SETTLEMENT OF DISPUTES BETWEEN INTERNATIONAL ORGANIZATIONS AND THEIR EMPLOYEES: THE ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND INTERNATIONAL LABOUR ORGANİZATION*

Ömer MADRA

I. INTRODUCTORY

1. Scope of the paper

The growth of international organizations both in terms of their number and their sphere of competence is one of the most outstanding developments in the international arena in the twentieth century. This development, in consequence. gives rise to an increase in the importance of the phenomenon called international civil service. One can witness the emergence of a vast complex of problems between international organizations and their employees. The solution of these problems is of vital importance for the effective functioning of international administration. It can, therefore, be safely asserted that the operational needs of the daily growing international organizations necessitate the creation of special judicial bodies competent to adjudicate upon such disputes. The acquired legal rights of the staff members who are linked to the organization by a contractual relationship must be protected against infringement by the administrative authority, and not left to the unchecked discretionary powers of the latter.

The hierarchical methods of dispute settlement (i. e., appeal against administrative decisions, to the hierarchical superior

* The present article was prepared at the Center of International law and International Relations of the Hague Academy of International law during the Center's 1976 session. The author is grateful to the Academy for making this study possible, and he wishes to thank Professor Seha L. Meray and Dr. Hüseyin Pazarcı for their valuable advice and comments there upon.

as a final stage of recourse) were tried and they proved to be insufficient in most cases.[1]

It was therefore essential that a system of judicial administrative control be adopted. Direct submission of the disputes arising between an international organization and its employees to the International Court of Justice is impossible, since neither of the parties have any *locus standi* before the Court in contentious cases; Article 34 of the State of the Court expressly states that only States may be parties in cases before the Court. Since international organizations operate independently of national control and pressures because of their international personality, such disputes cannot be submitted to the jurisdiction of national courts and tribunals either. Aside from the fact that international organizations enjoy general immunity from municipal jurisdiction, an overwhelming majority of the employees of each and every organization is not subject to any municipal system of law. The generally accepted opinion on this subject is that the settlement of such disputes belongs to the realm of the *internal law of the organization*, totally different from any municipal system. All this, in short, leads one to the necessity of the creation of special, independent international administrative tribunals.

It is proposed to examine in this paper the structure and functions of the two major international administrative tribunals, that of the United Nations and that of the International Labour Organization, with special emphasis on the disparities in the status of the parties before them. It would be quite fascinating to make a comparative study on administrative law; for, as an eminent author puts it, "the case-law of international administrative tribunals can... Serve as a laboratory for the examination of fundamental principles common to many systems of municipal administrative law."[2] But, admittedly, this is a task which goes beyond the capacity of the present writer and one which

1 Wolfgang Friedmann and Arghyrios A. Fatouros, "The United Nations Administrative Tribunal", *International Organization*, Vol. 11, 1957, pp. 14–15.

2 Michael B. Akehurst, *The Law Governing Employment in International Organizations*, Cambridge, University Press, 1967, p. 269.

falls somewhat outside the scope of the general topic.[3] The numerous questions related with the nature of the law applicable by the Tribunals or the question whether the internal law of international organizations form part of international law are also excluded, mainly because they would constitute the subject-matter of a much larger study than this one, and also because they are basically of theoretical importance. As regards the exclusion of the various other administrative courts and tribunals, it must be stated that this is a necessity stemming from mainly practical reasons. In the first place, the similarity between the Administrative Tribunals of the United Nations and International Labour Organization (I. L. O.) on the one hand, and other existing administrative courts and tribunals, on the other, is so apparent in many aspects that a study of the first two would give a fairly good idea of the functioning and role of the others. Secondly, the U. N. and I. L. O. Administrative Tribunals have, during their period of existence, developed a considerable case-law, the study of which will enable the reader to get acquainted with the various aspects of the current problems of international administrative justice. Furthermore, with the exception of the Court of Justice of the European Communities, the scope of activity of all the other administrative tribunals is incomparably smaller. As to the Court of the Communities, mention should be made of the fact that it is not a tribunal especially created for administrative purposes, but a Court empowered by virtue of Articles 164 and 179 of the E. E. C. Treaty to *act as such*, whenever necessary. It deserves to be examined, perhaps, within the context of a paper more detailed than the present one.

2. Historical Backround; Structure and Functions[4]

The ancestor of all administrative tribunals can be found in the League of Nations . The initial system of appeal against

3 The present article was originally prepared as a paper within the framework of a general study on the "Settlement of Disputes within the framework of Specialized Agencies, UNCTAD, GATT, Systems of Economic Integration, and in the Field of Commodity Agreements."

4 For the classical study on the development and functions of international administrative tribunals, see Suzanne Bastid, "Les tribunaux administratifs internationaux et leur jurisprudence", *R. C. A. D. I.*, Vol. 92, 1957, pp. 343–517; see also Mohammed Bedjaoui, *Fonction publique internationale et influences nationales*, Paris, Pedone, 1958.

administrative decisions to the League Council was replaced by a tribunal in 1927. I. L. O. was also making use of it. This body which served as the prototype of all administrative tribunals continues its existence today as the Tribunal of the I. L. O.[5] In its eighteen years of existence (1928–1946) it passed thirty-seven judgements, of which the last fourteen (Judgements nos: 24-37) gave rise to a serious crisis relating to the position of the Tribunal *vis-à-vis* the Assembly of the League. The Tribunal had declared in these judgements that the Assembly could not legally affect the acquired rights of the staff members. The Assembly responded by refusing to allocate the sums necessary for the implementation of the said judgements.[6] It was stated by the Assembly that there was the deliberate intention -on the part of the Assembly- to violate the acquired rights of the staff members, because of the then existing conditions of war.[7] A long legal debate followed, and although strong objections in defence of the "sovereignty" of the Tribunal were voiced, the Assembly decided not to give effect to the judgements concerned.[8] In spite of this somewhat "disturbing" juridical precedent, the Administrative Tribunal was maintained after the dissolution of the League and was later transformed into the Administrative Tribunal of the International Labour Organization. (1947).

The Statute of the Tribunal was amended in 1949 to enable other inter-governmental organizations to use it as their administrative tribunals. Since then, many organizations have taken advantage of this provision. Today, the Administrative Tribunal of the I. L. O. is the judicial organ of the following organizations: U. N. E. S. C. O., W. H. O., I. T. U., W. M. O., F. A. O., C. E. R. N. (The European Organization for Nuclear Research), I. A. E. A., U. P. U., G. A. T. T., B. I. R. P. I. (The United International Bureaux for the Protection of Industrial Property), Euro-Control (The European Organization for the Safety of Air Navigation), W. I. P. O. (World Intellectual Property Organization) and Inter-Governmental Council of Copper Exporting Countries.

5 Bastid, "Les Tribunaux administratifs...", pp. 363–364.

6 *Ibid.*, p. 373.

7 Jacques Ballaloud, *Le Tribunal Administratif de l'Organisation International du Travail et sa jurisprudence*, Paris, Pedone, 1967, pp. 21–22.

8 Bastid, "Les Tribunaux administratifs...", p. 376.

The United Nations, after considerable debate and opposition to the idea, established its own tribunal in 1949.[9] Article XIV of the Statute of the Tribunal provides for an extension of competence to any specialized agency, but the fact is that most of these organizations make use of the I. L. O. Tribunal. At present, I. M. C. O. and I. C. A. O. are the only organizations which have accepted the competence of the U. N. Administrative Tribunal.

Apart from these two major Tribunals several others have been set up by various organizations. As was mentioned above, the Court of Justice of the European Communities has jurisdiction over disputes between the Communities and their employees.[10] O. E. E. C. (now O. E. C. D.) set up an Appeals Board in 1950 which was a real administrative tribunal, competent to give binding decisions. The Institute for the Unification of Private Law (Unidroit) amended its Statute in 1952 to provide for the establishment of an administrative tribunal. Western European Union (W. E. U.) and N. A. T. O. have created Appeals Boards -or Complaints Commissions- for the same purpose in 1956 and 1965, respectively. Council of Europe and the Organization of American States are also planning to establish such bodies. It thus appears that a wide network of independent judicial organs is being set up, and virtually all international organizations have accepted the competence of such bodies. It must be added that "in the social pressure being exerted in favour of the institution and expansion of this recourse, the jurisprudence of [the] Administrative Tribunals [of the U. N. and I. L. O.] has undoubtedly played an appreciable role.[11]

The international character of the Administrative Tribunals of the U. N. and I. L. O. was confirmed by the International Court of Justice in its advisory opinion rendered in 1956.[12] They

9 For a detailed account of the points raised in the course of the establishment of the UN Administrative Tribunal, see Byung Chul Koh, *The United Nations Administrative Tribunal*, Baton Rouge, Louisiana State U. P., 1966, pp. 33–49.

10 Cf. Art. 179 of the EEC Treaty; Art. 152 of the Euratom Treaty.

11 Suzanne Bastid, "Have the United Nations Administrative Tribunals Contributed to the Development of International Law?", in *Transnational Law in a Changing Society* (Ed. W. Friedmann *et. al.*), New York, London, 1972, p. 307.

12 *Judgements of the Administrative Tribunal of the ILO Upon Complaints Made Against the UNESCO, Advisory Opinion of Oct.* 23 *rd* 1956, I. C. J. Reports, 1956, p. 97.

are competent to settle disputes between individuals (staff members) on the one side, and the organizations, on the other.[13] The official appears as the plaintiff and the organization as the defendant. The claims may be directed either against the organization itself, or against the Secretary-General (or the Director-General). Nevertheless, the result is the same, since the judgement is binding on the whole organization, a fact also confirmed by the International Court of Justice.[14] The legal basis of the Tribunals lies both in the constitutive treaties of the organizations in respect of which they have jurisdiction, and the staff members' contract of employment. The Tribunals are open to officials and ex-officials, plus persons to whom their rights have devolved on death, and to third party beneficiaries under the terms of appointment.[15] Because of the international character of the Tribunals, provision is made for the judges to be of different nationalities. The U. N. Tribunal is composed of seven judges (called "members" in the Statute), but only three sit in a particular case. (Article III of the Statute.) The I. L. O. Tribunal, on the other hand, consists of three judges and three deputies, but only three sit in a particular case, of whom one at least be a judge. (Article III of the Statute.) The judges are appointed for three years by the respective deliberative organs of the U. N. and I. L. O. Reappointment of the judges is possible. (Article III of both Statutes.) Membership has been fairly consistent in both Tribunals.[16] Dismissal of a judge of the U. N. Administrative Tribunal is possible only on the condition that other members reach unanimity on his (or her) unsuitableness for further service. (Article III/5 of the Statute of U. N. Tribunal.) No procedure for dismissal is provided for in the Statute of the I. L. O. Tribunal. Judgements of both Tribunals are rendered by a majority vote; they are final and binding. However, by later amendments to the Statutes, a special and limited type

13 Sometimes the ILO Tribunal acts as a "panel" of arbitrators, by virtue of its Statute, Art. II/4. See the judgement no. 28 (Waghorn), 1957.

14 *Effect of Awards of Compensation made by the UN Administrative Tribunal*, I. C. J. Reports, 1954, pp. 53–54.

15 Cf. Art. II/6 of the UN Administrative Tribunal Statute; Art. II/2 of the ILO Administrative Tribunal Statute.

16 For instance, Mme Bastid has always been present -as President or Vice-President- in the U. N. Tribunal since her election in 1950. The same is true for M. Letourneur (France), President of the I. L. O. Tribunal since 1959.

of review by way of a request for an advisory opinion from the I. C. J. is also provided for, which is proposed to be examined further on. Each Tribunal is assisted by its own executive secretariat provided by the organizations. These secretariats function continuously between the ordinary sessions of the Tribunals, which are held at fixed dates. (Articles IV of both Statutes.) The procedure followed by the Tribunals is heavily inspired by the the continental -especially French-administrative law system, and is based substantially on the written briefs lodged by the parties.[17]

The United Nations Administrative Tribunal has, up to the present time, rendered nearly two hundred judgements, and the I. L. O. Tribunal has handed down approximately three hundred, together constituting an extensive and impressive body of case-law.

II. DISPARITIES IN THE STATUS OF THE PARTIES: QUESTIONS RELATED WITH STRUCTURE AND PROCEDURE

Following this summary account of the past and present state of the two Tribunals, it is proposed to trace down the disparities, if any, in the status of the parties before the Tribunals. By briefly examining the various aspects of the mechanisms of international administrative justice, it is hoped to clarify such issues as to what extent the rights of individuals (international civil servants) are taken into account , are they effectively protected against the arbitrary discretionary powers of the administrators, how much the acquired rights are given effect to, etc. In short, it is intended to look into the question whether thre is an inequality between parties or not, and if so, where does this inequality becomes apparent. This seems to be a very significant point, for "the principle of equality of the parties follows from the requirements of good adminisration of justice."[18] It is also hoped that during this survey the position of

17 D. W. Bowett, *The Law of International Institutions*, (2 nd ed.), London, Stevens, 1970, p. 286.

18 *Application for Review of judgement No.* 158 *of the United Nations Administrative Tribunal, Advisory Opinion*, I. C. J. Reports 1973, p. 179.

of the Tribunals *vis-à-vis* the organizations, i. e., the extent of their "independence" from national pressures will be clarified too.

It might be added that the problems emanating from the judicial control of administrative powers and the issues related with the effectiveness of the remedies afforded should occupy a foremost place, while it is not unnecessary to devote some attention to the questions of structure and procedure.

1. Problems of Structure

The Administrative Tribunals of the U. N. and I. L. O. appear to be more detached from the involvement of States than the I. C. J. is, in that their Statutes contain no provision for the adjunction of *ad hoc* judges, who are nationals of the parties. The nature of the disputes calls for the creation of a juridiction completely independent from States.[19] It can be construed that this structural characteristic can be helpful in the protection of staff members' rights, because the examples of strong efforts by certain States to influence and control the functioning of the Administrative Tribunals to the disadvantage of the officials have not been so rare in the history of the Tribunals. The fact that the judges of both Tribunals are elected by the legislative organs of the organizations, and not by a mixed procedure as in the case of the I. C. J., provides for yet another ground of equality, permitting all States to participate on an equal basis in the election. It could still be argued, of course, whether it would not be better to leave the nomination of the judges to judicial organs rather than political ones[20], for the purpose of excluding all possibility of political pressure from major States.

As was mentioned above, the executive secretaries and other staff of the Tribunals are supplied by the administrative heads of the respective organizations. The soundness of this formulation is rather doubtful, taking into consideration the fact that these staff members are linked with loyalty ties to the organization, and it is not difficult to imagine that they could find them-

19 Ballaloud, *op. cit.*, p. 28.

20 A proposal to that effect was made by Suzanne Basdevant [Mme Bastid] in her thesis: *Les Fonctionnaires internationaux*, mentioned by Ballaloud, *op. cit.*, p. 29.

selves in a position of dependence to the latter. They could, for instance, communicate information to the Secretary-General of the United Nations or the Director-General of the International Labour Office, if ordered to do so. This action could obviously create serious disadvantages for the plaintiff. Furthermore, this is not a totally theoretical conclusion, for the frequent exclusion of the executive secretary from the deliberations of the U. N. Tribunal[21] can only be attributed to such a consideration on the part of the Tribunal. Thus, the establishment of a separate and independent "technical secretariat" for this purpose seems to be a better solution.

2. **Problems of Procedure**

Administrative Tribunals of the U. N. and I. L. O. function in accordance with a procedure established in their respective Statutes and Rules. The general rule for application to the Tribunals -as expressly provided for in the Statutes- is that the applicant, in all cases, must *exhaust administrative remedies*, and has to show that he is appealing against a *final decision* of the the Administration which has caused him some injury.[22] The only exception to this condition of receivability is the case in U. N. where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal. (Article VII /4 of the Statute.) The general rule of "exhaustion of remedies" is also confirmed by the jurisprudence of the two Tribunals.[23] This requirement is also an indication of the fact that administrative tribunals are normally bodies of last resort.[24] Thus, recourse to an Administrative Tribunal reveals an exceptional character and carries with it the risk of not ensuring the jurisdictional guarantees to the employee which he could have at least in some municipal laws . It is not difficult to imagine a situation where a staff member, after his application having

21 *Ibid.*, p. 35.

22 In the UN Tribunal, for example, the necessary condition for the jurisdiction of the Tribunal is the submission of the dispute first to the joint appeals body [Board], provided for in the Staff Regulations, See Art. VII /I of the Statute. The Statute of the ILO Tribunal comprises similar provisions; cf. Art. VII /1.

23 See, for example, UN Adm. Trib. Judgement no. 56 (Aglion), 1954; ILO Adm. Trib. Judgement no. 15 (Leff), 1955.

24 Bowett, *op. cit.*, p. 287.

been rejected by his chief of office, could hesitate to submit his case to a superior official. He could find it to his better judgement to seize directly the Tribunal.[25]

It is not intended here to underestimate the importance of the exhaustion of administrative (or local) remedies rule in general; nor can its necessity for the effective and smooth functioning of the administrative mechanism be denied. It could, of course, be argued that without the existence of such preconditions the whole administrative process would lapse into a state of chaos, and the Tribunals would be overburdened by all kinds of applications, many of them frivolous. Nonetheless, it is also a matter for discussion whether the international civil servants, under the given conditions, are not left in a slightly inferior status *vis-à-vis* the organizations, compared with the guarantees they could have in certain municipal systems.[26]

The second prerequisite for "receivability" is that the application must be filed within a prescribed time, reckoned from the date of notification of the administrative decision impugned. (Article VII /4-5 of the Statute of the U. N. Tribunal; Article VII /2-3 of the Statute of the I. L. O. Tribunal.) The wording of the relevant provisions of the Statute of the I. L. O. Tribunal is such that it is not clear whether the said time-limit begins to run from the "decision impugned" or from the "final decision." Nevertheless, it must be construed to be the second, because otherwise the applicant could find himself to be in a disadvantageous position. Furthermore, in the case where the administration "keeps silent" before an official's claim, the situation could get more complicated, for there seems to be no provision setting up a time-limit for the joint appeals body of the I. L. O. Some authors even mention the possibility of officials' running the risk of foreclosure[27], though, admittedly, this is a question of rather theoretical importance, since no example of it in the case-law of the Tribunals could be given as yet. However, strict interpretation of the time-limits by judicial or "quasi-judicial" bodies could cause the appelant some injury. Concerning the

25 Ballaloud, *op. cit.*, pp. 44–45.

26 In French administrative jurisprudence, for example, the condition to obtain a preliminary decision by the administration is necessary and *sufficient*. See Ballaloud, *op. cit.*, p. 46.

27 *Ibid.*, pp. 48–49.

U. N. Administrative Tribunals's Judgement No. 172 (Quemerais), for example, the U. N. Committee on Applications for Review -a special committee of member States established to make requests to the I. C. J. for review of the Tribunal's judgements- turned down the request on the grounds that "time-limits had expired- even though [the] appellant pointed out the judgement had reached him a month and eight days after it was rendered, after the deadline."[28]

The filing of an application to the Tribunals does not have the effect of suspending the execution of the administrative desion contested. (Article VII/6 of the Statute of the U. N. Tribunal; Article VII/4 of the Statute of the I. L. O. Tribunal). In practice, a number of applicants have made special requests for the suspension of the decisions of the U. N. Secretary-General; no interim measure, however, has been ordered by the U. N. Administrative Tribunal.[29] This is yet another point of detachment from certain municipal law systems and could be considered an element of insecurity for the staff member. For, suspension of the execution could well provide an additional safeguard for the protection of his acquired rights. True, too much recourse to such a measure could indeed hinder the smooth functioning of the administrative mechanism, but it can hardly be denied that the mere existence of this safeguard will urge the administration to pay more attention to the observance of the employee's rights.

3. Review Procedures

The respective Statutes of the U. N. and I. L. O. Administrative Tribunals state that the judgements of the Tribunals "shall be final and without appeal."[30] But these provisions should not be taken literally. In 1946, the Statute of the I. L. O. Tribunal was amended to include a new Article 12 which provided for a limited right of appeal by the Governing Body of International

28 Federation of International Civil Servants' Associations [FICSA], *Studies and Policies*, No. 2: *Due Appeals Procedures for Cicil Servants*, Geneva, 1974, p. 15.

29 See UN Adm. Trib. Judgement No 13 (Vanhove), 1952; No. 54 (Mauch), 1954.

30 Cf. Statute of the UN Adm. Trib., Art. X/2; Statute of the ILO Tribunal, Art. VI/1.

Labour Office or the Administrative Board of the Pensions Fund, in the form of a request for an advisory opinion from the I. C. J. According to the same article (paragraph 2), the opinion given by the Court was to be binding. At the end of 1955, following the dissatisfaction of certain States with the U. N. Tribunal's judgements in the "Fifth Amendment" Cases[31], a new Article 11 to the Statute of the Tribunal was added, establishing a similar procedure for review.[32] The major difference between these two articles is that the latter extends the right of appeal to any member State, the Secretary-General of the U. N., or the *individual applicant* or his successor. The scope of the latter article is also much larger. For obvious reasons, this differentiation between the two formulations puts the officials who are under the competence of the U. N. Tribunal in a stronger legal position than those under the I. L. O. Tribunal's competence. Furthermore, the provisions of the Statute of the I. L. O. Tribunal strips the international civil servant of a latent guarantee for the protection of this rights, for the official concerned is in no position to challenge the decisions of the Tribunal.[33] Thus, an inequality is created between the parties. The efforts to justify the provision of Article 12 by stating it "does not envision an appeal on the merits, but only creates the possibility of asking the Court, in a strictly limited fashion, to pronounce on the competence of the Tribunal",[34] do not suffice to diminish the importance of this inequality. A special Committee on Applications for Review of U. N. Administrative Tribunal's judgements is established for the purpose of receiving a request and deciding whether or not to ask for an advisory opinion from the I. C. J. This "screening" committee is composed of member States the representatives of which had served on the General Committee of the most recent regular session of the U. N. General Assembly.[35]

31 Bowett, *op. cit.*, p. 293; cf. also *infra.*

32 Apart from being of a limited character, recourse to the ICJ was, according to the majority of the Court itself, "to be held *only in exceptional cases.*" See the *Application for Review...*, ICJ Reports 1973, p. 177 (emphasis added).

33 In its Judgement No. 83 (Jurado). 1965, the ILO Adm. Trib. held it had no power to order the Organization to request an advisory opinion from the ICJ on behalf of the complainant who had lost the case.

34 Francis Wolff, "Le Tribunal Administratif de l'Organisation International du Travail (Origine et évolution)", *Etudes et Documents*, Paris, 1970, p. 66.

35 Koh. *op. cit.*, p. 89.

This procedure has been criticized by the great majority of the authors writing on the subject who state that an assessment of a purely legal character should not be left to a political body.[36]

Both of the Amendmends concerning the review of the judgements of the two Tribunals were made following two crises involving the position of the Tribunals *vis-à-vis* the organizations. This fact leaves little doubt that the sponsors of the amendments intended to exercise some kind of political control over the Tribunals. The review procedure of U. N. Tribunal's judgements is also open to political pressure in that it gives the right of appeal to member States too. Thus, in the case of an application by a member State, the staff member could find himself in a position of inequality before the Committee.[37]

The choice of the International Court of Justice as an appellate body for the review of Judgements has also been subject to criticism, "because of what was said to be an inherent inequality under the Statute of the Court between the staff member, on the one hand, and the Secretary-General [or the Director – General of the I. L. O.] and member States, on the other."[38] Under Article 66 of the Statute of the I. C. J. only States and international organizations are entitled to submit statements to the Court. The officials concerned, therefore, have no *locus standi* before the Court. During the debates in the U. N. General Assembly concerning the adoption of the review procedure it was maintained that, "a mere expression of a hope in the General Assembly... that member States and the Secretary-General would forgo their right to an oral hearing was not a sufficient guarantee of equality; nor was it thought appropriate that an individual should be dependent on another party to the dispute for the presentation of his views to the Court."[39] In the year following the adoption of Article 11 of the Statute of the U. N. Administrative Tribunal, the Executive Council of U. N. E. S. C. O. submitted to the Court for an advisory opinion the

36 Cf. Suzanne Bastid, "Le Tribunal Administratif des Nations Unies", *Etudes et Documents*, Paris, 1970, pp. 15–32; Akehurst, *op. cit.*, p. 23; Koh. *op. cit.*, p. 88 *et seq.*; Friedmann and Fatouros, "The United Nations...", pp. 20–22; Bowett, *op. cit.*, p. 294.

37 *Application for Review...*, I. C. J. Reports 1973, p. 178. In this advisory opinion, the ICJ renders a thorough analysis of the objections concerning the propriety of Art. 11 of the UN Adm. Trib. Statute, see p. 177 *et seq.*

38 *Ibid.*, p. 177; pp. 178–183, Cf. also *supra.* note 36.

39 Application for Review..., I. C. J. Reports 1973, p. 178.

judgements rendered by the I. L. O. Tribunal in 1955 (Judgements nos. 17, 18, 19 and 21). This is the first and only example of recourse to the I. C. J. against judgements of the I. L. O. Tribunal. In that case U. N. E. S. C. O. tried to solve the problem of inequality by transmitting the officials' briefs and statements to the Court, and by waiving its rights to oral hearings.[40] In the opinion it gave, the Court held that any absence of equality in each specific case could be "cured by the adoption of appropriate procedures."[41] The Court, in its advisory opinion rendered in 1973, which constitutes the only example of the application of Article 11 of the statute of the U. N. Tribunal so far, held the same views and stated its satisfaction over the fact that adequate information had been made available to it, and that all requirements to ensure an equality between the interested parties had been met in that particular case.[42] Thus, the majority of the Court seems to be of the view that although the inherent inequality would continue to exist on the formal level, substantially it could be remedied in each case by some action (or inaction) by the administrators, the States concerned and the Court itself.[43]

There are, however, a number of questions which remain unanswered. What would the possible outcome be, for instance, if an international organization or a member State were to demand oral hearings in the case of a request for an advisory opinion? Would the Court refuse to allow oral hearings, or would it refuse to give an opinion? Then, there is always the possibility of a State intervening and asking for oral hearings in the Court. Thus it can be asserted –along with the I. C. J. – that the review procedure is, as a whole, not free from difficulty.[44] The establishment of an external court, superior to the Administrative Tribunals –in lieu of the I. C. J.–,[45] together with amendments of the relevant provisions with a view to ensure greater equality between the parties, could constitute a solution to some of these problems.

40 *Judgements of the Administrative Tribunal of the ILO...*, I. C. J. Reports 1956, pp. 85–87.
41 *Application for Review...*, I. C. J. Reports 1973, p. 180.
42 *Ibid.*, pp. 181–182.
43 Friedmann and Fatouros, "The United Nations...", p. 22.
44 *Application for Review...*, I. C. J. Reports 1973, p. 183.
45 FICSA, *op. cit.*, p. 27.

III. DISPARITIES IN THE STATUS OF THE PARTIES: QUESTIONS RELATED WITH SUBSTANCE

1. Judicial Control of the Discretionary Powers of the Administration

It has been stated that the Administrative Tribunals of the U. N. and I. L. O. are competent to adjudicate upon disputes between staff members or their successors, on the one hand, and the international organizations, on the other. The subject matter of their jurisdication is limited to disputes arising from the terms of the contracts of employment. Judicial review of administrative decisions appear to be the most important function of the Tribunals.[46]

The major problem emanating from the accomplishment of this task is to what extent the Tribunals are competent to question the exercise of administrative discretion. Both Tribunals –and the I. C. J.– have adopted the view that they are Tribunals of "limited jurisdisction".[47] Furthermore, both Tribunals have consistently held that they are not in a position to review the actions and decisions of the administrative heads of the organizations which fall within the limits of the latters' discretionary powers; they would not substitute their opinions to those of the administrators.[48] To what extent are the Tribunals competent to challenge the disciplinary action taken by the heads of the administration? This is a question posed since the creation of the international administrative tribunals. Generally speaking, disciplinary measures have come be accepted as traditionally belonging to the realm of administrative discretion. Hence, much of the criticism directed against the U. N. Tribunal's Judgements Nos. 29–37 (Gordon etc.), the so-called Fifth Amendment Cases, centered on the argument that the Tribunal had not accepted the Secretary– General's opinion as final, and

46 For an excellent analysis of the judicial review process, see Akehurst, *op. cit.*, pp. 113–183.

47 *Judgements of the Administrative Tribunal of the I. L. O. ...*, I. C. J. Reports 1956, p. 97.

48 See the UN Adm. Trib. Judgements Nos. 21 (Rubin), 43 (Levinson), No, 48 (Wang) etc.; ILO Adm. Trib. Judgements Nos. 13 (Mc Intire), 32 (Garcin), 69 (Kissaun), etc.

had challenged his administrative discretion.[49] The Tribunal, however, had merely held that the invocation of a constitutional privilege by certain staff members who refused to answer the questions of a U. S. Senate subcomittee, could not be described as "serious misconduct" which alone gave the Secretary-General (under Article X/2 of Staff Regulations) the power to dismiss staff members summarily. The I. L. O. Tribunal, in its Judgements Nos. 17, 18, 19 and 21, –the "loyalty cases" of 1955–, held that an official's refusal to testify before a Loyalty Board could not justify the non-renewal of his contract or his dismissal. These views were subject to heavy criticism by the Director-General (of the International Labour Office), as a direct interference with his administrative discretion as to what was "for the good of the service and in the interests of the Organization."[50] It may be asserted that to exempt the Administrative Tribunals from such a limited competence (or right) of review, and to insist upon the finality of the chief administrators' opinions would create a great inequality between the parties, "depriving officials of all safeguards against arbitrary action."[51]

2. The "Political" Cases

Because of the special position they occupy in the jurisprudence of the Tribunals, it is now proposed to give a summary of the "political" cases which culminated in a grave crisis and threatened the very existence of the Tribunals.[52]

The notorious Mc Carthy period in the United States led to a series of trials, parliamentary investigations and anticommunist propaganda campaigns which included a wave of violent attacks against the United Nations. Secretary-General Trygve Lie bowed to the tremendous pressure exerted by the U. S. Government and Congress, and decided to dismiss several U.S. officials of the Secretariat, because they had refused –by invoking the Fifth Amendment of the U. S. Constitution– to ans-

49 Akehurst, *op. cit.*, p. 148 *et seq.*

50 Bowett, *op. cit.*, p. 289.

51 Akehurst, *op. cit.*, p. 128.

52 For a detailed account of the cases, see Georges Langrod, *Civil Service (Its Origins, Its Nature, Its Evolution)*, A. W. Sijthoff, Leyden, 1963, pp. 208–232. See also Bedjaoui, *op. cit.*, pp. 576–618; Koh, *op. cit.*, pp. 114–123.

wer the questions of a Federal Grand Jury. The ground given for the dismissals was that the officials' attitude constituted a fundamental breach of their service obligations under the Staff Regulations, and they were consequently unfit to remain in the employment of the Secretariat. Altogether eighteen U. N. officials were terminated, twelve of which for refusal to testify before the Jury. These dismissals brought about a crisis among the Staff of the Secretariat, culminating in the suicide of Abraham Feller, Legal Counsel of the Secretariat, and causing great anxiety among other officials. Although the U. N. Secretary-General Lie had announced his resignation towards the end of 1952, he asked the staff to submit to the questioning undertaken by the F. B. I. and executed in the Secretariat's premises, during office hours. A great majority of the officials were thus questioned.[53] The taking over of office by Dag Hammarskjöld did not alter the situation. The whole Organization was subject to heavy pressure from the U. S., where the "witch-hunt" started by Senator Mc Carthy was in full bloom.

The U. N. officials who had been dismissed by the previous Secretary-General made an appeal to the U. N. Administrative Tribunal at the beginning of 1953 for reinstatement in their former posts, arrears of salary, and damages. The Tribunal, by its judgements pronounced on 21 August 1953, settled the dispute by the following observations: The invoking of a constitutional privilege in respect of acts outside a staff member's professional duties could not be considered "serious misconduct, which alone under Article X/2 of Staff Regulations and pertinent Rules justifies the Secretary-General in dismissing a staff member summarily without the safeguard afforded by the disciplinary procedure."[54] Under these judgements, ten applicants –holding permanent appointments– won their cases. Whenever there was a request for the rescission of the decision contested (i. e., reinstatement in lieu of compensation) the Tribunal so ordered. In the cases where compensation was requested, the Tribunal awarded considerable sums to the claimants. These judgements drew heavy attacks from the U. S. in particular. The new Secretary-

53 Langrod, *op. cit.*, pp. 214–216.

54 UN Administrative Tribunal Judgement No. 29 (Gordon), *Judgements of the United Nations Administrative Tribunal (JUNAT), Nos.* 1–70, New York, 1953, pp. 124–126.

General Hammarskjöld, in a report he submitted to the General Assembly, proposed an amendment to the Staff Regulations, envisioning the enlargement of the Secretary-General's discretionary powers to dismiss permanent officials. In the proposal several new criteria such as the "integrity" of the officials, "the interests of the good administration of the organization", etc. were introduced. A second proposal by the Secretary-General was an amendment to the Statute of the U. N. Administrative Tribunal. According to this amendment, in the event of a decision of rescission (i. e., reinstatement), the Tribunal was to be empowered to fix the amount of compensation if the Secretary-General did not see it fit to reinstate the staff member.[55] Following a long debate in the General Assembly, these proposals were adopted in general and were transformed into new articles of the relevant texts. Meanwhile, the Secretary-General, by virtue of Article IX/1 of the Statute, opted, in all cases without exception, for paying compensation in lieu of reinstatement ordered by the Tribunal. This lead to a grave crisis when the U.N. General Assembly –under strong U.S. pressure– refused to allocate the sums necessary for the implementation of the Judgements in question.[56] Eventually, the General Assembly requested an advisory popinion from the I. C. J. on the subject. In its advisory opinion in 1954, the Court confirmed that the U. N. Tribunal was not a subordinate organ of the General Assembly, but "an independent and truly judicial body pronouncing final judgements" which are binding on the Assembly.[57] Upon this Opinion, the General Assembly resolved to make the necessary allocation.

The settlement of the legal issue, however, did not put an end to the crisis. The effects of political pressure from the U.S. were to be felt in U. N. E. S. C. O. this time. The Director-General of U. N. E. S. C. O., upon the injunction of U. S. authorities, refused to renew the appointments of four officials because of their refusal to appear before the Loyalty Board of the U. S. A. The Director-General regarded this act as a "breach of integrity"

55 Langrod, *op. cit.*, p. 221.

56 The U. S. authorities held that they would refuse to make a contribution to be used in financing "subversive activities.", *Ibid.*, pp. 222–224. See also Koh, *op. cit.*, p. 119.

57 *Effect of Awards of Compensation...*, ICJ Reports 1954, pp. 51–53.

on the part of the officials concerned. All four officials appealed to the I. L. O. Tribunal. In the Judgements it rendered, the Tribunal observed that, "the conduct of an official with regard to the Government of his country... is entirely outside the control of the disciplinary authority of the Organization."[58] Furthermore, "the Director-General of an international organization cannot associate himself with the execution of the policy of the Government authorities of any member State... without misusing the authority which has been conferred on him."[58a] The decisions contested were rescinded on these grounds. Upon the Judgements, the Executive Board of U. N. E. S. C. O. lodged an appeal under the newly adopted Article XII of the Statute of the I. L. O. Tribunal, alleging an excess of jurisdiction committed by the Tribunal. The International Court of Justice rejected the claim of the Organization and confirmed the Tribunal's decisions.[59] Consequently, all the applicants got compensation from U. N. E. S. C. O. This was to be the end of the crisis.

3. Developments in the Jurisprudence of the Tribunals

The problem of delineating the limits of the jurisdictional powers of the administrative tribunals and those of administrative discretion is almost insoluble, it seems. As was mentioned, the Tribunals have always expressly stated their will not to interfere with the internal administrative practices of the executive organs. Nonetheless they have developed a jurisprudence to *define* the limits of the discretionary powers of the administrator, trying, in this way, to bridge the gap in the legal protection of staff members'rights. This can be defined as an effort to set up a balance between the effective functioning of the organizations and sufficient guarantees for the employees. The limitations to the discretionary powers of the administrator, brought about by the the Tribunals, are difficult to classify categorically. Nevertheless, an attempt will be made to dwell upon some of the major concepts developed in this field by the Tribunals.

58 ILO Administrative Tribunal's Judgement no. 15 (Leff), *ILO Off. Bull.*, Vol. 37, no. 7, 1954, p. 292.

58a ILO Administrative Tribunal's Judgements nos. 17–19 and 21 (Duberg, Leff, Wilcox, Bernstein), *ILO Off. Bull.*, Vol. 38, no. 7, pp. 255–256.

59 For a criticism of the Advisory Opinion of the Court, see Bin Cheng, "Revision of Judgements of the ILO Administrative Tribunal by the ICJ", *The Solicitor*, Vol. 24, Nos. 4–5 (April–May), 1957, pp. 102–104; 132–135.

Since judicial review of the *substance* of administrative decision is limited by the very concept of discretionary powers, the Tribunals have tried to control the administration by examining the *motives* of the decision. The judicial review is thus centered upon the concept of irregular or improper motives. Irregularities of motive have usually been desribed by the French term of "détournement de pouvoir". The Tribunals have often held that the discretionary powers must be exercised without improper motive so that there shall be no misuse of power.[60] It must, however, be stated that the U. N. Administrative Tribunal has acted rather "timidly" and made very few findings of improper motives. The only examples of the use of this concept can be found in the Judgements nos. 15 (Robinson), 1952 and 18 (Crawford), 1953. In its subsequent judgements, especially in the "Fifth Amendment" cases, the Tribunal did not find any evidence of improper motivation, although the circumstances were very similar to those of the preceding judgements.[61] The I. L. O. Tribunal, on the other hand, has chosen to act less cautiously, and in a series of cases has invoked the obligation of the administration not to misuse the authority conferred upon it.[62] On the other hand, the great difficulty of proving irregular motives mitigates the importance of this concept as a major form of judicial review. Irregular motivation does not, by itself, provide sufficient ground for the complaining official to base his case on.

According to the jurisprudence developed so far, the Tribunals will also assume jurisdiction whenever they find non-observance to the *procedure* specified in the relevant texts. Because of the difficulty of proving manifestations of non-observance - on the part of the administration- to the terms of employment, the Tribunals apparently had to insist on observance of correct procedure, in order to check arbitrary administrative discretion. In many circumstances, the Tribunals have established a body of rules based on certain general principles of law. First of all, the rule *audi alteram partem* may be mentioned.

60 See the UN Administrative Tribunal's Judgements Nos. 19 (Kaplan), 1953, 90 (Chiachia), 1963 and many others. See also the ILO Tribunal's Judgements Nos. 17–19, 21 (Duberg, etc.), 1955, and many subsequent Judgements.

61 Friedmann and Fatouros, "The United Nations...", p. 26.

62 Cf. *supra*, note 60; see also Judgements Nos. 22–24 (Froma, etc.), 1955.

The rule that the interested party must be informed of the grievance and have an opportunity to state his case has been asserted in many judgements. It may be submitted that, as a general rule, this principle applies to all kinds of decisions relating to dismissal and non-renewal of contracts.[63] A second limit pertaining to procedure is the obligation by the administration to state the reasons for its decisions. The U. N. Tribunal, in one of its earlier judgements, held this principle to be "an essential element of due process".[64] In subsequent cases, however, it seems to be abandoned; the Tribunal refused to annul a decision for which no reason was given.[65] The I. L. O. Tribunal's approach to the problem has not been less equivocal.[66] Furthermore, this procedural limitation lost most of its importance when an amendment was made to the Staff Regulations of the United Nations (Article IX/1 (c)), allowing the Secretary-General to dismiss a staff member "in the interests of the UN"; this means that the chief administrator is able to give reasons for his actions without actually giving any.

Error of law is yet another limit on the discretionary authority of the administration. Many judgements of the Tribunals indicate that if a decision is based upor materially incorrect facts, or if essential material elements have been left out of account, then the decision contested would be remanded.[67] To these. a number of other limitations can be added: Manifestly erroneous conclusions drawn from the documents of the dossier (ILO Tribunal's Judgement No. 84, Gale, 1965); bias (Un Tribunal Judgement No. 93, Cooperman); non-discrimination (ILO Tribunal Judgement No. 212); proportionality of disciplinary measures to the fault committed (ILO Tribunal judgements Nos. 203, 207, 210, Ferrechia etc., 1973), etc.[68] In passing, note should

63 See ILO Administrative Tribunal's Judgement No. 69 (Kissaun), 1964.

64 Judgement No. 4 (Howrani), 1951.

65 Judgement No. 19 (Kaplan), 1953 and many others.

66 Cf. Judgements Nos. 17–19, 21 (Duberg ,etc.), 1955.

67 See ILO Tribunal's Judgement No, 84 (Gale), 1965; see also UN Tribunal's Judgements Nos. 90 (Chiachia), 1963 and 98 (Gillman), 1966.

68 For the analysis of the recent developments in the jurisprudence of the Tribunals, see Maxime Letourneur, "Le Tribunal Administratif de l'OIT", in *Melanges offerts à Marcel Waline*, Vol. 1, 1974, pp. 204–214; Françoise Dreyfus, "Les Limitations du pouvoir discrétionnaire", *Revue de Droit Public*, Vol. 90, No. 3, 1974, pp. 691–705; Bastid, "Have The U. N. Administrative Tribunals..., *op. cit.*, pp. 308–312.

be made of the fact that the introduction to the international administrative law of the principle of "proportionality" constitutes a significant new step in the restriction of the discretionary powers of the administrative authorities of international organizations.[69]

Thus, it may be asserted that the jurisprudence of the Administrative Tribunals has established a considerable body of rules governing the conducts of the heads of international administrations. To quote Mme Bastid, "one may consider that *a custom is being established* which has not been contested, notably by the organs which could have recourse to the ICJ against the judgements which apply the custom."[70] On the other hand, it is evident that the Administrative Tribunals of the U. N. and I. L. O. have shown various divergencies and fluctuations in the application of the above mentioned principles. Under the circumstances, it must be conceded that the executive heads of international organizations still enjoy wide discretionary powers . Despite considerable progress made by the Tribunals, the disparity in the status of the parties remain in existence.

4. Effectiveness of Remedies and Enforcement.

One of the most important criteria in the evaluation of the work of the Administrative Tribunals is the effectiveness of the remedies they afford. For, without tangible remedies, national civil servants would suffer from a sense of injustice and this loss of confidence would, in turn, harm the smooth running of the administration. There are three types of remedies available from the Tribunals: annulment of the administrative decision, specific performance of an obligation, and compensation, Relevant articles of the Statutes provide that if the Tribunals find an application to be well-founded, they shall order the rescission of the decision contested or the performance of the obligation invoked[71]. It is thus obvious that annulment and specific performance are the normal, primary remedies. This fact is also confirmed by the I. C. J.[72]

69 Dreyfus, "Les Limitations...", pp. 691-692.
70 Bastid, "Have the U. N. Administrative Tribunals...", p. 311. (Emphasis added.)
71 Statute of the UN Adm. Trib., Art. IX/1; Statute of the ILO Adm. Trib., Art. VIII.
72 *Application for Review...*, I. C. J. Reports 1973, pp. 195-196.

But, there is more to it than that. Article 8 of the Statute of the I. L. O. Tribunal goes on to state that if such rescinding of a decision or the execution of an obligation is *not possible or advisable*, the Tribunal shall award the complainant compensation. And Article IX/1 of the Statute of the U. N. Tribunal reads (in part):

> ... the Tribunal shall fix the amount of compensation to be paid... should the Secretary-General... decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case...

Evidently, the need to strike up a balance between the requirements of efficient administration and a sense of security among officials must have been the underlying motive of such a "flexible" solution. It is, nevertheless, rather difficult to conclude that this end has been achieved by the above formulation . The damages to be awarded are of a "subsidiary character, in the sense they are granted in lieu of specific performance".[73] Theoretically there is always the choice: either the administrative decision contested is reversed, or the applicant is paid compensation in lieu of reversal. In practice, however, these provisions come to mean that the course of action to be taken is left, not to the judgement of the Tribunal, but to the discretion of the administration. The administrative heads of international organizations actually made –and continue to make– a most extensive use of this power. In the case of the U. N. , this provision of the Statute gives the Secretary-General almost the power to override the judgements of the Tribunal. For he can –and does– always invoke that famous clause "in the interest of the United Nations"[74] and thus refuse to implement the Tribunal's decisions.[75] The Tribunals have always bowed the wishes of the administrations on this matter. Although the I. L. O. Tribunal has, in its later judgements, begun to decide *proprio motu* that rescission is not impossible or inadvisable, when the administration insists

73 *Ibid.*

74 This clause reminds one of Art. XV of the European Convention of Human Rights , whereby a State can suspend its obligations under the Convention during "time of war or other public emergency threatening the life of a nation". The provision of Art. IX/1 of the Statute which gives the UN Secretary-General similar powers is equally plastic and equivocal.

75 See Koh, *op. cit.*, pp. 84–88.

on refusing to reinstate an official after a decision of dismissal has been rescinded, the sole applicable remedy which remains is still that of damages.[76]

In the light of what has been said above, it is obviously not easy to maintain that, in practice, annulment or specific performance is the rule, and compensation in lieu thereof the exception. The administrative heads of international organizations always have the last word and they consistently choose the alternative of paying damages. This could be considered a serious shortcoming of the judicial system of administrative control. It is very doubtful that monetary compensation can be a real remedy in dismissal cases, however large is the sum accorded. Winning the dispute has come to mean losing the job. "Once the necessary confidence is gone, reinstatement is impossible, because it is not in the interests of good administration." The standpoint of the administrators thus summarized seems to be reflected in the practice of judicial control of administrative decisions.

IV. CONCLUDING REMARKS

It is not intended here to summarize what has been said above, but to make a general assessment of the Administrative Tribunals of the U. N. and I. L. O. This attempt is bound to be tentative because of the very nature of the subject-matter.

There can be three basic approaches in the evaluation of the role and functions of the Tribunals, depending upon one's initial position. On the jurists' side, the Tribunals are considered to be generally successful in the construction of a well-balanced body of rules embodying enough guarantees both for the interests of sound administration and for the protection of the rights of international civil servants. From the officials' front, however, the picture can be painted in quite different colours. The whole system of judicial control of administration could be described by them as a machinery full of shortcomings, necessitating radical changes or reforms in the entire framework. To these must be added a third viewpoint, that of the executive heads of international organizations. This viewpoint tends to emphasize that

76 Akehurst, *op. cit.*, p. 21.

although the Administrative Tribunals play a role vital for the smooth functioning of the administration, they nonetheless exceed their limits of jurisdiction from time to time and interfere with the true discretionary powers of the administrators. Accordingly, the status and position of the Tribunals could be redefined and thus clarified.

While refraining from adopting the easy, middle-of-the-roader attitude by making use of the famous cliché: "the truth probably lies somewhere in-between", it is deemed possible to make a few comments on the question. It is submitted that the most important contribution of the two Tribunals to the relations governing employment in international organizations to date, have been the series of judgements they delivered concerning the "political cases". By refusing to yield to the strong politial pressure exerted by certain "Super Powers" in the United Nations, the Tribunals have achieved a twofold task. First, they have confirmed their own independence from the Organizations and member States, thus strengthening their own position as a well-established component of the Organizations. Secondly, by defending the employee against political and arbitrary actions of the Administration, they have, in a way, defended the Organization itself. The independence of international organizations and the international character of the responsibilities of their staff (as defined by Article 100 of the U. N. Charter) were confirmed by the said judgements. Both aspects of this accomplishment were further solidified by the International Court of Justice, which found the judgements to be well-grounded.

On the other hand, a serious criticism one might make of the attitude of the Tribunals is that their jurisprudence occasionally bear the marks of a rather restrictive interpretation of the provisions that confer rights on staff members. This is especially true for the U. N. Tribunal. Part of this "conservatism" may be attributed to the heavy criticism they were subjected to because of the firm stand they took against the victimisation of the American officials during the "witch-hunt" of the Mc Carthy period. The U. N. Tribunal, in particular, adopted too cautious an approach to the question of irregularity of administrative motives, holding, almost all the time, that no evidence had established improper motivation.

Another contribution of the Tribunals is, undoubtedly, the role they play in developing a body of law conducting employment relations in international organizations, which was, to a great extent, created by the Tribunals themselves. This is a gradual, piece-meal process, where the application of unwritten sources of law and general principles of law in particular, occupy a foremost place. It has already been mentioned that some jurists consider this development to be the establishment of a custom. Without underestimating the signifiance of this role, however, it must be added that in the jurisprudence of the Tribunals the examples of reversals of approach or of inconsistencies are not so few. There are also a number of cases where "it may be difficult to assess whether the Tribunal[s] ha[ve] in any true sense considered and determined the exercise of relevant jurisdictional powers."[77]

The inherent weaknesses of the present system of judicial control, such as the limits of the jurisdiction of the Tribunals or the insufficiency of the remedies afforded, have already been mentioned. Despite considerable effort by the Tribunals to make inroads upon these limitations, it can hardly be denied that there exist important disparities in the status of the parties before the Tribunals. The argument that international organizations have no right of appeal to international administrative tribunals could not possibly afffect this basic conclusion, since the power of the organizations over their officials renders this argument almost meaningless. The organization is quite free to take a decision against the official and to impose sanctions if he disobeys.[78] Simply stated, there is no *need* for the organization to make an appeal against the official. To make a comparison, the international civil servant is still much less protected legally than his counterpart in the municipal system.

The system of judicial review of international administrations, with its deficiencies, is still in the process of development. The role of international administrative tribunals in this process must not be exaggerated. At present, they can go little further than *interpreting* legislative provisions and thereby attaching them certain consequences. Therefore, it would not be totally

77 *Application for Review...*, I. C. J. Reports 1973, p. 190.
78 Akehurst, *op. cit.*, p. 17.

wrong to conclude that it is always the administrative heads of the organizations who have the last say in the matter. Nevertheless, one can see no reason why, with certain amendments in the Statutes of the Tribunals and in other relevant texts, together with a little more audacity on the part of the two Tribunals, the equilibrium between the interests of the parties should not be better maintained.