had asked for Lapointe's head.

9) Great concern was expressed that Dr. Tolba has no intention of meeting with Lapointe to discuss his removal. Despite 8 years of successfully building the Convention, and having been cleared of all accusations of wrongdoing and corruption, Lapointe does not know officially why he is being removed. Dr. Tolba stated clearly that he does not have to give Lapointe a reason for removal.

10) Dr. Tolba alluded to his concern that UNEP (and CITES) contributions from the USA might be affected in some manner if he was not seen to act on this matter. (As a matter of interest, there is "talk" that the US congress might hold hearings in Spring 1990 to debate the (mis) management of the CITES Secretariat, on the instigation of some USNGOs).

11) Dr. Tolba stated that WWF (Switzerland) and IUCN were greatly concerned about Lapointe's performance and referred directly to Dr. Holdgate,^{2/} for whom he said he has great respect. Two recent letters from Dr.

^{2/}Director General, IUCN. WWF = World Wildlife Federation.

Dr. Holdgate to Lapointe, made available to the SC, are directly contrary to the statements of Dr. Tolba.

12) The Standing Committee decided to investigate further Dr. Tolba's only reason for wanting to remove Lapointe - namely, lobbying in the media for Appendix II listing for the African Elephant^{3/}. All relevant press clippings and CITES media hand-outs will be sent to members of the SC for review and assessment immediately.

As a preliminary and tentative finding, the Vice-Chairman spent 2 hours in the CITES Secretariat offices on February 27 looking at selected papers on this subject. Nothing was found to substantiate Dr. Tolba's claim. In fact, the reverse is true. A UNEP press release of July 3, 1989, 3 months and more before COP7, and issued under Dr. Tolba's blessing (he is specifically mentioned) states categorically that UNEP hopes that the Parties will ban all trade in African elephant ivory (ie. Appendix 1 listing is being promoted). This UNEP press release was out of Nairobi, and the CITES Secretariat was not involved. It would appear that UNEP and Dr. Tolba were not neutral on this matter in the media. Having said this, it is known that a staff member on assignment to the CITES Secretariat from the Japanese Government did lobby quite openly before COP7 for an Appendix II listing. Mr. Lapointe stated that this matter was discussed with the employee in person and that as a result, a reprimand had been placed on the employee's personal file.

13) The Standing Committee, as a result, is somewhat perplexed at this time. It does not question Dr. Tolba's right to "hire" and "fire" Secretaries General although this might be a subject for further clarification, but it is concerned that the reason being given may not stand up to scrutiny. This media issue will be discussed by the SC in the near future, after further analysis, but there is a sense of uneasiness among SC members about the matter.

The allegation of Dr. Holdgate's concern about Lapointe's performance by Dr. Tolba, and the clear contradiction by Holdgate's letters to Lapointe on this matter, raises further questions in the minds of SC members.

^{3/}Emphasis in original.

12. On 9 April 1990, the Exdir replied to a letter written on behalf of a group of US Congressmen by Congressman Richard Schulze which requested that he "not allow a small but vocal group of U.S. NGO's to dictate to you or the 106 Party Nations on how to administer the world's threatened and endangered species through this valuable Treaty." He said:

"First of all, let me assure you that in the United Nations we do not dismiss staff. They are dismissed only if they are caught doing something against the staff regulations and responsibilities. This has never been the case of Mr. Lapointe or his colleagues on the Secretariat of CITES. On the contrary everybody acknowledges that Mr. Lapointe and his colleagues did a good job with the Secretariat, with fund-raising and with seeking support for the Convention itself.

"Second, I have never been one of those lobbied or pressured to get a staff member in or out of the organization for the 14 years I have been heading UNEP.

"What happened in the case of Mr. Lapointe is my own decision based on my assessment of the situation. Mr. Lapointe made a major misjudgment as an international civil servant by taking the issue of the African Elephant to the Media to try to press his own point of view rather than putting this point of view to the Contracting Parties and defending it. This is our role as international civil servants. Because of his attitude he lost credibility with a number of governments and with a number of major international non-governmental organizations.

"Thus based on my own assessment of the situation, I took the decision long ago, in fact in August 1989, that he should leave. The Ambassador of Canada to UNEP was informed of this in August 1989. I also wrote to the Canadian Ministers of Foreign Affairs and of Environment earlier this year requesting them to see if they can have a job for Mr. Lapointe to help him indicate his willingness to leave the Secretariat before the end of this year which is the deadline. I informed the Canadian Ambassador to UNEP of the same view last August."

13. On 18 May 1990, a Vacancy Announcement was published by UNEP for the post of SG, CITES (at the D-1 level) with an entry on duty date of 1 October 1990. On 29 May 1990, Mr. Mansfield wrote to Appellant at the request of the Exdir, referring to the announcement and expressing the Exdir's hope

that Appellant "would remain until 2 November to assist the new Secretary-General."

14. On 7 August 1990, Appellant wrote to the Exdir objecting strongly to the contents of the letter addressed to Mr. Schulze and demanding that either the Exdir substantiate the allegations and accusations therein, or that he write to Mr. Schulze to withdraw them. Appellant wrote again on 25 September 1990 to the Exdir, referring to the letter cited in paragraph 5 above (A/5), and "claiming, as a matter of right, the extension of [his] appointment until 31 December 1990." (Emphasis in original). His letter concluded by saying that it was "not to be taken as acquiescence in any further decision not to extend [his] contract beyond that date." Mr. Mansfield replied in a letter of 8 October 1990 confirming the decision not to extend Appellant's contract beyond 2 November 1990.

15. On 25 October 1990, Appellant addressed a request for an administrative review of that decision to the Secretary-General. Ms. Gordon, Chief, Administrative Review Unit (ARU), acknowledged receipt on 22 November 1990. A Performance Evaluation Report (PER) covering Appellant's service from 7 July 1986 to 31 October 1990 was prepared on 16 January 1991 and sent to him via the CITES office on 21 January. By FAX of 4 February 1991, Appellant explained his reasons for refusing to sign it.

16. On 23 February 1991, Appellant requested agreement of the Secretary-General to submit his appeal directly to the United Nations Administrative Tribunal (UNAT). On 26 February 1991, he submitted a preliminary statement of appeal to the JAB at Nairobi. The same day Mr. Ciss, ASG, OHRM, informed Appellant that his appeal should be addressed to the competent JAB and not to the UNAT.

17. The Secretary, Nairobi JAB, acknowledged receipt of the preliminary statement of appeal on 21 March 1991, and suggested that the full appeal be submitted in English "as members of the Board would not be fluent enough to consider your case in the French language." Appellant replied on 5 April 1991, explaining that he would be constrained to submit his appeal in French, and, on 26 April, submitted his appeal. On 7 May 1991, the Secretary, Nairobi JAB, wrote Appellant "to inform [him] of the delays that may occur in the consideration of your case, because your statement will need to be translated into English." Eventually, the appeal was sent to the Translation Division at Headquarters, and the translated text was returned to Nairobi on 20 August 1991.

18. The English translation of the appeal was sent to Mr. Halbwachs, Chief, Administrative Services, UNEP, on 11 October 1991, by the Secretary, Nairobi JAB. On 18 October, the latter wrote to Appellant to inform him of the above and to ask if Appellant wished to submit his case directly to the UNAT. On 13 November 1991, Mr. Halbwachs replied to the Secretary, attaching copy of a memorandum of 16 January 1991 from Mr. Brough to Ms. Gordon in response to her query at the time of administrative review. Mr. Brough's memorandum was to be considered as Respondent's reply.

19. On 26 March 1992, Ms. King, Director, Staff Administration & Training Division, OHRM, replying to a letter from Appellant of 17 February (not on file), informed him, with details, that Respondent's reply had been submitted. She rejected, once again, Appellant's request for permission to submit directly to UNAT. On 16 April 1992, Appellant wrote to the Secretary, Nairobi JAB, complaining that Respondent's reply had never been sent to him. The Secretary forwarded the reply to Appellant under cover of a letter of 12 May 1992 which reported difficulties in constituting a panel "which would be competent in handling your appeal." On 11 June, the Secretary, informed Mr. Halbwachs that "the present composition of the Nairobi JAB is unable to handle this complex case properly and to the satisfaction of both parties." On 23 June 1992, Mr. Ciss notified the Secretary, Nairobi JAB, that the Secretary-General had decided to refer the case to the Headquarters JAB and requested that the entire appeal file be sent to Headquarters. On 27 August 1992, the Secretary, Headquarters JAB, notified Appellant of this decision and invited him to submit observations on Respondent's reply within two months. By letter dated 26 October 1992, received on 3 November, Appellant submitted his observations.

Contentions

20. Appellant's contentions may be summarized as follows:

(a) He was offered and accepted an extension of appointment until 31 December 1990 (A/5), subject only to the availability of funds. As funds were available, he was fully entitled to this extension, regardless of and independent of considerations relating to the remainder of his appeal.

(b) As the CITES Secretariat is an autonomous organ, set up by the Convention and answerable only to the Parties, it was for the Parties (either within the Conference of the Parties or through the Standing Committee) to decide whether it was appropriate to replace him; the Executive

Director of UNEP did not have the power to do so. In any case, even supposing that he did have this power, the autonomy enjoyed by CITES with respect to UNEP, and the instruments stipulating the organizational structure of CITES, mean that the Executive Director of UNEP should, at the very least, have sought the views of the States Parties to CITES (for example, by consulting the Standing Committee) before taking his decision not to extend Appellant's appointment.

(c) The decision not to extend was in violation of basic rules of form and procedure, because (i) despite the terms of ST/AI/240/Rev.2, a PER was never prepared until after his separation from the UN, and (ii) despite Appellant's attempts to meet with the Exdir, he was never granted a hearing on the accusations levelled against him.

(d) In violation of Article 100 of the Charter, the Exdir decided not to extend Appellant's appointment as a result of pressure brought to bear by the government of the USA.

(e) The decision was based on accusations of inappropriate behaviour which are demonstrably false and which have been acknowledged to be false by the Exdir himself. The reason ultimately given by the Exdir for his decision - that Appellant had communicated to the Press the CITES Secretariat's position on the African Elephant issue - is without merit. Appellant's actions in this matter were consistent with his responsibilities as defined in the Convention and with his actions with respect to other issues previously before the COP.

(f) The decision not to extend was an abuse of discretionary authority as defined by UNAT in a number of its decisions including Mauch (UNAT #54):

"It should be noted that Staff Regulation 9.1(c) does not require the Secretary-General to state a specific reason or follow any particular procedure for termination of temporary-indefinite appointments. It is sufficient that the termination be found by him to be in the interest of the United Nations. While the measure of power here was intended to be left completely within the discretion of the Secretary-General, this would not authorize an arbitrary or capricious exercise of the power of termination, nor the assignment of specious or untruthful reasons for the action taken, such as

would connote a lack of good faith or due consideration for the rights of the staff member involved."

and Archibald (UNAT #222):

"The Tribunal recognizes that the decision on what is in the interest of the service is within the discretion of the Secretary-General - and that the Tribunal cannot substitute its judgment for that of the Secretary-General - provided that the decision is not arbitrary or based on a mistake or improperly motivated."

(g) Appellant suffered grave moral injury as a result of the accusations made against him by the NGOs which were widely reported in the press (A/48-52). Even though the Exdir acknowledged that the accusations were false, no effort was made to publicise that conclusion. In fact, the precipitate nature of his departure from the post of Secretary-General was seen as confirmation of the truth of the charges levelled against him.

(h) Appellant should be reimbursed for the cost of counsel in the amount of 68,500 French francs.

21. Respondent's contentions may be summarized as follows:

(a) The Exdir's main reason for not extending Appellant's fixed-term appointment was that the latter "made a major misjudgment as an international civil servant by taking the issue of the African Elephant to the Media to try to press his own point of view rather than putting this view to the Contracting Parties and defending it." Moreover, Appellant "was perceived as taking up one sided position on the African elephant and he issued documents and spoke to the press to that effect without prior notice and this had been the source of grave concern and ultimately a source of serious conflict among the Convention participants, given the circumstances and criticality of the issue he should have kept his supervisors informed and should have sought advice and clearance from them. As a result the Executive Director received several representations that he should be replaced."

(b) The decision was in conformity with the provisions of S.R. 104.12(b) and 109.7(a).

Procedure

22. The Panel met in executive session on 12 January 1993 and completed its consideration of the case.

Considerations

23. The Panel noted that the Administrative Review Unit (ARU), OHRM, which normally represents the Secretary-General in appeals before JAB Panels at Headquarters, had not done so in this case. ARU had been involved at the stage of administrative review; Mr. Brough's reply of 16 January 1991 to ARU's query at that stage was the only substantive piece submitted to JAB as Respondent's reply.

24. The Panel agreed that the two major questions before it were: Did the Exdir have the authority to decide whether or not Appellant's fixed-term appointment should be extended? Did he exercise that authority properly?

25. The Panel noted, first, that there was a delegation of authority to the Exdir from the Secretary-General with respect to such appointments as Appellant's. Although the SC had a role in Appellant's initial appointment, it had decided not to "question Dr. Tolba's right to 'hire' and 'fire' Secretaries-General." Moreover, the Convention (Article XII) specifically states that the Secretariat is to be provided by the Exdir, UNEP. Finally, the Appellant had implicitly acknowledged the Exdir's authority by accepting all previous fixed-term appointments issued by UNEP and approved by the Exdir.

26. The Panel, having concluded that the Exdir had the authority, considered whether he had exercised it properly, using as its frame of reference UNAT Judgement #54 (Mauch) (see paragraph 20f, above) and similar judgements since with respect to fixed-term appointments.

27. Certain facts are not in dispute. Appellant's performance until the African elephant imbroglio had been highly satisfactory. The post of Secretary-General is a continuing one (cf: the Convention and the job description, A/19). Appellant was given fixed-term appointments because of the uncertainties of financing from voluntary funds. Under these circumstances, the Panel felt that non-renewal of Appellant's appointment could not be justified simply by reference to Staff Rule 109.7, but would require some explanation, or evidence, of Appellant's lack of suitability for continuing in his functions.

28. There were two investigations of the allegations made against Appellant: one, at the request of the Exdir, by Messrs. Mansfield and Brough apparently just prior to or during COP7, i.e., September-October 1989; the other, by the Vice-Chairman of the SC in February 1990. Both of these found no basis for the allegations. The Vice-Chairman draws attention to two significant points arising from his inquiry: (a) that it was Dr. Tolba, not Appellant, who had taken the issue to the Media (A/9-UNEP press release of 3 July 1989), and (b) Appellant had reprimanded a Japanese staff member who had, in fact, lobbied the press.

29. Writing to Prince Sadruddin Aga Khan in October 1989, the Exdir acknowledged that there was "no evidence of wrong-doing or illegal behaviour on the part of the Secretariat." He refers only to "differences of views" on "how strongly the Secretariat should promote its recommendations." If the Exdir thought that this was, indeed, a serious transgression (lobbying the media, as he put it to the SC), then Appellant should have been given the opportunity to respond or explain. In fact, the Exdir did not reply to Appellant's request for an interview, nor did he respond to Appellant's letters. The Panel concluded that either the reason given by the Exdir for non-extension was specious or that the decision was arbitrary.

30. In his letter of 9 April 1990 to Congressman Schulze, the Exdir stated that he had decided that Appellant must go in August 1989. If that is accurate, then the Exdir had made up his mind before any investigation into the allegations against Appellant, and his decision can only be described as arbitrary. If the Exdir's memory was defective, or he was resorting to hyperbole, and, in fact, he made his decision subsequent to the investigations, his action showed "a lack of good faith or due consideration for the rights of the staff member involved."

31. Even if the Panel were to set these arguments aside, it would still have to conclude that Appellant was deprived of the fair treatment and due consideration to which he was entitled. The vacancy announcement for the post of Secretary-General of CITES (at the D-1 level!) was circulated on 18 May 1990. Under the terms of Staff Regulation 4.4, Appellant should have been given full consideration for the vacancy. Clearly, he was not.

32. Appellant has contended that the Exdir made his decision under the influence of the U.S. State Department. Respondent's reference to "representations" that Appellant should be replaced, and the concern expressed by the Exdir to the SC that "contributions from the USA might be affected in

some manner if he was not seen to act on this matter" would seem to lend credence to this contention. As indicated in the prior paragraphs, the Panel did not feel it was necessary to prove that this extraneous consideration had played a part in the Exdir's decision to conclude that he had acted in an arbitrary or capricious manner.

Findings and recommendations

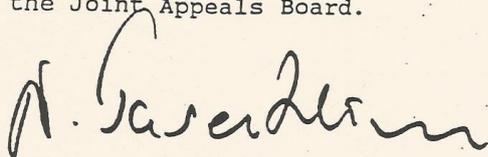
33. The Panel found that by informing Appellant that the Exdir had approved the extension of his appointment through 31 December 1990, UNEP had created a legitimate expectancy of appointment until that date (UNAT Judgement #142, Bhattacharyya). It recommends, therefore, that Appellant be paid full salary and allowances from his date of termination until 31 December 1990.

34. Having found that the Exdir, acting on behalf of the Secretary-General, had made his decision in an arbitrary and capricious manner, the Panel recommends that Appellant be reinstated as from 1 January 1991 and that he be paid full salary and allowances from that date. If the post of Secretary-General, CITES, is occupied, Appellant should be offered an equivalent post elsewhere in the Secretariat. If, for any reason, Appellant is not reinstated, the Panel recommends that he be paid full salary and allowances from 1 January 1991 until 31 March 1992. The Panel chose the latter date taking into account (a) the fact that CITES is financed from voluntary funds, and (b) that the SC had recommended that Appellant be kept as Secretary-General until COP8, which was to be held in Japan in March 1992.

35. The Panel finds that the termination of Appellant's appointment was solely due to the Exdir. It recommends, therefore, that, consistent with the terms of Staff Rule 112.3, the Secretary-General consider withholding the sum paid to Appellant under paragraphs 33 and 34 from any salary and emoluments due Mr. Tolba.

36. If Appellant is not reinstated, the Panel recommends that he be provided with a letter signed by the Secretary-General stating that he had fulfilled his duties and responsibilities as Secretary-General of CITES in every way and in a highly satisfactory manner.

Report and recommendation adopted unanimously by the Panel of the Joint Appeals Board.

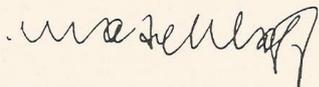


Nandasiri Jasentuliyana, Chairperson

Alexandre Titov
Member appointed by the Secretary-General

Nabil Aldel-Al
Member elected by the Staff

M.A. Schlaff, Secretary to the Panel



9 March, 1993.

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Mr. Lapointe

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Nabil Abdel-Al 2/26/1993

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