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Individual Grievance Procedures in United National Secretariats
Les voies du recours individuel dans les secrétariats des Nations Unies

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Résumé de l'article

Les organisations des Nations Unies, en dépit de leurs objectifs sociaux ambitieux, ne sont pas mieux protégées contre les conflits internes entre employés et employeurs que les bureaucraties nationales ou les entreprises privées.

Comme de nombreuses entreprises dans le cadre national, elles ont instauré des procédures de recours destinées à examiner et si possible régler ces conflits, pour éviter que des problèmes individuels ne se transforment en conflits collectifs.

Contrairement aux sociétés ou administrations nationales, les organisations internationales ne sont pas soumises aux législations nationales du travail et leurs employés ne peuvent pas recourir aux tribunaux civils ou juridictions du travail. Les conditions d'emploi et relations de travail employés/employeurs dans ces organisations sont précisées dans des statuts et règlements du personnel autonomes, approuvés par les États membres et mis en oeuvre par les administrations internationales. Tous les aspects de la gestion du personnel, recrutement, contrats, salaires et indemnités, pensions, discipline, évaluation du personnel et voies de recours ont été élaborés en fonction des caractéristiques des organisations internationales, indépendamment des lois et pratiques de tel ou tel pays.

Les 46,000 employés des organisations des Nations Unies ont accès à des voies de recours qui comprennent la conciliation ou la médiation, les recours à des comités internes d'appel et à des Tribunaux indépendants.

Les procédures internes varient dans les différentes organisations. L'Organisation mondiale de la Santé, l'UNESCO et le Programme des Nations Unies pour le Développement emploient un médiateur (Ombudsman) pour arbitrer les conflits individuels entre l'employé et l'administration, l'employé et son chef ou ses collègues.

Le médiateur peut également enquêter sur des problèmes de conditions d'emploi ou de travail et formuler des propositions. Il conseille mais ne décide pas. Au Bureau international du travail et dans d'autres organisations, l'employé peut se faire aider ou représenter par un délégué du syndicat ou association du personnel, pour présenter ses doléances et obtenir un règlement équitable.

Si la conciliation échoue, l'employé peut soumettre son cas formellement à un comité interne paritaire chargé d'étudier les faits, d'obtenir toute la documentation nécessaire et d'examiner si le règlement du personnel a été correctement appliqué. À la suite d'une procédure contradictoire, le comité formule ses recommandations au Directeur général de l'organisation, qui prendra librement une décision définitive.

Si l'employé n'accepte pas cette décision, il peut enfin saisir un des deux Tribunaux administratifs internationaux, le Tribunal des Nations Unies à New York ou le Tribunal de l'Organisation internationale du Travail à Genève, qui a succédé au Tribunal de la Société des Nations. Les Tribunaux sont indépendants des secrétariats internationaux et leurs jugements sont exécutoires. S'ils reconnaissent le bien fondé de la requête, les juges peuvent annuler la décision administrative contestée, ou ordonner l'exécution de l'obligation invoquée. Si cette annulation ou cette exécution n'est pas possible ou opportune, le Tribunal peut attribuer au requérant une indemnité pour le préjudice matériel ou moral souffert.

Les cas soumis aux Tribunaux concernent des problèmes de traitements, d'allocations, d'accidents du travail, d'évaluation des services et règles de conduite, classement des postes, mutations, droit à la pension, non renouvellement ou résiliation de contrats. Dans ces derniers cas, les Tribunaux n'ont que très rarement ordonné le ré-emploi du personnel licencié, mais ont préféré accorder une indemnisation.

Les organisations ont intérêt à ce que les plaintes des employés soient examinées par des comités statutaires et les Tribunaux pour éviter des pressions des États membres en faveur de leurs ressortissants.

Malgré leurs imperfections, les voies de recours garantissent aux employés des organisations des Nations Unies que leurs requêtes seront examinées avec impartialité et que leur situation administrative ne dépend pas entièrement de la bonne ou mauvaise volonté de leurs chefs ou employeurs, ou de leur équité ou arbitraire. En particulier la jurisprudence des Tribunaux administratifs a institué des limites juridiques aux larges pouvoirs discrétionnaires des chefs de secrétariats, a contribué au respect du droit et a renforcé le concept de la permanence et de l'indépendance de la fonction publique internationale.

Individual Grievance Procedures in United Nations Secretariats

Yves Beigbeder

The author examines the particular way by which grievances of the 46 000 United Nations employees are settled.

United Nations organizations, in spite of their lofty social objectives, are no more immune to internal disputes between employees and employers than national bureaucracies or private enterprises.

Like many firms in the national context, they have set up formal grievance procedures to deal promptly and systematically with disputes, in order to prevent individual problems from growing into collective claims. For the employee, a grievance procedure is a guarantee that he has a recourse against arbitrary treatment, injustice, or administrative error, and that his complaint will be reviewed.

Unlike national administrations or firms, international organizations are not subject to national labor laws, and their employees cannot appeal to national civil or labor courts for redress. All the employee/employer relations in international organizations are regulated by staff rules and regulations which are decided upon by the collective will of member countries, sitting in governing bodies, and implemented by the secretariat heads and their administrative chiefs. As employees recruited from more than 100 different countries could not be subjected to the labor legislation of only one country, employment contracts, salary and allowances, pensions, discipline, performance evaluation, grievance and recourse procedures and all other aspects of personnel management in UN organizations were created as an autonomous system, inspired by but independent from national schemes.[1]

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** The author has written this article in a personal capacity.

1 Inspiration came initially from the personnel administration experience of the League of Nations, itself influenced by the British and French civil service traditions: for instance, the notion of a career international civil service, impartial and independent from Member Governments. UN organizations, created after World War II, were then heavily influenced by U.S. administrative concepts, such as rank-in-post classification and recruitment on the basis of detailed, specialist-oriented post descriptions.

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Grievances of the 46,000 UN employees may be settled by conciliation or mediation, reviewed by internal appeal bodies and adjudicated by independent international labor courts, the UN and ILO Administrative Tribunals. Grievances are thus finally settled by labor courts and not by arbitration, a current practice in Switzerland and other continental European countries where the defunct League of Nations was created, and where most of the UN specialized agencies are situated.

CONCILIATION OR MEDIATION

In all UN organizations, the employee may informally appeal to the source of his discontent, supervisor or personnel department. However, the employee is then alone against the hierarchical or administrative authority and his claim for redress may go unheeded.

To assist the employee, the International Labour Organization (ILO) has a review procedure, while three other large agencies have appointed an Ombudsman as staff mediator. UN has set up a panel to investigate alleged discriminatory treatment.

THE ILO REVIEW PROCEDURE

Based on an industrial pattern, this procedure allows the employee to be assisted by a union representative. The complaint is addressed to the Chief or Personnel if the employee considers that he has been treated inconsistently with the Staff Regulations or the terms of his contract. If he claims that he has been subjected to arbitrary treatment by a supervisor, the review is taken up with this supervisor or his chief.[2]

The ILO Staff Union representative plays the role of a shop steward in dealing with individual grievances. While other UN organizations have not formally recognized this role in their staff rules, their staff associations or union representatives also assist employees, particularly those in the lower ranks, in having their grievances considered and hopefully settled.

The ILO administration is satisfied with the way this procedure works in practice. Because of its informality, however, no statistics on its use or its results are available. The procedure fulfils the following requirements:

— a procedure as loosely and informally constructed as is compatible with a definite obligation for management to submit to it;

2 *ILO Staff Regulations,* article 13.1 and Annex IV, Part A. The ILO has 2,684 employees.

— the aggrieved party may demand without risk of reprisal that his grievance be discussed with him by those in whose power it lies to remove it;
— the grievant may be assisted by an independent and qualified representative who can deal with the supervisor, or personnel, as an equal;
— this representative has the moral authority to tell the grievant his grievance is unfounded.

Other UN organizations have opted for an Ombudsman.

OMBUDSMAN

A panel of mediators was created in UNDP in 1973, and individual ombudsmen were appointed in WHO in 1974 and UNESCO in 1976.[3]

The Ombudsman's main role is to assist staff members individually with problems or grievances related to their employment or working conditions, and their relations with chiefs and colleagues. He may also investigate collective problems, propose improvements in employment or working conditions. He counsels and proposes, but he does not decide.

A staff member of his organization, the Ombudsman is appointed to this function by the Executive Head, to whom he reports. He is released from his normal duties, full or part-time. As an Ombudsman, he has access to all pertinent documents and files. He is bound by professional secrecy.

In the period April 1979-March 1980, the WHO Ombudsman dealt, on a half-time basis, with 61 individual cases initiated by employees at all levels, i.e., approximately 5% of the regularly employed manpower at the organization headquarters. Twelve of these cases concerned relations at work between colleagues, or between employees and supervisors. The other 49 related to employment conditions, performance, transfers, promotions, terminations. In UNDP and UNESCO also, most cases relate to career, employment and performance. Only 4% concern salary questions.

In his work, the Ombudsman interferes with management and supervisors' responsibilities: if all supervisors are good supervisors, if management is fair and accessible, if personnel management is dynamic and flexible, there should be no need for an Ombudsman. However, no organization is perfect and, particularly in large bureaucracies, an Ombudsman may fill a

3 The International Monetary Fund, which does not belong to the UN common system, also has an Ombudsman. UNDP (United Nations Development Program) has 5,155 employees, WHO (World Health Organization), 4,378, and UNESCO (United Nations Educational, Scientific and Cultural Organization), 3,365.

need for confidential counselling and third party intervention in interpersonal and administrative conflicts. This need is more evident in a multinational environment, where expatriation, cultural, educational and linguistic factors may cause or aggravate bureaucratic hassles.

For the WHO administration, the Ombudsman is deemed useful as an independent and confidential staff counsellor and as a conciliator. His role centers on problem prevention and solution and stops whenever a formal complaint is lodged with an internal appeal's body or to an Administrative Tribunal.

Selecting the right person as an Ombudsman is not easy. This sensitive job demands good judgment, impartiality and discretion, as well as the true spirit of conciliation. It may be wise to consult the employees, or the union, before the appointment is made. The WHO appointment process includes nomination of candidates by the employees, staff association and Director General, the selection of 3 names agreeable to both the association and the Director General, followed by the secret ballot election by all the employees. To ensure success, management must be committed to give the Ombudsman its full and honest cooperation. It must also be prepared to reconsider its position in individual cases and accept compromises when warranted.

The introduction of an Ombudsman in WHO was initially feared by some staff association representatives as a potential rival. In practice no conflict has arisen. Some employees call on the Ombudsman for help, others prefer support from the staff association, others use the services of both instances simultaneously or in succession.

The main point is that an employee in difficulties may have access to a neutral and respected person, independent from management, for a confidential talk, advice or intervention, without fear of damaging his own position.

UN PANEL

In December 1978, the UN Secretary General appointed five staff members to serve as members of a "Panel to investigate allegations of discriminatory treatment in the UN secretariat". The members worked individually except for difficult cases which were reviewed by the panel. They investigated 65 cases in 14 months (there are 4,600 UN staff members in New York). Of these, they solved 9 informally, 18 were only inquiries, 17 were not retained as no discrimination was found and the others are pen-

ding. Although the competence of this panel is limited, the number of cases relatively small, and the proportion of cases resolved low, the mere fact that such a body exists shows to the employees that management is willing to deal with certain types of problems and to have them publicized.

According to the first report of the panel,[4] which was distributed to the staff, 40% of the cases related to personality conflicts, 25% to sex discrimination, 6% to nationality and 5% to race issues. Sources of difficulties were attributed to communications failures, management indecisiveness, favoritism or incompetence.

According to a recent interagency study,[5] these varied conciliation procedures play a useful role in reducing the need for formal appeals in the larger UN secretariats. Such procedures are not available to employees in the smaller organizations, where familiarity and an easier access to senior management levels alleviate interpersonal communication problems.

FORMAL APPEAL BODIES

If conciliation or mediation fails, the complainant may formally appeal against a final administrative decision or action to an advisory board with employee participation.[6]

Appeals may be lodged against disciplinary action or other administrative decisions, on the grounds that the action or decision resulted from personal prejudice on the part of a supervisor or another responsible official, incomplete consideration of the facts, or failure to observe or apply correctly the provisions of the staff regulations, or rules or the terms of his contract. In ILO, a complaint may also be filed if the employee has been subjected to arbitrary treatment by a supervisor.[7]

The role of the board is to review the written pleas of the appellant and of the administration, to obtain and study all relevant documentation, if necessary hear both parties and witnesses, and submit a report recording facts, findings and recommendations to the chief of the secretariat for his decision.

While all boards have management and employees' representatives,

4 *UN Information Circular* ST/IC/81/7 of 22 January 1981.

5 UN doc. ACC/1981/PER/45 of 8 January 1981 on "Internal Recourse Procedures".

6 *UN Staff Rules* 111.1, .2, and .3 -- *FAO Staff Rule* 303.11, .12, and .13, -- *ILO Staff Regulations* art. 10.5 and Annex IV, Part B, -- *UNESCO Staff Regulation* 11.1, Rule 111.1 and Annex A, -- *WHO Staff Rule* 1230.

7 *WHO Staff Rule* 1230.1 and *ILO Staff Regulations* art. 13.2.

their composition varies in the various organizations. They have 5 members in the Food and Agricultural Organization (FAO), ILO, UNESCO and at WHO headquarters, 3 in UN. The employees' representatives (1 in UN and 2 in the other agencies) are elected by all the staff, except for the ILO Board, where they are appointed by the Staff Union Committee. The other members are appointed by the executive head, who also appoints the chairman after consultation with the staff representatives. In FAO and UNESCO, the chairman is appointed by the governing body outside the secretariat, traditionally an Ambassador in Rome (FAO) and a French Councillor of State in Paris (UNESCO). In these organizations, the independent status of the chairman reinforces the independence and credibility of the Board in contrast with the other agencies, where all the boards' members are members of the secretariat subject to the authority of the Executive Head.

Experience shows that internal appeal boards play a positive role. Through this formal grievance process, the individual complainant is placed on an equal basis with the powerful administration. The board verifies the facts, obtains and reviews relevant documentation, hears both parties if requested, may call witnesses. Its knowledge of the organization, its rules, pratices and internal personal relations helps board members to understand the problems, and find compromise solutions which may give a degree of satisfaction to the complainant and be acceptable to the chief executive. In some cases, conciliation is achieved before the hearing, or even during a hearing, and the appeal is withdrawn. For instance, in 1979, out of 15 appeals submitted to the WHO headquarters Board of Inquiry and Appeal, 7 were withdrawn before the hearing, and one during the hearing as a result of conciliation between the two parties.

Boards review cases in law (have rules and contract provisions been properly applied?) and in equity. They act as filters: if a case is settled to the appellant's satisfaction, the case ends there. If his case has been rejected by a board as unfounded or frivolous, an appellant may decide to stop his litigation.

If the case is carried to the Administrative Tribunal, the board's report provides the Tribunal with an analysis of the case and documentation which would not otherwise be available.

The Chief Executive is not bound to accept the Board's recommendations. For instance, in 8 appeal cases reviewed by the WHO headquarters board in 1978, the board accepted the appellant's claims in full in 4 cases, in part in 2 cases and rejected the other two cases. In the same 8 cases, the Director General then accepted the appellant's claims in full in 2 cases, in part 2 cases, and rejected the other 4 cases.

THE UN AND ILO ADMINISTRATIVE TRIBUNALS

In spite of their value as fact-finding and case-screening bodies, internal appeals boards have their limitations for the appellant and the organization. They do not decide, they only address recommendations to the executive head, placed in the uncomfortable position of judging over his own, or his subordinates' decisions.

Due process is only assured through a recourse to an independent Court of justice, in the interest of both parties. The employee is then assured that his complaint will be examined in law by a specialized and independent body, not subjected to the authority of the chief executive, and that his rights will be recognized. The Organization is protected against unjustified claims from employees, and against pressures from member Governments on behalf of their nationals.

For historical reasons, the UN system of organizations has two Administrative Tribunals. UN, the International Civil Aviation Organization (ICAO) and the Inter-governmental Maritime Consultative Organization (IMCO) have accepted the competence of the UN Administrative Tribunal, and the other specialized agencies, that of the ILO Tribunal. To complicate matters further, complaints alleging non-observance of terms or regulations by the UN Pension Board can only be addressed to the UN Tribunal so that a WHO employee, for instance, may have to appeal to both tribunals: to the UN Tribunal to decide on a pension issue, and to the ILO Tribunal to decide on an employment dispute.[8]

The ILO Tribunal has succeeded the League of Nations Tribunal, created in 1927; the UN Tribunal was created in 1949.[9] The former sits in Geneva, the latter mostly in New York, occasionally in Geneva.

Why two Tribunals -- or why did the ILO Tribunal not disappear in favor the UN Tribunal? No candid story has yet explained this judicial duplication, but several probable reasons can be given: ILO's natural wish to retain its own Tribunal, which as the League Tribunal initiated a respected jurisprudence -- geographical proximity of the specialized agencies' headquarters (Geneva for WHO, the International Telecommunica-

8 See article 9 of the Regulations of the UN Joint Staff Pension Fund. *In re Aouad,* two judgments of the UN Tribunal (No. 224 and 226) and one of the ILO Tribunal (No. 309) were required to decide on a Pension/contract termination complaint.

9 Its Statute was adopted by the Assembly of the League of 26 September 1927 and came into force on 1 January 1928. The Statute of the ILO Tribunal was adopted by the International Labour Conference on 1 October 1946 and confirmed on 10 July 1947. The Statute of the UN Tribunal was adopted on 24 November 1949 by resolution of the UN General Assembly 351A (IV).

tions Union (ITU), the World Meterological Organization (WMO), the World Intellectual Property Organization (WIPO); Rome for FAO; Bern for the Universal Postal Union (UPU); Paris for UNESCO; Vienna for the International Atomic Energy Agency (IAEA) and the United Nations Industrial Development Organization (UNIDO)) to the ILO Tribunal site in Geneva, resulting in lower costs -- WHO's initiative in 1949 to choose the ILO Tribunal "pending definitive arrangements for the use of the UN Tribunal" (WHO Staff Rule 1240.1), example followed by the other agencies -- fear of the political interference of the UN General Assembly over the UN Tribunal, a fear which was proved right when the Assembly suspended in 1953 the payments of indemnities ordered by the Tribunal to 21 UN staff members of U.S. nationality who had been terminated for "disloyalty" to their governement during the McCarthy witchhunt era, and decided to limit the right of the Tribunal to grant indemnities and to allow judgments to be reviewed by the International Court of Justice.[10]

In 1978 the UN General Assembly requested the Executive Heads of the UN organizations to study the feasibility of establishing a single Tribunal. This request was caused by an apparent contradiction between an Advisory Opinion of the ILO Tribunal Judge and a UN Tribunal Judgment both given in 1978.[11] In 1979, the General Assembly adopted a more modest and pragmatic objective, "to progressively harmonize the statutes, rules and practices of the two Tribunals," while still aiming at later unification (Resolution 34/438).

DIFFERENCES BETWEEN THE TWO TRIBUNALS

Even though the two Tribunals have different Statutes, recent studies have shown that no substantial divergences of jurisprudence have occurred in the more than 30 years of their parallel existence.[12]

10 See Georges LANGROD, «La fonction publique internationale», Sythoff Leyde, 1963, pp. 229-234. See the Advisory Opinion of the International Court of Justice of 13 July 1954 and the General Assembly Resolutions 888 (IX) of 17 December 1954 and 957/X of 8 November 1955.

11 UN General Assembly Resolution 33/119 (1978). The Advisory Opinion of the ILO Judges was rendered on 16 May 1978 and the UN Tribunal Judgment no. 236, Belchamber, on 20 October 1978. See Yves BEIGBEDER, «Note sur l'avis donné le 16 mai 1978 par les membres du Tribunal Administratif de l'OIT», *Annuaire français de droit international,* Paris, 1978, pp. 476-478.

12 See Gurdon W. WATTLES, "Harmonization of Administrative Tribunals and the Aim of Establishing a Single Tribunal", *Bulletin of the International Civil Service Commission,* vol. 2, no. 1, February 1980, and Secretary-General's Report to the General Assembly, doc. A/C.5/34/31. See also "Comparative Analysis of the Statutes of the Administrative Tribunals of the ILO and of the UN", by J. LEMOINE, ILO, doc. CCAQ/PER/WGRP/R.2 of 15 June 1979.

The roles of both Tribunals are defined in similar terms: they are competent to hear and dispose of complaints alleging non-observance of terms of appointment and relevant Staff Regulations and Rules. However, as already noted, the UN Tribunal has exclusive competence to hear complaints alleging non-observance of the Rules of the UN Joint Staff Pension Fund.

The ILO Tribunal consists of 3 judges and 3 deputy judges, while the UN Tribunal has 7 members. In both Tribunals, only 3 judges sit in any particular case.

The ILO Tribunal judges are elected by the International Labour Conference, on the recommendation of the Governing Body where they are nominated by the Director General. UN Tribunal members are elected by the General Assembly on presentation by governments. While the ILO judges are all experienced legal practitioners (the three titular judges have sat on the Supreme Court of their country), 5 of the 7 UN Tribunal members are diplomats rather than lawyers.

When they find the complaint well-founded, either Tribunal may order the rescinding of the decision contested, or the specific performance of the obligation invoked. In the case of the ILO Tribunal, if rescinding or specific performance is not possible or advisable, the Tribunal may award the complainant financial compensation for material or moral damage. The ILO Tribunal decides whether or not to give the option of financial compensation to the organization, while the Statute of the UN Tribunal leaves this option to the Secretary General. In practice, only twice in 30 years has the ILO Tribunal ordered re-employment of an appellant without the option of paying damages for illegal termination.

The amount of financial compensation which the ILO Tribunal may award is not limited, while the UN Tribunal is restricted to a maximum of 2 years net base salary of the applicant, barring exceptional circumstances.

REVIEW OF JUDGMENTS

Judgments of both Tribunals are subject to review by the International Court of Justice. For ILO Tribunal judgments, a request for an advisory opinion of the Court can only be submitted by one party, i.e., the Governing Body of the ILO or of the other UN organizations having recognized the jurisdiction of this Tribunal. The other party, the appellant, has no such recourse. For UN Tribunal judgments, a review may be initiated by 3 parties: a Member State of the UN, the Secretary General and the complainant,

subject to a decision by a screening committee composed of Member States representatives.

Review by the Court has only occurred in one case for each Tribunal[13] so that in practice, Tribunal judgments are final.

NUMBER AND TYPE OF CASES

In the period 1974-78,[14] the UN Tribunal rendered 56 judgments, or an average of 11.2 per year -- the ILO Tribunal rendered 143 judgments, an average of 28.6 per year. In relation to the 46,000 persons employed by organizations, this represents the very small percentage of 4% for the 5 year period.

For the same period, the types of cases submitted to the Tribunals are shown on table 1.

Only one grievant out of four had full or part satisfaction from the ILO Tribunal while half of the cases submitted to the UN Tribunal succeeded in full or in part.

TABLE 1

Types of Cases Submitted to the Tribunals

Claims Concerned With:	*UN Tribunal*	*ILO Tribunal*
UN Pensions	9	NIL (Not Competent)
Terminations (a)	19	43
Employment conditions (b)	23	85
Revision or Interpretation of a Previous Judgment	5	4
Withdrawal of a Complaint	(Not Recorded)	11

(a) Includes non-extension of fixed-term contracts, termination for unsatisfactory performance or misconduct, abandonment of post, abolition of post and reduction in force.

(b) Includes issues of salaries, indemnities, allowances, service-incurred accidents or illnesses, performance and conduct, classification of posts, transfers, entitlement to pensions.

13 Advisory Opinion of 23 October 1956 (ILO Tribunal judgment) and of 12 July 1973 (UN Tribunal judgment), *International Court of Justice Reports,* 1956, p. 77 and 1973, p. 166.

14 Period considered relevant by the Tribunals secretariats in terms of average workload, as quoted by G.W. WATTLES in his study, doc. *CCAQ/PER/R.107,* Annex II, 5 September 1979, p. 46.

AWARDS

The number of claims admitted in full or in part, or rejected, was for the same period is shown in Table 2:

TABLE 2

Claims Admitted or Rejected

1974-1978	*UN Tribunal*	*ILO Tribunal*
(a) Claims admitted in full or in part	28	34
(b) Claims rejected	28	98
(c) Percentage of claims admitted in full or in part vs. total	50%	25.7%

When a Tribunal found in favour of a complainant, the Judges quashed the contested decision and ordered performance of the obligation invoked. Examples of such decisions follow.

In case 233, the effect of a promotion from one category to another was to reduce an employee's total remuneration through an oddity of the salary structure. The ILO Tribunal ordered the organization to pay a salary supplement to correct this anomaly. In case 247, the Tribunal ordered payment of a yearly within grade salary increase which had been withheld on erroneous reasons of law and fact. In case 292, the Tribunal decided that the complainant was entitled to recover from the organization sums underpaid to him as educational allowance for his children. In case 342, the Tribunal ordered the retroactive promotion of the complainant to a higher grade, and granted him $4,000 for his costs. In case 274, the complainant challenged the validity of two written reprimands for misconduct on the grounds that these related to Staff Council activities. The Tribunal affirmed that a Staff Council member has no immunity from disciplinary measures, but quashed one of the 2 reprimands and remitted the other to the Director-General for reconsideration. In case 272, the Tribunal decided that the place of residence of a Peruvian employee recruited in Peru to work in Washington, D.C. was Lima and not the duty station. This decision entailed payment of a non-resident's allowance, home leave travel every two years and other benefits. In case 245, the Tribunal ordered the extension of the complainant's contract by 13 days, to a total of 5 years' duration, thus entitling him to a pension under the UN Pension Fund rules.

In case 215, the UN Tribunal found that a periodic performance evaluation report was inaccurate and misleading and ordered that its judgment be incorporated in the complainant's service record to supplement and correct the contested report.

In cases when specific performance was not thought possible or advisable, the Tribunal ordered financial compensation. In some cases, financial compensation for physical or moral damage was granted in addition to ordering performance.

Indemnisation varies, of course, according to the cases. In 1974-1978, the UN Tribunal awarded once 3 years' salary, once 2 years' salary, twice 1 year's salary, and three times 6 months salary indemnities. Financial awards not based on salary period ranged from $800 to $26,000. Moral damage was rated $1,000. The ILO Tribunal also granted a 3 year salary indemnity, a 2 year and two 1 year indemnities. Financial awards unrelated to salary periods ranged from $400 to $20,000. Compensation for moral damage, plus costs, was rated $16,000 in one case and $20,500 in another. In 1980, the ILO Tribunal has raised its awards to $50,000 in one case and $210,000 in another.[15]

STAFF ASSOCIATIONS' DISSATISFACTION WITH THE TRIBUNALS

Staff Associations deplore that complainants may win their cases and lose their jobs.[16] This is true and the reason is one of expediency. After long and often bitter litigation, can an employer be expected to reemploy the dissatisfied but triumphant employee? Although empowered to order reinstatement without option, the ILO Tribunal has very rarely forced organizations to re-engage a former employee. In the United Kingdom, Industrial Tribunals are also empowered to order re-employment. If the employer fails to comply with the order, the Tribunal can only increase the amount of compensation payable.[17]

Employee associations also complain of excessive delays in the recourse process. In fact, the UN Tribunal deals promptly with its cases, an average of six months between the date of introduction of the complaint and the date of the judgment. The ILO Tribunal takes longer, an average of 14

15 ILO Tribunal judgments no. 361, 367, 431, and 402.

16 Peter OZORIO, "Winning your Case but Losing your Job", in *WHO Diaglogue,* Geneva, no. 81, June-July 1980.

17 Brian CAPSTICK, "Industrial Tribunals: Giving a Fair Service", *Personnel Management,* London, vol. 11, no. 12, December 1979.

months.[18] Such durations are not extraordinary for a judicial body. However, they are added to the time taken by internal appeal bodies to review the cases and by the Executive Head to convey his decision.

For instance, an FAO staff member, Mr. A.Z., had his contract terminated on 10 April 1976. He appealed against this decision to the FAO Appeals Committee on 5 April 1976, but he was informed only on 13 March 1978 that the Director General had dismissed his appeal. He then appealed to the ILO Tribunal on 1 May 1978 and the case was ready in October 1978. The Tribunal rendered his judgment no. 389 on 24 April 1980, four years after his contract was terminated. In this unfortunate case, there were excessive delays both at the internal appeal and at the Tribunal stages.

Delays experienced by appellants at the UN Joint Appeals Board range from 2 to 4 years,[19] which is also unacceptable. In such cases, the internal recourse process within the organization takes even longer than the judicial process. As neither process suspends the impugned administrative decision, several years may elapse after a staff member has been terminated, before a final judgment is rendered.

To alleviate the effect of such delays, the staff associations want the internal appeal bodies and the Tribunals to acquire the power to order conservatory measures, including stay of execution, when the decision appealed against is likely to have particularly serious or irreparable consequences.[20] This proposal is, however, unacceptable to the organizations, as it would infringue upon the management responsibilities of the heads of secretariats.

The staff representatives also feel that the Tribunals should resort more frequently to oral proceedings, which would increase the confidence of the employees. This approach is addressed mainly to the ILO Tribunal which has in recent years ruled on cases exclusively on written submissions, while the UN Tribunal has oral proceedings in one out of five cases on an average. Whether to have oral proceedings or not is, of course, for the Tribunals to decide. Oral proceedings are costly in time and travel expenses, and are required only when facts are in doubt.

Finally, staff associations claim that they should be entitled to initiate litigations before Tribunals in their own name and that they should have the right of intervention in individual proceedings through *amicus curiae* briefs.

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18 Based on judgments rendered by the UN Tribunal in 1977 and 1978 and by the ILO Tribunal in 1978 and 1979.

19 M. GEORGHEGAN, "Joint Appeals Board", *Secretariat News,* UN, New York, 15 August 1980.

20 Note by FICSA on *Recourse Procedures in the Organizations of the UN System,* doc. ACC/1980/PER/29 of 9 July 1980.

At present, the Tribunals admit only individual complaints. Their Statutes do not allow them to accept complaints filed by associations or unions. *Amicus curiae* briefs from the staff association have been allowed by the UN Tribunal, but not by the ILO Tribunal, unless the staff spokesman himself had rights or interests which could be affected by the resolution of the case.

In spite of these discrepancies and limitations, the right of appeal to independent Tribunals has given the UN employees a necessary and independent counterweight to the powers and prerogatives of the executive heads. The Tribunals have exercised their control over the proper application of Rules and Regulations to individual cases and have censured improper motives. They have reinforced security of employment, by reducing the contractual element in the legal situation of UN employee and by stressing the career expectancy concept.

CONCLUSION

Informal and formal grievance procedures are available to all staff of UN organizations through conciliation or mediation, appeals to internal boards and access to independent Tribunals.

Procedures vary in various organizations. A few rely on a house Ombudsman, while ILO has an original review process. In most organizations, the staff associations or union play a significant role in helping individuals submit grievances or in obtaining fair settlements.

Internal appeal boards are useful to gather and assess facts and documents, to make recommendations related to structure, politics and personal circumstances in organizations as well as to administrative rules. The board's recommendations are, however, not binding on the Executive Heads.

The Tribunals are independent and their decisions must be implemented. However, the UN Tribunal cannot order re-employment of an employee and the ILO Tribunal has only done so twice. The only remedy is then financial and financial awards have in the past been relatively modest (the ILO Tribunal has recently raised substantially the sums awarded to successful complainants). On the other hand, most cases are not related to termination of employment, and the Tribunals have contributed to ensuring the respect of the rule of law and to reinforcing the international civil service concept.

In spite of their imperfections and slow pace, the grievance and recourse procedures are an essential guarantee to UN employees that their case will be heard and that they are not wholly dependent on the good or bad will, fairness or arbitrariness of their supervisors or employers. Furthermore, the Tribunal's jurisprudence and recourse procedures generally act as regulators, guides, and deterrents for UN managers. The organizations also benefit by having claims and grievances reviewed by boards with employee participation and tribunals, a protection against member state interferences.

Altogether, in spite of occasional irritation shown by the administrations against «staff-oriented» judgments and staff complaints against the imperfections and slowness of justice, the grievance and recourse procedures available to UN employees can be considered generally adequate.

Les voies de recours individuel dans les secrétariats des Nations Unies

Les organisations des Nations Unies, en dépit de leurs objectifs sociaux ambitieux, ne sont pas mieux protégées contre les conflits internes entre employés et employeurs que les bureaucraties nationales ou les entreprises privées.

Comme de nombreuses entreprises dans le cadre national, elles ont instauré des procédures de recours destinées à examiner et si possible régler ces conflits, pour éviter que des problèmes individuels ne se transforment en conflits collectifs.

Contrairement aux sociétés ou administrations nationales, les organisations internationales ne sont pas soumises aux législations nationales du travail et leurs employés ne peuvent pas recourir aux tribunaux civils ou juridictions du travail. Les conditions d'emploi et relations de travail employés/employeurs dans ces organisations sont précisées dans des statuts et règlements du personnel autonomes, approuvés par les États membres et mis en oeuvre par les administrations internationales. Tous les aspects de la gestion du personnel, recrutement, contrats, salaires et indemnités, pensions, discipline, évaluation du personnel et voies de recours ont été élaborés en fonction des caractéristiques des organisations internationales, indépendamment des lois et pratiques de tel ou tel pays.

Les 46,000 employés des organisations des Nations Unies ont accès à des voies de recours qui comprennent la conciliation ou la médiation, les recours à des comités internes d'appel et à des Tribunaux indépendants.

Les procédures internes varient dans les différentes organisations. L'Organisation mondiale de la Santé, l'UNESCO et le Programme des Nations Unies pour le Développement emploient un médiateur (Ombudsman) pour arbitrer les conflits individuels entre l'employé et l'administration, l'employé et son chef ou ses collègues.

Le médiateur peut également enquêter sur des problèmes de conditions d'emploi ou de travail et formuler des propositions. Il conseille mais ne décide pas. Au Bureau international du travail et dans d'autres organisations, l'employé peut se faire aider ou représenter par un délégué du syndicat ou association du personnel, pour présenter ses doléances et obtenir un règlement équitable.

Si la conciliation échoue, l'employé peut soumettre son cas formellement à un comité interne paritaire chargé d'étudier les faits, d'obtenir toute la documentation nécessaire et d'examiner si le règlement du personnel a été correctement appliqué. À la suite d'une procédure contradictoire, le comité formule ses recommandations au Directeur général de l'organisation, qui prendra librement une décision définitive.

Si l'employé n'accepte pas cette décision, il peut enfin saisir un des deux Tribunaux administratifs internationaux, le Tribunal des Nations Unies à New York ou le Tribunal de l'Organisation internationale du Travail à Genève, qui a succédé au Tribunal de la Société des Nations. Les Tribunaux sont indépendants des secrétariats internationaux et leurs jugements sont exécutoires. S'ils reconnaissent le bien fondé de la requête, les juges peuvent annuler la décision administrative contestée, ou ordonner l'exécution de l'obligation invoquée. Si cette annulation ou cette exécution n'est pas possible ou opportune, le Tribunal peut attribuer au requérant une indemnité pour le préjudice matériel ou moral souffert.

Les cas soumis aux Tribunaux concernent des problèmes de traitements, d'allocations, d'accidents du travail, d'évaluation des services et règles de conduite, classement des postes, mutations, droit à la pension, non renouvellement ou résiliation de contrats. Dans ces derniers cas, les Tribunaux n'ont que très rarement ordonné le ré-emploi du personnel licencié, mais ont préféré accorder une indemnisation.

Les organisations ont intérêt à ce que les plaintes des employés soient examinées par des comités statutaires et les Tribunaux pour éviter des pressions des États membres en faveur de leurs ressortissants.

Malgré leurs imperfections, les voies de recours garantissent aux employés des organisations des Nations Unies que leurs requêtes seront examinées avec impartialité et que leur situation administrative ne dépend pas entièrement de la bonne ou mauvaise volonté de leurs chefs ou employeurs, ou de leur équité ou arbitraire. En particulier la jurisprudence des Tribunaux administratifs a institué des limites juridiques aux larges pouvoirs discrétionnaires des chefs de secrétariats, a contribué au respect du droit et a renforcé le concept de la permanence et de l'indépendance de la fonction publique internationale.