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Administration of justice at the United Nations

Comprehensive report on the activities of the United Nations Administrative Tribunal

Report of the United Nations Administrative Tribunal

Summary

The present report is submitted in response to General Assembly resolution 57/307 of 15 April 2003, in paragraph 23 of which the United Nations Administrative Tribunal was requested to submit a comprehensive report on its activities to the Assembly. The report provides information on the composition, jurisdiction, functioning and work of the Tribunal, including a general overview.

I. Introduction

1. The United Nations Administrative Tribunal (UNAT) was established by the General Assembly in its resolution 351 (IV) of 24 November 1949 as an independent and truly judicial body pronouncing final judgements without appeal within the limited field of its functions. It consists of seven members appointed for a term of four years by the General Assembly, upon the recommendation of the Fifth Committee. The members may be reappointed once. The most recent elections to fill vacancies were held in the General Assembly, on 17 December 2003.

2. The Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations and such other bodies/organs/agencies that have accepted the competence of the Tribunal or the terms of employment of such staff members. The judgements of the Tribunal are final and binding.

II. Organization of the Tribunal

3. The present composition of the Tribunal is as follows: President: Julio Barboza (Argentina); First Vice-President: Kevin Haugh (Ireland); Second Vice-President: Brigitte Stern (France); members: Omer Yousif Bireedo (Sudan), Spyridon Flogaitis (Greece), Jacqueline Scott (United States of America) and Dayendra Wijewardane (Sri Lanka).

4. On 17 December 2003, the General Assembly reappointed Julio Barboza and appointed Dayendra Wijewardane each for a term of four years beginning on 1 January 2004.

5. On 20 December 2003, the Tribunal elected Mr. Julio Barboza as President, and Kevin Haugh and Brigitte Stern as its First and Second Vice-Presidents, respectively, for a term of one year.

6. The Executive Secretary of the Tribunal is Maritza Struyvenberg.

7. Under article 3 of the Statute, three members designated by the President sit in any particular case (see article 6, paragraph 1, of the Rules of the Tribunal). Either the President or one of the Vice-Presidents shall act as the presiding member. The President may, in addition, designate one or more members of the Tribunal as alternates. However, article 8 of the Statute stipulates that if the three members sitting in any particular case consider that the case raises a significant question of law, they may, at any time before they render judgement, refer the case for consideration by the whole Tribunal. Five members constitute a quorum for such a hearing. The Tribunal has decided that, in such cases, judgement will be rendered by the whole Tribunal.

8. The Tribunal holds two five-week sessions per year, one in the summer and one in the autumn. Plenary meetings for the purpose of election of officers and any other matters affecting the administration or operation of the Tribunal are held during the sessions. Four members of the Tribunal shall constitute a quorum for plenary sessions. Sessions of the Tribunal are convened at dates and places to be set by the President after consultation with the Executive Secretary.

9. Oral proceedings shall be held if the presiding member so decides or if either party so requests and the presiding member agrees (see article 15 of the Rules).

III. Jurisdiction of the Tribunal

10. Under article 2 of the Statute, applications may be filed by staff members of the United Nations Secretariat. Over the years, however, the Tribunal's jurisdiction has been extended to a number of specialized agencies and other bodies and, at present, applications may also be filed by staff of the International Civil Aviation Organization and the International Maritime Organization; International and Area staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East; staff of the Registries of the International Court of Justice, the International Tribunal for the Law of the Sea and the International Seabed Authority; and by any staff of a member organization of the United Nations Joint Staff Pension Fund which has thereby accepted the jurisdiction of the Tribunal in Pension Fund cases. The total number of staff that fall under the Tribunal's jurisdiction exceeds 150,000.

11. The Tribunal is also open to former staff members, any person who has succeeded to a staff member's rights on his or her death, and to any person who can show that he or she is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

12. Under article 11 of the Statute, the judgements of the Tribunal are final and without appeal, except that, under article 12,

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

13. In addition, the Tribunal holds itself competent to consider applications requesting an interpretation of judgement, as it finds that the competence of national and international courts to interpret their own judgements is generally recognized. Attention is drawn in this regard to Judgement No. 61, *Crawford et al.* (1955), citing the advisory opinion of the International Court of Justice of 27 November 1950 in the *Asylum Case*,¹ where the Court laid down the conditions in which it can take action on a request for interpretation.

IV. Functioning of the Tribunal

14. The Tribunal was established by the General Assembly to adjudicate disputes and grievances related to the employment and rights and obligations of staff.

15. The Executive Secretary manages the secretariat. She assists the President in the planning and organizing of the sessions and makes all preparations for the sessions, budgetary or otherwise. The Executive Secretary also maintains the Tribunal's external relations, with Registrars of other Tribunals and the Legal Advisers and/or Executive Heads of the various specialized agencies under the Tribunal's jurisdiction; and, liaises with the Fifth and Sixth Committees of the General Assembly when and where appropriate. The Executive Secretary is assisted by two Legal Officers and two Administrative Assistants.

16. The secretariat of the Tribunal is assisted by the Executive Office of the Office of Legal Affairs in all administrative and budgetary matters.

17. The Tribunal meets in Geneva during the summer sessions and at Headquarters in New York during the autumn sessions. If circumstances require, the President may fix a different place after consultation with the Executive Secretary.

V. Judicial work of the Tribunal

18. The Tribunal renders an average of 60 judgements per year. In 2003, the Tribunal rendered 63 judgements and received 56 new cases. At present, 93 cases remain outstanding. Cases heard by the Tribunal deal with issues such as contract renewals, promotions, job classifications, disability payments and disciplinary matters.

VI. Finances of the Tribunal

19. The secretariat of the Tribunal and its operating expenses are financed from the regular budget. The Tribunal's budget is part of the overall budget of the Office of Legal Affairs.

VII. Overview

20. The process of administration of justice in the United Nations is initiated by a written request to the Secretary-General to review a contested decision (see chapter XI of the Staff Regulations and Rules). In the absence of a response satisfactory to the staff member, he or she may file an appeal with the Joint Appeals Board (JAB). Following its deliberations, the JAB makes a recommendation to the Secretary-General. A staff member may appeal a decision by the Secretary-General to the Administrative Tribunal. In addition, an Applicant may, in cases where the Secretary-General and the Applicant have so agreed, submit a case directly to the Tribunal (see article 7.1 of the Statute).

21. Under Chapter X of the Staff Regulations and Rules, the Secretary-General may seek the advice of the Joint Disciplinary Committee (JDC) before deciding on the appropriate measures to be taken in cases of alleged misconduct. Furthermore, in cases of summary dismissal under staff regulation 10.2, second paragraph, the staff member or former staff member concerned may, within two months of having received written notification of the measure, request that the measure be reviewed by such a committee.

22. In October 2002, the General Assembly decided to establish the United Nations Ombudsman's Office to facilitate conflict resolution, using any appropriate means for the primary objective of settling conflicts between parties, and obviate recourse to the formal grievance process. In addition, a conciliation procedure is provided under staff rule 111.2 (b).

23. The Tribunal is part of a complex, multifaceted internal dispute resolution system and functions as the final authority in employer-employee job-related disputes. Notwithstanding Ombudsman efforts, conciliation procedures, grievance panels, JABs and JDCs, as an integral part of the process, resolution of disputes is not carried out in a timely manner. However, the Tribunal, despite its paucity of resources and a steady stream of new cases, resolutely strives to render its judgements fairly and speedily. At all times, the Tribunal strives to avoid the accumulation of a backlog.

24. At present, the average time for a case to reach the Tribunal ranges from two to three years. To reach its ultimate conclusion it can consume an additional two years. Time is always of the essence in the administration of justice in any legal system. The passage of time renders many remedies of little value and, in far too many instances, of no value at all. For example, the improper discharge of an employee under normal conditions should be remedied by reinstatement with back pay. After a prolonged delay, however, reinstatement becomes impossible or, at the very least, impractical. The axiom "justice delayed is justice denied" remains all too true. The Tribunal may order reinstatement. In reality, the post in question may have disappeared, have been filled, the aggrieved staff member may no longer be fit or available, or — and this happens in the vast majority of cases — the Administration chooses, in the interest of the Organization, to award damages in lieu of reinstatement. The remedy is apparent, but it can only be achieved through simplification of the system and an appropriate increase in funding and staff at all stages of the process. The Tribunal itself has successfully made efforts to speed up its work, albeit without disrupting or compromising its responsibilities, and will continue to do so.

25. Another issue which has been broached on many occasions but as of yet has not been resolved is the matter of Tribunal independence to enhance confidence and trust in the process, on the part of both employees and management. Currently, the Tribunal is dependent on the Office of Legal Affairs for its administration, implementation of its budget, staffing and its physical facilities. However, at the same time, the Office of Legal Affairs represents the Secretary-General, who is the Respondent in most Tribunal cases. The Joint Inspection Unit (JIU), in its report on the administration of justice at the United Nations has proposed the creation of a separate independent department for the settlement and resolution of disputes and the administration of justice, comprising the secretariat of UNAT, the Ombudsman's Office and the secretariats of the JAB and the JDC. Alternatively, proposals have been made to separate UNAT from the Office of Legal Affairs, provide it with an independent budget, a separate location and, presumably, its own executive staff, not unlike the secretariat of the ILO Tribunal. Not only would this indelibly imprint upon UNAT the appearance of independence and impartiality, but it would also preserve its reputation, thereby sustaining confidence in the United Nations judicial process.

26. Another long outstanding issue, often discussed but still unresolved, is the question of the clear disparity of function, power and availability of resources between the UNAT and the Administrative Tribunal of the International Labour Organization (ILOAT). The statutory restrictions imposed upon the decision-making powers of UNAT not only constitutes an impediment to a more just and equitable disposition of grievances, but provides ILO employees, as was pointed out in the JIU report, with a judicial system empowered to provide remedies unavailable to employees of the United Nations.

27. The Tribunal may order rescission of a contested decision or specific performance of a management obligation. However, the Secretary-General is privileged to decide, in the interest of the Organization, to compensate the Applicant in lieu thereof. The amount of compensation is determined by the Tribunal, but generally limited to two years' net base salary. There is little doubt that, for the Tribunal to properly provide just results, there should be no restriction placed on its power to rescind contested management decisions or order specific performance of management obligations, nor any limitation on the amount of compensation the Tribunal may award. ILOAT, on the other hand, is not so encumbered. No limit is imposed on the amount of compensation it may award, nor is organizational interference permitted with its power to enforce legitimate rights and obligations. As the JIU so aptly observed, removal of such restrictions would "establish a genuine system of administration of justice and enhance the credibility of the Tribunal".²

28. With regard to the resources and funding available to ILOAT and to UNAT, the ILO Tribunal is more favourably endowed with respect to both staffing and compensation for members' services. Insufficient staffing at UNAT is an ongoing problem and could create serious disruption in the judicial process if the flow of cases approaches a critical level. Funding has either been skimpy or at times unavailable for the necessary streamlining of research facilities and the compilation of case law for use not only by the judges but also by the litigants or their representatives. A serious backlog in the publication of judgements is another result.

29. The Tribunal is in agreement with the Advisory Committee on Administrative and Budgetary Questions³ that the restriction on the Administrative Tribunal's ability to impose specific performance seriously limits the staff's rights to redress, and that the time has come to consider closing the gap between the statutes of UNAT and the ILO Tribunal. This view is shared by the General Assembly, which took note of the observations of the Advisory Committee on this issue and, in its resolution 55/258 of 14 June 2001, requested the Secretary-General to take necessary measures to "close the gap" as appropriate between the statutes of the two Tribunals. The matter might also be facilitated by the recent amendment to the UNAT Statute adopted by the General Assembly in its resolution 58/87 of 9 December 2003, requiring that members "shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction."

30. The Tribunal does not see any great merit in the proposal to merge ILOAT and UNAT, which would require the harmonization of the statutes and working procedures of the two Tribunals, with special emphasis on the procedures for selecting their members, their competencies and jurisdictions as well as their case law. This would present, in addition to financial difficulties, logistical difficulties: for instance, the unified Tribunal would need to have a membership larger than the

membership of either Tribunal, and also a proportionate number of staff members to support its work; the secretariats would have to be merged into a single, much larger-sized secretariat; and a location would have to be agreed upon for sessions to be held. In addition, the Tribunal would be in session for a large part of the year, as the number of cases to be considered would about double.

31. Finally, the Tribunal notes that the judges at the Administrative Tribunal of ILO are compensated by a fee based on the number of cases dealt with annually, while the UNAT members receive only an honorarium of US\$ 1 per year. The Tribunal welcomes proposals by the Secretary-General regarding compensation.

VIII. Conclusion

32. In conclusion, the Tribunal supports the strengthening of the existing system and sees no great merit in radically modifying the system or in creating a new system. In particular, the Tribunal supports the proposals made by the Joint Inspection Unit and the Advisory Committee on Administrative and Budgetary Questions in this regard.

33. The Tribunal would also like to stress the importance of presenting an annual report to the General Assembly, in order to keep the Assembly informed of emerging jurisprudence and of some of the main conflicts that erupt between the Administration and staff members. This would also allow the Tribunal to draw attention to certain administrative practices that need correction. For example, the Tribunal has on several occasions suggested that the Secretary-General consider invoking staff rule 112.3, thereby deciding that the officials who violate staff regulations and administrative instructions should be held personally accountable for the monetary damages occasioned by such violations. The Tribunal has held, in its Judgements No. 358, *Sherif* (1995), and No. 887, *Ludvigsen* (1998), that invoking staff rule 112.3 would deter staff from deliberately flouting the rules and prevent the Organization from having to pay for the intentional violation of the rules by its officials.

34. Finally, the Tribunal would like to draw attention to its recent Judgement No. 1122, *Lopes Braga* (2003), as a result of which the Administration decided to revise its existing guidelines for the application of the staff selection system, as an example of the Tribunal's contribution to the administration of justice in the United Nations.

Notes

¹ *I.C.J. Reports*, 1950, p. 402.

² A/55/57-JIU-REP/2000/1, para. 116.

³ See A/55/514, para. 10.