

## The Contractual Rights of International Civil Servants: Administrative Tribunals of the United Nations and International Labour Organization Perspective

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**Abstract:** International Organizations are acting within the parameters provided by the rules of procedure of the organization and terms of their contract of employment. The International Labour Organization Administrative Tribunal (ILOAT), was created as a judicial system for international civil servants. The United Nations Administrative Tribunal (UNAT) was established as an independent organ competent to hear and pass judgments upon application alleging non-observance of contracts or terms of employment by staff members of the UN Secretariat. The two most important administrative tribunals that grant remedies to aggrieved staff of an international organization that have accepted their jurisdiction. The ILOAT and UNAT has gradually consolidated the idea that international organizations are under a human rights obligation to provide access to staff dispute settlement mechanisms.

**Keywords:** United Nations, Civil servants, ILOAT, UNAT

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### 1. Introduction

All international organizations are structured to guarantee internal accountability of all their agents towards the executive head for acts done in the exercise of their functions.<sup>1</sup> There is an apparent deficiency, however, in the provision of mechanisms for ascertaining whether officials of an International Organization are acting within the parameters provided by the rules of procedure of the organization and terms of their contract of employment. The right to redress as a general principle of law and a norm of customary international law applies in all dealings between an international organization and their staff. This right includes both the procedural right of effective access to a fair hearing and the substantive right to a remedy; - both elements serve as yardsticks to assess whether an international organization has complied with their inherent duty to provide adequate, equivalent legal protection as it is found in the national courts system of states. (Wellens 2004) This work will compare between the International Labour Organization Administrative Tribunal (ILOAT) and the United Nations Administrative Tribunal (UNAT) to look at internal environment with adequate due processes to ensure that best practice standards for fair trial are guaranteed.

### 2. Aims and Purposes of the Study

This study aims at evaluating the nature and procedures of the International Labour Organization Administrative Tribunal (ILOAT) and United Nations Administrative Tribunal (UNAT) in promotion and protection of the contractual rights of international civil servants whom their employers in dealing with them would have violated the rules and regulations

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<sup>1</sup> UN Staff Regulation 1.3(a). See also, Bulletin on the Status, Basic Rights, and Duties of U.N. Staff Members, U.N.Doc. ST/SBG/1998/19.

governing their terms of employment without regards to due processes, remedy or recourse to the principles of natural justice after they might have exhausted all internal appeal procedures.

This paper also demonstrated the fact that the ILOAT, though with a broader jurisdiction, is not the only administrative body addressing the grievances by employees of international organizations but the United Nations Administrative Tribunal (now reformed as United Nations Dispute Tribunal and Appeals Tribunal) has also played a similar role in addressing conflicts between staffs of the United Nations who upon application alleging non-observance of contracts or terms of employment/appointment by the UN Secretariat or applications alleging non-observance of the regulations and rules of the United Nations Joint Staff Pension Fund (UNJSPF), arising out of decisions by the Fund. Though the World Bank and IMF Administrative Tribunals also play similar role, they have not been covered in this study.

### 3. Scope of this Study

This study will address the issues of law relating to the contractual rights of international civil servants and means of redress in the event of conflict relating to the violations of terms of contracts of employment between international organizations, particularly the International Labour Office and United Nations. This work shows that there is a legally binding obligation between the International Organizations and their staffs as contained in their contract of employment and taking into considerations the principles of International Law relating to ILO core labour standards. The ILOAT also takes into consideration the complaints of family members of deceased staffs or by a person(s) who claims that he/she is entitled to some right on the death of a staff of an international organizations that have recognized its jurisdictions and competence in their contractual relationships with the deceased staff. The tribunal is not a court of first instance rather it is an appellate body which complaints can only be made after all the internal remedies, including appeals procedures, available to the official concerned under the Staff Rules and Regulations of the international organizations have been fully exhausted and final decisions given.

### 4. Research Methodology

This study is generally a non-empirical analysis. The main sources of this study include library and desk research. It involves a review of literature relying on secondary sources materials - textbooks, journals, studies, reports and on-line documents related to the ILO and UN Administrative Tribunal. This study has examined and analyzed policy documents such as international conventions, and resolutions of the United Nations that dealt with the topic of this research. The study has also relied on decided cases from the ILOAT and UNAT on contractual rights of international civil servants in buttressing facts that were discussed in this paper. Perusing through, analyzing and internalizing existing academic literatures and scholarly writings both in hard copy and from the Internet on the subject of international civil servants constitute a good portion of the research.

### 5. Limitations

One of the greatest limitations of this research work is that there is dearth of books dealing with the subject of International Labour Organization Administrative Tribunal and defunct United Nations Administrative Tribunal. Again this work did not embark on case analysis but references were made to decided cases by ILOAT and UNAT in buttressing facts. Finally, there are very few available Journal Articles, international documents, papers and internet resources dealing with the subject matter of this paper that are accessible in libraries and on the internet.

### 6. The Nature of ILO and UN Administrative Tribunals

The International Labour Organization Administrative Tribunal, or ILOAT, is the successor of the League of Nations Administrative Tribunal. It was created as a judicial system for international civil servants, (Flaherty and Hunt 2010) while the United Nations Administrative Tribunal (UNAT) was established by the General Assembly through Resolution 351A(IV) (1949)<sup>2</sup> as an independent organ competent to hear and pass judgments upon application alleging non-observance of contracts or terms of employment by staff members of the UN Secretariat or of their terms of appointment

<sup>2</sup> As adopted by the Tribunal on 7 June 1950 and amended on 20 December 1951, 9 December 1954, 30 November 1955, 4 December 1958, 14 September 1962, 16 October 1970, 3 October 1972, 1 January 1998, 1 January 2001, and 27 July 2004 (See also United Nations Administrative Tribunal Available online at <http://untreaty.un.org/unat/Statute.htm> Last visited 17 February, 2011

as well as applications alleging non-observance of the regulations and rules of the United Nations Joint Staff Pension Fund (UNJSPF), arising out of decisions by the Fund. It is composed of seven members, no two of whom may be nationals of the same State. The members shall be appointed by the General Assembly for four years, and may be reappointed once. (Chersterman at al 2002). The League of Nations established the Administrative Tribunal in 1927 with jurisdiction over staff of the ILO and with time, staffs of UN Specialized Agencies and other international organizations that have accepted its jurisdiction.

While the United Nations Administrative Tribunal (UNAT) members usually come from a diplomatic or University background, the ILOAT Tribunal is composed of seven lawyers mostly coming from the national judiciaries. Schermers., H.G. and Blokker (2003).

It is competent to consider disputes between the organizations concerned and their staffs at the initiative of staff members. It will not accept a complaint filed by organization against a staff member. In addition to staff cases, the tribunal can be charged with the settlements of possible conflicts arising from contracts concluded by the ILO. Judgments of the Tribunal are binding, final and without appeal.

The ILOAT is older than the UN itself, being a descendant of the League of Nations Administrative Tribunal. It is the court for labour disputes, including workplace harassment, promotions difficulties, unfair dismissal and discrimination, for many international organization employees. It is the labour law court for a workforce of over 40 international organizations. Its sister tribunal, the defunct United Nations Administrative Tribunal, or UNAT, has jurisdiction over associated programs, including the staff of the International Court of Justice Registry, the UN and its internal units. Together, the system adjudicates disputes for around 70,000 workers, over half of whom are on precarious, short-term contracts. The next sub-heading will compare the Statutes of the two tribunals to see whether there exist similarities and differences in the way there are drafted to function.

## 7. Statutes of ILO and UN Administrative Tribunal

According to Frank Gutteridge, (2009) the ILO<sup>3</sup> itself have outlined four significant differences between the two tribunals in terms of membership, means of redress, compensation and the final nature of its judgment.

Though firstly, the ILOAT uses the designation "Judges" for the Judges and "Registrar" of "*Greffier*" for the officers of the Court, as opposed to members and "Executive Secretary" for UNAT, a usage suggesting that for UNAT the intention was to distance the conceptions underlying the text of the statutes as far as possible from those of a true court of law and in particular from the *droit administratif* (Gutteridge 2009). In terms of membership, the Judges of ILOAT (named as "judges" and not "members" as in the case of UNAT) are appointed by the International Labour Conference on the recommendation of the governing body to which the Director General submits their names and qualifications. The members of UNAT are appointed by the General Assembly on the nomination of the government of their own countries. Not only are the appointing bodies different in composition, since there are no representation of employers and workers at the International Labour Conference (ILC), but there are also differences in practice.

The members of ILOAT are eminent lawyers, and most of them hold or have held judicial offices in their own countries but in the contrary, not all member of UNAT need to be judges or experienced lawyers and this is the line which the General Assembly has consistently taken (Gutteridge 2009).

Under their means of redress, the ILOAT may order the rescinding of an unlawful decision or the performance of an undercharged obligation. If such rescinding or performance is not possible or advisable, the Tribunal awards compensation and has sole discretion in the matter while UNAT may order the rescinding of a decision or the performance of an obligation, but at the same time it fixes the amount of compensation to be paid should the Secretary General decide<sup>4</sup>, in the interest of the United Nations that the applicant should be compensated without further action.... The ILOAT has remain discreet in the ordering of reinstatement and in recent times have left it to the organization to decide in the last resort whether the reinstatement might prove undesirable or impossible, a procedure which appears to be similar with that followed by UNAT (Gutteridge 2009).

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<sup>3</sup> See ILO Document GB.234/PFA/11/17,3

<sup>4</sup> Despite the safe guard by the ICJ review procedure, the UNAT has come, over the years, under similar attacks, within the suggestion that the General Assembly has a General Discretionary power of review over Judgments. (See for example JIU Follow up Report on Staff Cost in the United Nations Secretariat, UN Document A/40/653 (18 September, 1985), 15.) This has not been the case for the ILOAT despite the difficulties arising out of the Duberg, Leff ILOAT Judgment No.2 (1955) Wilcox and Bernstein cases which was followed by review by the ICJ, which concluded that the Tribunal was competent to give the judgment, and the Lindsey case, after which the possibility of such a review was mooted but finally not requested.

In terms of compensation, ILOAT determine the amounts at its discretion by reference to the wrong sustained by the complainant. Save in exceptional cases requiring special justification, the UNAT may not, under its statutes, award compensation exceeding the equivalent of two year's net salary of the applicant. This issue will be further elaborated in the next sub-heading.

In terms of the nature of the judgments of ILOAT and UNAT, the ILOAT's judgments are final and without appeal, except that the governing body may seek advisory opinion from the ICJ if it considers that the tribunal has exceeded its jurisdiction or taken a decision which is vitiated by a fundamental procedural fault. According to the statutes of UNAT; a member state, the Secretary General or the applicant may within 30 days ask a committee of the most recent regular session of the General Assembly to request an advisory opinion of the International Court of Justice where a judgment is challenged on the ground that the tribunal has exceeded its jurisdiction or competence or failed to exercise its jurisdiction, or erred on a question of law relating to the provisions of the Charter of the UN, or committed a fundamental error in the procedure which has occasioned a failure of justice. If no such application is made within a period of thirty days, or if such application is dismissed, the judgment becomes final. If the matter goes to court, the payment of any compensation awarded under the challenged judgment is suspended, except that in some cases part provisional payment may be made.

Another compares, that may be made between the ILOAT and UNAT is in respect of Article 14 of the latter's Statutes which provides that the tribunals competence may be extended to any Specialized Agency brought into relationship with the United Nations in accordance with the provisions of Article 57 and 63 of the Charter upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations (Elias 2009). Each such special agreement shall provide that the Agency concerned must be bound by the judgment of the tribunal and not be responsible for the payment of any compensation awarded by the tribunal in respect of a staff member of that agency and must include inter-alia, provision's concerning the agency's participation in the administrative arrangements for the functioning of the Tribunal and on the bearing of the expenses of the Tribunal. This is in marked contrast to the administrative arrangements' involved in the judgments of the Administrative Tribunal of the ILO upon complaints made against UNESCO cases. Another point of departure, and a significant one is that, the ILO Administrative Tribunal Statutes provides, in its own Article 10 that, for an appeal to be made to the Court in cases of a challenge to the tribunal's judgment by the ILO or the UNESCO or other Agencies having the power to use the ILO Statutes. In other words, the ILO Statutes and therefore the UNESCO has not been given the power to conclude matters for itself; it provides that the court is to decide the matter finally. It seems reasonable to suppose that the UN Administrative Tribunal's Statutes provides for it to operate as a self contained body so far as its judicial function is concerned, leaving only a power of review to the court within the limits set out in Article 11 of the UNAT Statutes.. (Elias 2009).

## 8. Functions of ILOAT and UNAT in Awarding Remedies and Compensations

Both the International Labour Organization Administrative Tribunal (ILOAT) and United Nations Administrative Tribunal (UNAT) are the two most important administrative tribunals that grant remedies to aggrieved staff of an international organization that have accepted their jurisdiction. Although it has to be said, that extracting any general principles applicable to all tribunals and which would underlie the granting of particular remedies is difficult (Amerasinghe, 1994). As a result of the different statutes, there is no uniformity of approach to the issue of remedies and each tribunal takes its decisions in the light of a certain expediency and discretion (Wellens 2002) Though in the capacity of Chief Administrative Officer of the Organization<sup>5</sup>, the Secretary General is the respondent to the applications to the UNAT (Tribunal), although the tribunal decisions normally, are final, the Statutes of the Administrative Tribunal of the UN in this respect differs from that of the Statutes of the Administrative Tribunal of the International Labour Organization to which the Specialized Agencies subscribe.<sup>6</sup>

Although the UNAT's powers to freely grant remedies are more limited by its statutes because the choice between recession and compensation belongs to the respondent organization, both UNAT and ILOAT have sometimes awarded remedies in a manner not explicitly provided for in their statutes. Often when the decision was not found to be invalid, compensation has been awarded by UNAT without ordering rescission or specific performance which was not appropriate, but the ILOAT has granted compensation in such cases. Both tribunals have considered these powers to be inherent, and have liberally construed the provisions on remedies while recognizing the express limitations placed on them by their respective statutes and not exceeding their powers beyond what is clearly and unequivocally circumscribed in the statutes.

<sup>5</sup> See., United Nations Charter June, 1945, Article 97

<sup>6</sup> Ibid., It should be noted that certain international organisation based in Europe has accepted the jurisdiction of the ILOAT.

Specific performance has also been ordered by both ILOAT and UNAT when the decision was regarded as being invalid but has not been specifically annulled because the tribunal considered the order of specific performance, without substitute compensation, to provide the applicant with an adequate remedy.

Regarding the terms of compensation, it may be awarded as an alternative to annulment, rescission or specific performance. In some cases, the UNAT has accessed the compensation, but in numerous cases, it did not, in case the respondent chose not to carry out the order. In many cases, the ILOAT, after quashing the administrative decision decided to award compensation and an alternative to rescission or reinstatement, although this has not always been a very reasoned decision. In cases where the respondent's wrongful act is considered to have caused additional damage to the claimant, compensation may operate as an additional remedy or the sole remedy where for variety of reasons, other remedies are inappropriate or impossible.

Compensation may also be awarded either without an annulment or, conversely without the tribunal characterizing the decision as valid. In the case of non-renewal of fixed term of contract, the UNAT has never ordered a renewal of the contract, but has awarded compensation instead<sup>7</sup>. Undue hardship suffered by the applicant may be compensated in unusual circumstance even when the conduct of the respondent was legally correct.

Finally, it certainly cannot be said that in the decisions by the UNAT and ILOAT to award damages the most significant factors are the character of the applicant, the unanimity of the court and the procedural or substantive nature of the rights violated. On the other hand, the UNAT and ILOAT's case law apparently does not show the routine and non-controversial substantive violation or a pattern of non-compliance with procedural norms are more likely to give rise to damages. Although, the option of deciding between rescission and compensation lies within its powers and there is no ceiling for compensation provided in its statutes, the ILOAT generally follows a policy of restraint in awarding compensation. The UNAT, for its part, has an exceptional case and not without giving reasons exceeded the ceiling of two year salary. Finally, it is important to note that the UN Administrative Tribunal and the ILO Administrative Tribunal publish their judgments unlike other similar tribunals.<sup>8</sup> At this point let's compare the jurisdiction and powers of ILO and UN Administrative Tribunal

#### 9. Jurisdiction/Powers of ILO and UN Administrative Tribunal

The ILOAT is older than the UN itself, being a descendant of the League of Nations Administrative Tribunal. It is the court for labour disputes, including workplace harassment, promotions difficulties, unfair dismissal and discrimination, for many international organization employees. It is the labour law court for a workforce of 58 international organizations. Its sister tribunal, the United Nations Administrative Tribunal, or UNAT,<sup>9</sup> has jurisdiction over associated programs, including the staff of the International Court of Justice Registry, the UN and its internal units. Together, the system adjudicates disputes for around 70,000 workers, over half of whom are on precarious, short-term contracts.<sup>10</sup>

UNAT 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<sup>11</sup> 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

<sup>7</sup>Ibid., In Effects of Awards of compensation Made by the United Nations Administrative Tribunal (Advisory Opinions) 1954 ICJ Reports 50, The tribunal held that the non-renewal of the employees' contracts was unwarranted because it was unrelated to their professional qualities. Not having the power to reinstate the employees to their formal positions, the tribunal awarded reparation. Pressure from the United States on the General assembly for those amounts not to be paid failed following the rendering of advisory opinion by the ICJ, which affirmed that finding that the General Assembly should pay out the sums allocated by the UNAT in its judicial decision, was final. On this point, the UNAT thus made a decisive contribution to the rule of law within the United Nations. (See also Robert Kolb, An Introduction to the Law of United Nations, (Oxford, Portland, and Oregon: Hart Publication, 2010) p.153)

<sup>8</sup> Available online at [www.ilo.org/trib](http://www.ilo.org/trib) and <http://untreaty.un.org/UNAT/> Last visited 16 February, 2011 See also Edward Patrick Flaherty, "Legal Protection in International Organizations for Staff: A Practitioner's View", Available online <http://www.campaignsitebuilder.com/user/.../download/March%20paper.doc>. <http://www.jm-rico.at/iloat.pdf>. Last visited 17 February, 2011

<sup>9</sup>Statutes 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, by resolution 957 (X) on 8 November 1955, by resolution 50/54 on 11 December 1995, by resolution 52/166 on 15 December 1997, by resolution 55/159 on 12 December, 2000 by resolution 58/87 on 9. The most recent amendment has been adopted by GA/RES 59/283 of 2 June 2005. Operative Paragraph 40 reads "Decides to amend Article 3(1) of the Statutes of the Tribunal with effect from 1 January, 2006.

<sup>10</sup>Edward Patrick Flaherty & Sarah Hunt, op. cit.

<sup>11</sup>The employment of personnel is provided for with respect to the United Nations system as a whole. Moreover, the different organizations share the principal administrative tribunals that are based in Geneva, namely the United Nations Administrative Tribunal (UNAT) and the International Labour Organization Administrative Tribunal (ILOAT). These tribunals are competent to hear any claim brought by a member of staff relating to their contract. (See., Robert Kolb op. cit., p.160)

of alleged non observance, including the staff pension regulations. The Tribunal shall be open: (a) To any staff member of the Secretariat of the United Nations even after his or her employment has ceased, and to any person who has succeeded to the staff member's rights on his or her death; (b) To any other 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.<sup>12</sup> In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.<sup>13</sup> While Article II of the Statute of the ILO Administrative Tribunal recognize the jurisdiction of the Tribunal to consider complaints alleging the non-observance, in substance or in form, of the terms of appointment of officials, or of the provisions of the Staff Regulations of those organizations.<sup>14</sup>

#### 10. UN Official Justice Systems: The UN Dispute and Appellate Tribunals

Since the 1990s, the internal justice system of the United Nations as well as other international organizations, providing for the settlement of disputes between the employer organizations and their staff has been intensively criticized, by staff associations legal practitioners and academics, over the years different panels of experts have addressed the issue, identified major weaknesses and made recommendations for improving the current system, regarding both the informal and the formal system of staff dispute settlement. Already in the late 1990s reform proposal for the ILOAT were high on the agenda, however they did not result in any concrete changes [up till now].<sup>15</sup> Ten years later, the debate reached the United Nations and the result and the reform suggestion put forward by the *Redesign Panel*<sup>16</sup> in 2006 have led to a follow up process that created a completely new system of internal dispute settlement within the United Nations and the Specialized Agencies that have accepted the statutes of the United Nations Administrative Tribunal.<sup>17</sup>

The actual stages for the new system of justice administration within the United Nations was set when the United Nations General Assembly adopted resolution (42/226) on 8 April 1993<sup>18</sup>, which stressed the importance of a just, transparent, simple, impartial and efficient system on internal justice at the Secretariat and requested the Secretary-General to undertake a comprehensive review of the UN system for the administration of justice. A task force not only proposed a complete reform of the administrative review system, but also called for measures to encourage settlement through informal channels, such as through the office of the ombudsman.<sup>19</sup> Again in 1995, a report for the reform of the

<sup>12</sup>The UNAT had extended its jurisdiction to a dispute involving a non-staff member. In *Zafari* and in *Salaymeh*, the UNAT extended its jurisdiction to claims brought by local United Nations Relief and Works Agency (UNRWA) staff. Under normal circumstances, it was not the UN Administrative Tribunal itself, but rather a Special Panel of Adjudicators that was competent to hear such complaints. The jurisdiction of this special panel was, however, very limited; it was basically restricted to scrutinizing the legality of a termination of employment. In *Zafari* the applicant disputed that the end of his employment was to be qualified as an early voluntary retirement; whereas in *Salaymeh* the applicant complained that the calculation of his contribution to UNRWA's pension fund was incorrect. In both cases UNAT thought that the Special Panel of Adjudicators would lack jurisdiction. In the Tribunal's view applicant *Zafari* was "thus deprived of any recourse against the decision of the Commissioner-General of UNRWA" and "has truly been denied justice." (See the case of *Zafari v. UNRWA*, UN Administrative Tribunal, 10 November 1990, Judgment No. 461. See also the case of *Salaymeh v. UNRWA*, UN Administrative Tribunal, 17 November 1990, Judgment No. 469)

<sup>13</sup>Article 2 (1) (2) and (4) Statutes 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, by resolution 957 (X) on 8 November 1955, by resolution 50/54 on 11 December 1995, by resolution 52/166 on 15 December 1997, by resolution 55/159 on 12 December 2000, by resolution 58/87 on 9...Accordingly, in order to be within the tribunals' jurisdiction, a claim must derive from a concluded employment contract. Mere unsuccessful applicants cannot avail themselves of the tribunal should they have grievances and wish to "alleged the occurrence of prejudice or some other impropriety in the selection process". Moreover, it is the policy of the organisation "not to enter into any litigation or arbitration with such individuals but to rely in a reasoned manner to such individual with a copy provided to the Permanent Mission if it becomes involved in the matter". (See the Report of the Secretary General on the Procedures in place for the implementation of Article VIII, section 29, on the Privileges and Immunities of the United Nations. A/C.5/49/64 of 24 April, 1995 para. 24) (See also, Peter Neumann, "Immunities of International Organisations and Alternative Remedies Against the United Nations" Seminar on State Immunity, Vienna University, Department of International Law, Summer Semester 2006 (1064200)

<sup>14</sup> Article II, of the Statute of the ILO Tribunal Adopted by the International Labour Conference on 9 October 1946 and amended by the Conference on 29 June 1949, 17 June 1986, 19 June 1992, 16 June, 1998 and 11 June, 2008

<sup>15</sup>August Reinisch and Christina Knahr, "From the United Nations Administrative Tribunal to the United Nations Appeal Tribunal-Reform of the Administration of the Justice System within the United Nations", Max Planck Year Book of United Nations Law, The Netherlands, Volume 12, 2008, pp.447-483 at p.448

<sup>16</sup> Redesign Panel of the United Nations System of Administration of Justice, 2005, A/RES/59/283 of 13 April, 2005

<sup>17</sup> Ibid

<sup>18</sup>UN General Assembly Resolution A/C.5/49/1 of 5 August 1994 para.94

<sup>19</sup>Karel Wellens: op. cit. p.81

internal justice system in the UN Secretariat was submitted by the then Secretary General in September but the proposal was never put into effect.<sup>20</sup> With regards to the pre-litigation procedure, a series of measures proposed by the Secretary General were designed to promote the early resolution of dispute before they reach the formal appeal stage. Ombudsman panels would have been appointed to deal with disagreements, grievances and discrimination issues raised informally by staff members. The review of administrative decisions would be conducted within the office of the under Secretary-General for Administration and Management but as a result of the decision of the General Assembly to establish a new system of administration of justice, including a two-tier formal system comprising a first instance, the UN Dispute Tribunal, and an appellate instance, the UN Appeals Tribunal, the age long UN Administrative Tribunal was abolished as of 31 December 2009.<sup>21</sup>

The United Nations Dispute Tribunal was established by the UN General Assembly and became operational on 1 July 2009.<sup>22</sup> It is the first instance court in the new system of administration of justice bringing to an end the sixty years old United Nations Administrative Tribunal (UNAT) including the joint appeals boards, the joint disciplinary committees and the disciplinary committees of the separately administered funds and programmes.<sup>23</sup>

This decision was reached in reaffirming the decision in paragraph 4 of UN General Assembly, resolution 61/261 of 4 April, 2007 to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. The Dispute Tribunal<sup>24</sup> hears and decides cases filed by or on behalf of current and former staff

<sup>20</sup>Ibid., p.199-200. See UN General Assembly Resolution A/C.5/50/2, of September, 1995, p.2 para.4

<sup>21</sup>See UN Resolutions 61/261 of 4 April 2007, 62/228 of 22 December 2007 and 63/253 of 24 December 2008) Available online at <http://www.un.org/en/internaljustice>. Last visited 20 February, 2011

<sup>22</sup>Resolution adopted by the General Assembly on the report of the Fifth Committee (A/63/642) 63/253. Administration of Justice at the United Nations of 17 March, 2009. The General Assembly, Recalling its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April 2007 and 62/228 of 22 December 2007, and its decisions 62/519 of 6 December 2007 and 63/531 of 11 December 2008. See also UNAT statute (A/RES/63/253 of 24 December 2008) Available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/485/97/PDF/N0848597.pdf?OpenElement> Last visited 18 February, 2011

<sup>23</sup>Ibid., As part of its transitional measures the para. 57 of resolution 62/228 of 22 December, 2007 provides that, " the United Nations Administrative Tribunal shall cease to accept new cases as of 1 July 2009; and also abolish the United Nations Administrative Tribunal as of 31 December 2009.

<sup>24</sup>Annex I of the UN. Resolution adopted by the General Assembly (on the report of the Fifth Committee (A/63/642)) 63/253 on Administration of Justice at the United Nations A/RES/63/253, 17 March, 2009, Statutes of the United Nations Dispute Tribunal, Article 2 (1) provide that "The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in Article 3, paragraph 1, of the statute, against the Secretary-General as the Chief Administrative Officer of the United Nations: (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance; (b) To appeal an administrative decision imposing a disciplinary measure; (c) To enforce the implementation of an agreement reached through mediation pursuant to Article 8, paragraph 2, of the statute. 2. The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal. 3. The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association. 4. The Dispute Tribunal shall be competent to permit an individual who is entitled to appeal the same administrative decision under paragraph 1 (a) of the present article to intervene in a matter brought by another staff member under the same paragraph. 5. The Dispute Tribunal shall be competent to hear and pass judgment on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Dispute Tribunal, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgments of the Dispute Tribunal and be responsible for the payment of any compensation awarded by the Dispute Tribunal in respect of its own staff members and shall include, *inter alia*, provisions concerning its participation in the administrative arrangements for the functioning of the Dispute Tribunal and concerning its sharing of the expenses of the Dispute Tribunal. Such special agreement shall also contain other provisions required for the Dispute Tribunal to carry out its functions *vis-à-vis* the agency, organization or entity. 6. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Dispute Tribunal shall decide on the matter. 7. As a transitional measure, the Dispute Tribunal shall be competent to hear and pass judgment on: (a) A case transferred to it from a joint appeals board or a joint disciplinary committee established by the United Nations, or from another similar body established by a separately administered fund or programme; (b) A case transferred to it from the United Nations Administrative Tribunal; as decided by the General Assembly".

members appealing administrative decisions alleged to be in non-compliance with their terms of appointment or contract of employment. The Tribunal conducts hearings, issues orders, and renders binding judgments. Both staff members and the Administration have a right to appeal the judgments of the Dispute Tribunal to the United Nations Appeals Tribunal.

As a transitional measure from the former system, the Dispute Tribunal also hears and passes judgment on cases transferred from the former Joint Appeals Boards, Joint Disciplinary Committees and United Nations Administrative Tribunal.<sup>25</sup>

#### 10.1 Organization of the United Nations Dispute Tribunal

The United Nations Dispute Tribunal (UNDT) is located in Geneva, Nairobi and New York, but it may also decide to hold sessions at other duty stations. It operates on a full-time basis and is composed of five permanent, professional judges - three full-time and two half-time - with one full-time judge in Geneva, Nairobi and New York, respectively. As a provisional measure, the General Assembly further decided to appoint three *ad litem* or temporary judges in order to strengthen the UNDT capacity to adjudicate cases transferred from the former system of administration of justice. The three *ad litem* judges have all the powers conferred to the permanent judges and exercise their functions in Geneva, Nairobi and New York, respectively.

The judges are all nationals from different Member States of the United Nations. They must be of "high moral character" and "possess at least 10 years of judicial experience in the field of administrative law". They are appointed by the General Assembly from a list of candidates drawn up by the Internal Justice Council (which consists of representatives from staff and management, as well as distinguished jurists), for a non-renewable term of seven years. As a transitional measure, one full-time and one half-time judges initially appointed serve for a three-year term and may be reappointed to the UNDT for a further non-renewable term of seven years. The judges are not eligible for any appointment within the UN, except another judicial post, for a period of five years following their respective terms of office.<sup>26</sup>

#### 10.2 Office of Administration of Justice: United Nations Appeals Tribunal

United Nations Appeals Tribunal (UNAT) is an appellate court established by the General Assembly to review appeals against judgments rendered by the United Nations Dispute Tribunal (UNDT). It also hears and passes judgment on appeals from decisions taken by the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board (UNJSPB) and by those agencies and entities that have accepted jurisdiction of the UNAT.

UNAT is composed of seven judges, who normally review appeals in three-member panels. Their judgments are final and binding on the parties.<sup>27</sup>

#### 10.3 Jurisdiction

United Nations Appeals Tribunal (UNAT)<sup>28</sup> is competent to hear and pass judgment on appeals from judgments of the UNDT, decisions taken by the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board

<sup>25</sup>Available online at <http://www.un.org/en/oaj/dispute/> last visited 19 February, 2011

<sup>26</sup>Available online at <http://www.un.org/en/oaj/dispute/organization.shtml> last visited 16 February, 2011. In accordance with its statute, the UNDT has established its own rules of procedure link on 26 June 2009, which have also been approved by the General Assembly. The UNDT elects a President from among the full-time Judges. In June 2009, the Tribunal elected Judge Vinod Boolell (Mauritius) as President for a term of one year. On 2 July 2010, the Tribunal elected Judge Thomas Laker as President for a term of one year. The President directs the work of the UNDT in accordance with the Statute. Three Registries have been established in Geneva, Nairobi and New York respectively to support the work of the UNDT at the different locations.

<sup>27</sup>Available online at <http://www.un.org/en/oaj/appeals/> Last visited 17 February, 2011. The UNAT is based in New York. It holds sessions in New York, Geneva or Nairobi, as required by caseload. It held its first session in Geneva in 2010.

<sup>28</sup>UN. Resolution adopted by the General Assembly (on the report of the Fifth Committee (A/63/642)) 63/253. Administration of Justice at the United Nations A/RES/63/253, 17 March, 2009 Annex II Statutes of the United Nations Appeal Tribunal, Article 2 (1). Provides that "the Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgment rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence; (b) Failed to exercise jurisdiction vested in it; (c) Erred on a question of law; (d) Committed an error in procedure, such as to affect the decision of the case; or (e) Erred on a question of fact, resulting in a manifestly unreasonable decision. 2. An appeal may be filed by either party (i.e., the applicant, a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgment of the Dispute Tribunal. 3. The Appeals Tribunal may affirm, reverse, modify or remand the judgment of the Dispute Tribunal. It may also issue all orders necessary or appropriate in aid of its jurisdiction and consonant with the present statute. 4. In cases of appeal under paragraph



(UNJSPB) and decisions taken by the heads of those agencies and entities that have accepted jurisdiction of the UNAT, which currently include the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the International Seabed Authority (ISA).<sup>29</sup>

United Nations Appeals Tribunal (UNAT) may review a UNDT judgment under appeal only on limited grounds. As an appellant you must allege that UNDT has: (i) exceeded its jurisdiction or competence; (ii) failed to exercise jurisdiction vested in it; (iii) erred on a question of law; (iv) committed an error of procedure, such as to affect the decision of the case; or (v) erred on a question of fact, resulting in a manifestly unreasonable decision. Appeals may be filed as follows: (i) A judgment rendered by the UNDT may be appealed by either party; (ii) A decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board (UNJSPB) may be appealed by a United Nations Joint Staff Pension Fund (UNJSPF) participant; (iii) An administrative decision made by the head of a specialized agency or entity that has accepted the jurisdiction of UNAT may be appealed by a current or former staff member of the agency or entity.<sup>30</sup>

## 11. Conclusion

The establishment of the ILOAT and UNAT has gradually consolidated the idea that international organizations are under a human rights obligation to provide access to staff dispute settlement mechanisms which has also found expression in the opinion of some international organizations that the establishment of administrative tribunals was the fulfillment of an international legal obligation. For instance, when the World Bank Administrative Tribunal was set up in 1980, the official explanatory report referred to a principle accepted in many national legal systems and reaffirmed in the Universal Declaration of Human Rights which required that, wherever administrative power was exercised, a machinery should be available to accord a fair hearing and due process to an aggrieved party in cases of disputes.<sup>31</sup>

In fact, the establishment of the ILOAT and the sister tribunal (UNAT) has shown that contractual rights of international civil servants are binding upon international organizations and this has been endorsed by many administrative tribunals in their jurisprudence. UNAT and the International Labour Organization Administrative Tribunal (ILOAT)<sup>32</sup> have both endorsed the ECJ's view that general principles of law, which may contain fundamental rights obligations, can be relied upon in order to supplement the applicable staff rules and regulations of the organizations subject to their jurisdiction.<sup>33</sup> To the extent that one may consider the right of access to court (as contained, or at least

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1 (e) of the present article, the Appeals Tribunal shall be competent: (a) To affirm, reverse or modify findings of fact of the Dispute Tribunal on the basis of substantial evidence in the written record; or (b) To remand the case to the Dispute Tribunal for additional findings of fact, subject to paragraph 5 of the present Article, if it determines that further findings of fact are necessary".

<sup>29</sup> Available online at <http://www.un.org/en/oaj/appeals/jurisdiction.shtml> Last visited 17 February, 2011

<sup>30</sup> UNAT is composed of seven Judges, appointed by the General Assembly. The current Judges were appointed on 2 March 2009 for one non-renewable term of seven years beginning 1 July 2009. Drawing lots, the General Assembly appointed three Judges (Judges Painter, Courtial and Garewal) for an initial term of three years. These three Judges may be re-appointed for a non-renewable term of seven years.

<sup>31</sup> Memorandum to the Executive Directors from the President of the World Bank, 14 January 1980, Doc. R80- 8, 1., cited in C.F. Amerasinghe, *The Law of the International Civil Service (as Applied by International Administrative Tribunals)* Vol. I (2<sup>nd</sup> edn. , 1994), 41. The World Bank Administrative Tribunal was established by a resolution adopted by the Boards of Governors of the IBRD, IDA, and IFC on 30 April, 1980.

<sup>32</sup> Statute of the Administrative Tribunal of the International Labour Organization, adopted by the International Labour Conference, 9 October 1946, amended on 29 June 1949, 17 June 1986, 19 June 1992 and 16 June 1998, available at <http://www.ilo.org/public/english/tribunal/stateng.htm>. Last visited 22 February, 2011 Article II (5) ILO of the Administrative Tribunal Statute provides that "the Tribunal shall also be competent to hear complaints ... of officials ... of any other intergovernmental organization approved by the Governing Body which has addressed to the Director General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the tribunal for this purpose, as well as its Rules of Procedure." Among others, WHO, UNESCO, FAO, WMO, IAEA, and GATT have made such declarations.

<sup>33</sup> In 1957 the ILOAT held, in *Waghorn v. ILO* (1957) ILOAT Judgment No. 28, that it is also "bound ... by general principles of law." In *Franks v. EPO*, (1994) ILOAT Judgment No. 1333, it included alongside "general principles of law" also "basic human rights." Similarly, the World Bank Administrative Tribunal held that sexual discrimination or harassment violated "general principles of law." *Mendaro v. IBRD*, World Bank Administrative Tribunal Reports Judgment No. 26 (1981) at p.9. See more generally de Merode, World Bank Administrative Tribunal Reports Judgment No. 1 (1981) para. 28 "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". for the ECHR *Golder v. United Kingdom*,

implicit,<sup>34</sup> in the Universal Declaration of Human Rights,<sup>35</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>36</sup> and the European Convention of Human Rights (ECHR)<sup>37</sup> as also forming part of customary human rights law, it becomes apparent that international organizations may be under a duty to provide such access in cases of claims brought against them.<sup>38</sup>

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<sup>34</sup>The ECHR judgment in *Golder v. United Kingdom*, supra 1, para. 36; *Osman v. United Kingdom*, European Court of Human Rights, Application No. 23452/94, 28 October 1998, (1998) ECHR 101, para. 136. With regard to the ICCPR, the Human Rights Committee has referred to "equality before the courts, including equal access to courts" in General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14), 13 April 1984, para. 3.

<sup>35</sup>Article 10 of the Universal Declaration of Human Rights provides: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71.

<sup>36</sup>Article 14 para. 1 of the International Covenant on Civil and Political Rights provides, inter alia, that "all persons are equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171 (1976)

<sup>37</sup>Article 6(1) European Convention on Human Rights provides: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221

<sup>38</sup>See generally, August Reinisch, op. cit.

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