

DOCUMENTS ON  
INTERNATIONAL  
ADMINISTRATIVE  
TRIBUNALS



C.F. AMERASINGHE

# DOCUMENTS ON INTERNATIONAL ADMINISTRATIVE TRIBUNALS

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## PREFACE

After completing my two-volume treatise on *The Law of the International Civil Service*, I thought it would be a good idea to publish, partly as an accompanying volume, a collection of documents on international administrative tribunals which would contain the texts of the Statutes and Rules of Procedure of the principal extant tribunals and the three tribunals that have ceased to function. The book consists of the texts of the documents preceded in each case by a short introductory note with selected references on the tribunals. There is also a brief general introduction to the collection of documents.

The Court of Justice of the European Communities has not been included in this collection as it functions only in an ancillary way as an international administrative tribunal, its principal role being much wider.

Any views expressed herein are not necessarily the views of the World Bank Administrative Tribunal or the World Bank.

C.F.A.

*Washington, DC*  
*May 1988*

# ABBREVIATIONS

AFDI	<i>Annuaire français de droit international</i>
CAFRAD	African Training and Research Centre in Administration for Development
CERN	European Organization for Nuclear Research
CIEPS	International Centre for Registration of Publications in Series
CIPEC	Intergovernmental Council of Copper Exporting Countries (Conseil Intergouvernemental des Pays Exportateurs de Cuivre)
EFTA	European Free Trade Association
ELDO	European Space Vehicle Launcher Development Organization
EMBL	European Molecular Biology Laboratory
EPO	European Patent Organization
ESA	European Space Agency
ESO	European Southern Observatory
ESRO	European Space Research Organization
Eurocontrol	European Organization for the Safety of Air Navigation
FAO	Food and Agricultural Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICEM	Intergovernmental Committee for European Migration
ICITO-GATT	Interim Commission for the International Trade Organization
ICJ	International Court of Justice
<i>ICLQ</i>	<i>International and Comparative Law Quarterly</i>
ICM	Intergovernmental Committee for Migration
ICSID	International Center for Settlement of Investment Disputes
IDA	International Development Association
IDB	Inter-American Development Bank
IDBAT	Inter-American Development Bank Administrative Tribunal
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILO	International Labour Organization
ILOAT	International Labour Organization Administrative Tribunal
IMO	International Maritime Organization

IPU	International Paleontological Union
ITU	International Telecommunication Union
<i>JDI</i>	<i>Journal de droit international</i>
LNAT	League of Nations Administrative Tribunal
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OCTI	Central Office for International Railway Transport
OECD	Organization for Economic Co-operation and Development
OEEC	European Organization for Economic Co-operation
OIE	International Office of Epizootics
<i>RDILC</i>	<i>Revue de droit international et de législation comparée</i>
<i>RGDIP</i>	<i>Revue générale de droit international public</i>
UN	United Nations
UNAT	United Nations Administrative Tribunal
UNDP	United Nations Development Program
UNEP	United Nations Environmental Program
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UNIDO	United Nations Industrial Development Organization
UNRWA	United Nations Relief and Works Agency
UPU	Universal Postal Union
WBAT	World Bank Administrative Tribunal
WEU	Western European Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Tourism Organization
ZAÖRV	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>

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# I

## Introduction

IN order to introduce this collection of documents on international administrative tribunals, it may be useful to make a few preliminary remarks on some general matters relating to such tribunals.

Some theoretical questions on the nature of the international administrative law governing employment relations and the authority to establish and the need for international administrative tribunals have been raised and the answers to them discussed elsewhere.<sup>1</sup> In regard to the authority to establish such tribunals suffice it to quote here the statement of the ICJ recognizing the authority of the UN General Assembly to establish the UNAT as an independent court with power to take binding decisions:

The power to establish a tribunal, to do justice as between the organization and the staff members was essential to insure the efficient working of the Secretariat and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity.<sup>2</sup>

This statement is valid *mutatis mutandis* for all governmental international organizations in situations where the constituent instrument of the organization does not expressly permit or prohibit the setting up of a tribunal. The need for such tribunals could not be gainsaid, particularly because national courts have tended to recognize the immunity of governmental international organizations from their jurisdiction in matters pertaining to employment relations<sup>3</sup> and, even if they did not, national courts would not be a desirable forum for the settlement of disputes relating to employment relations, because this would have a divisive effect and be inconsistent with the international character of organizations and their staff.

In regard to the nature of international administrative law in so far as it governs employment relations, as was made quite clear by the WBAT, it is the internal law of the organizations that is applicable as the law governing conditions of employment.<sup>4</sup> This is a system peculiar to the

<sup>1</sup> See C. F. Amerasinghe, 1 *The Law of the International Civil Service* (1988) pp. 3-25 and 26-48.

<sup>2</sup> *Effect of Awards of Compensation Case*, ICJ Reports (1954) p. 47 at p. 57.

<sup>3</sup> See *Mendaro*, US Court of Appeals No. 82-2247 (1983).

<sup>4</sup> *de Merode*, WBAT Reports (1981), Decision No. 1 at pp. 12-13.

organization in question, although there are similar principles and rules applied by the different tribunals. The WBAT stated:

The Tribunal does not overlook the fact that each international organization has its own constituent instrument; its own membership; its own institutional structure; its own functions; its own measure of legal personality; its own personnel policy, and that the differences between one organization and another are so obvious that the notion of a common law of international organization must be subject to numerous and sometimes significant qualifications. But the fact that these differences exist does not exclude the possibility that similar conditions may affect the solution of comparable problems. While the various international administrative tribunals do not consider themselves bound by each other's decisions and have worked out a sometimes divergent jurisprudence adapted to each organization, it is equally true that on certain points the solutions reached are not significantly different. It even happens that the judgments of one tribunal may refer to the jurisprudence of another. Some of these judgments even go so far as to speak of general principles of international civil service law or of a body of rules applicable to the international civil service. Whether these similar features amount to a true *corpus juris* is not a matter on which it is necessary for the Tribunal to express a view. The Tribunal is free to take note of solutions worked out in sufficiently comparable conditions by other administrative tribunals, particularly those of the United Nations family. In this way the Tribunal may take account both of the diversity of international organizations and the special character of the Bank without neglecting the tendency towards a certain *rapprochement*.<sup>5</sup>

Thus, it is always necessary to bear in mind, among other things, the differences in the Statutes and Rules of Procedure of the tribunals of different organizations in approaching their jurisprudence. These differences are as important as the similarities in these Statutes and Rules of Procedure in using the jurisprudence of administrative tribunals and in comparing them.

The Statutes and Rules of Procedure of tribunals differ considerably in their content but there are certain important features in the structure of such tribunals and their operation which deserve attention. These salient features have been explored in some detail in the editor's treatise on *The Law of the International Civil Service*.<sup>6</sup> Here it is proposed to advert to some of them in order to demonstrate why the Statutes, in particular, and Rules of Procedure of individual tribunals are of considerable importance in the legal system of international organizations which governs employment relations.

On the institutional side the Statute of a tribunal determines such questions as its composition, the qualifications of judges, and whether

<sup>5</sup> *de Merode*, *ibid.* at p. 13.

<sup>6</sup> See C. F. Amersinghe, 1 *op. cit.* (note 1 *supra*), Ch. 3, pp. 63ff., Ch. 16-19, *passim*, and Chs. 26-33, *passim*.

they can be expected to be independent. The Statute of the WBAT provides a good example of these aspects. The Statute in Articles IV and V requires that seven judges be appointed and details the manner of their appointment which enables appropriate consultation with such bodies as Staff Associations. These provisions also indicate that normally seven judges form the bench for the decision of a case, while permitting the formation of panels of three. Further, Article IV refers to the very high qualifications required for appointment to the bench of the tribunal. These happen to be as stringent as those required for appointment to the bench of the ICJ. As a consequence, there is strong support for preserving the impartiality and independence of the judges. On the other hand, judges of the WBAT are elected for a term of 3 years without any restriction on the possibility of re-election. This feature could militate against independence and impartiality but for the fact that the requisite qualifications imply the highest standards of judicial integrity and probity.

With respect to jurisdictional competence and admissibility of actions the Statutes of tribunals would generally be controlling. Thus, the jurisdiction of most tribunals is confined to actions brought by staff members or former staff members (or sometimes persons with derivative rights) against the organization, provided such cases concern their contracts or terms of employment. The parameters of competence and admissibility of actions *ratione temporis*, for example, are determined almost entirely by the express terms of Statutes. While certain general principles of law and rules derived from other sources may be relevant to the interpretation of the provisions of Statutes and their application, it is the express terms of such provisions of such instruments that are important in the determination of jurisdictional competence and admissibility of actions.

In regard to remedies, the Statute of a tribunal is generally the *terminus a quo* for determining the remedies that it may order and the limits on such remedies, although here again the express terms of the Statute may require interpretation and application in the light of other sources of law. Tribunals have paid considerable attention to the terms of their Statutes in prescribing remedies. What is important is that they do not ignore express limitations on their power to grant remedies.

Procedural matters are governed almost entirely by the Rules of Procedure of tribunals or, where appropriate, by their Statutes. Rules of Procedure vary from tribunal to tribunal. Such matters as how witnesses or evidence should be dealt with or whether and when oral proceedings may be held are included generally in Rules of Procedure or sometimes in Statutes. As will be seen from the documents that follow, the Rules of Procedure contain extensive provisions on the manner in which plead-

ings should be filed and the time limits pertaining thereto. Rules of Procedure may also deal with such matters as intervention and the procedure for remand of a case.

The secretariat or registry is an important supportive arm of these tribunals. They are normally established by the Statutes of tribunals. What the Statutes state about their establishment will determine such important questions as whether they can function independently and efficiently without interference from the organization. For example, it is significant that the Statute of the WBAT expressly states in Article VI that the Executive Secretary, although designated by the President of the Bank, is in the discharge of his duties responsible only to the tribunal.

In sum, not only are the documents that follow fundamental to the operation of tribunals but they give an insight into the framework in which they operate and the limitations imposed on their functions and operations.

## II

# The United Nations Administrative Tribunal

WHEN the UN was being created, the Preparatory Commission of the United Nations had recommended that an administrative tribunal be established in 1945. However, there were many delegations which were unfamiliar with such an institution in their national civil services and consequently thought that it was pointless and would be an unwanted interference with the control of the Secretary General over his secretariat. The USA and the USSR particularly opposed the creation of such a tribunal. Ultimately, however, the tribunal was established on 24 November 1949 by Resolution 351(IV) of the General Assembly adopted at its 255th Plenary Meeting, which contained the Statute of the tribunal. This Statute was further amended by Resolution 957(X) on 8 November 1955.

The rules of the UNAT were adopted by the tribunal on 7 June 1950 (UN Doc. A/CN.5/1). They were subsequently amended on 20 December 1951 (UN Doc. AT/7), 9 December 1954 (UN Doc. AT/9), 30 November 1955 (UN Doc. AT/10), 4 December 1958 (UN Doc. AT/12), 14 September 1962 (UN Doc. AT/13), 16 October 1970 (UN Doc. AT/11/Rev.2/Amend.1), and 3 October 1972 (UN Doc. AT/11/Rev.3/Amend.1).

The original intention was that the UNAT would have jurisdiction over the specialized agencies but because of the delay in setting it up some specialized agencies decided to make use of the ILOAT instead. Even after the UNAT was established most of the specialized agencies preferred to accept the jurisdiction of the ILOAT, primarily because they feared that the UNAT would not be permanent. Some agencies, however, decided to accept the UNAT's jurisdiction. At present, the UNAT has jurisdiction over the UN (including, *inter alia*, UNDP, UNEP, UNICEF, and UNRWA), ICAO, and IMO. It also has jurisdiction to hear disputes arising out of the Regulations of the UN. Joint Staff Pension Fund of which the UN, FAO, IAEA, ICAO, ICITO-GATT, IFAD, ILO, ITU, UNESCO, UNIDO, WHO, WIPO, and WMO are members.

The documents on the UNAT would not be complete without (a)

Article 48 of the Regulations and Rules of the UN Joint Staff Pension Fund which refers to the jurisdiction of the Tribunal, and (b) the Rules of Procedure of the Committee on Applications for Review of Administrative Tribunal Judgments (1983) which deal with reference to the ICJ. These are included in this collection of documents on the UNAT.

### Selected References

- Effect of Awards of Compensation made by the United Nations Administrative Tribunal: Pleadings, Oral Arguments, and Documents*, ICJ (1954) and ICJ Reports [1954] p. 47.
- Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal: Pleadings, Oral Arguments and Documents*, ICJ (1973) and ICJ Reports [1973] p. 166.
- Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, ICJ Reports [1982] p. 325.
- Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, ICJ [1987] p. 18.
- AMERASINGHE, C. F., 1 *The Law of the International Civil Service* (1988) pp. 54–7.
- BASTID, S., 'El Tribunal Administrativo de las Naciones Unidas', in *Cursos y conferencias, Año Académico 1956–7*, p. 5.
- 'Les Tribunaux administratifs internationaux et leur jurisprudence', 92. 2 *Académie de droit international de la Haye: Recueil des cours* (1958) p. 374.

## STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS

As adopted by the General Assembly by resolution 351 A (IV) on 24 November 1949 and amended by resolution 782 B (VIII) on 9 December 1953 and by resolution 957 (X) on 8 November 1955

### Article 1

A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal.

### Article 2

1. The Tribunal shall be 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 or of the terms of appointment of such staff members. The words 'contracts' and 'terms of

appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.

2. The Tribunal shall be open:

- (a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;
- (b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff members could have relied.

3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.

4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950.

### *Article 3*

1. The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Only three shall sit in any particular case.

2. The members shall be appointed by the General Assembly for three years, and they may be re-appointed; provided, however, that of the members initially appointed, the terms of two members shall expire at the end of one year and the terms of two members shall expire at the end of two years. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

3. The Tribunal shall elect its President and its two Vice-Presidents from among its members.

4. The Secretary-General shall provide the Tribunal with an Executive Secretary and such other staff as may be considered necessary.

5. No member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he is unsuited for further service.

6. In case of a resignation of a member of the Tribunal, the resignation shall be addressed to the President of the Tribunal for transmission to the Secretary-General. This last notification makes the place vacant.

### *Article 4*

The Tribunal shall hold ordinary sessions at dates to be fixed by its rules,

subject to there being cases on its list which, in the opinion of the President, justify holding the session. Extraordinary sessions may be convoked by the President when required by the cases on the list.

#### *Article 5*

1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Tribunal.
2. The expenses of the Tribunal shall be borne by the United Nations.

#### *Article 6*

1. Subject to the provisions of the present Statute, the Tribunal shall establish its rules.
2. The rules shall include provisions concerning:
  - (a) Election of the President and Vice-Presidents;
  - (b) Composition of the Tribunal for its sessions;
  - (c) Presentation of applications and the procedure to be followed in respect to them;
  - (d) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgement;
  - (e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of article 2, even though they are not parties to the case; and generally
  - (f) Other matters relating to the functioning of the Tribunal.

#### *Article 7*

1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.
2. In the event of the joint body's recommendations being favourable to the application submitted to it, and in so far as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:
  - (a) Rejected the recommendations;
  - (b) Failed to take any action within thirty days following the communication of the opinion; or
  - (c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.



3. In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous.
4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time limit of ninety days shall begin to run from that date. Nevertheless, the said time limit on his behalf shall be extended to one year if the heirs of a deceased staff member or the trustees of a staff member who is not in a position to manage his own affairs, file the application in the name of the said staff member.
5. In any particular case the Tribunal may decide to suspend the provisions regarding time limits.
6. The filing of an application shall not have the effect of suspending the execution of the decision contested.
7. Applications may be filed in any of the five official languages of the United Nations.

#### *Article 8*

The oral proceedings of the Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that they be held in private.

#### *Article 9*

1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.