

# Why Change the Statutes of the ILO Administrative Tribunal? And What Needs Changing?

# The Fundamental Limitation

- International agencies (IAs) enjoy absolute immunity from jurisdiction
- Hence, IAs are not accountable for their decisions and their conduct as other employers are
- This immunity is justified only if the internal system of justice guarantees the rule of law as applied in (enlightened) national courts
- The ILOAT does not apply some fundamental principles of law



# Two Families of Issues:

- Substantive  
ILOAT must review both the interpretation of rules and the legality of regulatory decisions
- Procedural  
Due process, transparency and accountability of the litigation must meet the highest standards

# Problem 1: Natural Justice Denied

- The 2 components of “natural justice” are:
  - Nobody should adjudicate his/her own case  
(“*Nemo iudex in causa sua*”)
  - Parties must be fully informed of all issues in dispute, should be heard and can respond effectively to all issues or charges (“*Audi alteram partem*”)
- The ILOAT does not apply either rule fully



# Nemo iudex Not Applied

- ILO ADMINISTRATION CAN HAVE PREFERENTIAL ACCESS TO THE ILOAT:
- The ILO unilaterally nominates and hires ILOAT judges to judge... their paymaster, the ILO
- The ILO unilaterally nominates and pays the Registrar, to assist in judging ... his/her paymaster, the ILO
- The ILO provides the operating budget, logistics and the locus for the ILOAT
- the ILOAT does not report to complainants of ALL contacts with the Administrations.



# *Audi Alteram Partem Not Applied*

- **FULL HEARINGS DENIED.** Since 1995, not a single oral hearing was allowed in the 702 cases adjudicated by the ILOAT.
- **FULL DISCLOSURE DENIED.** The burden of proof is always on the complainant, in all cases. Yet, the ILOAT does not assist staff to obtain all information pertinent to their case, when the Administration refuse to reveal sensitive information, or when they cover up evidence of their own failings, or when they shield harassers.



## Problem 2: Equal Treatment Denied

- Everyone under similar situations should be treated in the same way (“*stare decisis*”)
- ILOAT DOES NOT GUARANTEE LEGAL EQUAL TREATMENT: ILOAT is not bound by its own previous decisions; no equality of protection through application of precedents
- ILOAT DOES NOT PROVIDE “EQUALITY OF ARMS”: standard measures to balance the power difference between strong Administrations and weaker individuals are denied by the ILOAT

## Problem 3: Class Action Denied

- ILOAT denies the Staff Union standing to bring action (“*Locus situ*”) when:
  - its own legal rights are impinged; or
  - a decision affects whole categories of staff
  - the union acts on behalf of one or more person(s) wishing to remain anonymous
  - the union acts on behalf of one or more person(s) who ask the union to represent them
- ILOAT denies the Unions rights it accords the ICSC, to submit “*Amicus curiae*” briefs on common system decisions



## Problem 4: Ineffective Remedy

- The ILOAT does not give effective remedy to injured staff. Effective remedy must be appropriate to the injury or damage inflicted.
- ILOAT does not admit requests for interlocutory redress to maintain *status quo ante* pending final adjudication of cases.

## Problem 5: Due Process Denied

- ILOAT can - and often does - reject cases on formalities, without addressing legal issues or circumstantial facts
- ILOAT does not impose sanctions on Administrations failing to comply with time limits or with full discovery
- Claimants cannot oppose undue extensions of time limits given to Administrations



## Problem 6: Appeal / Review Denied

- THERE IS NO RIGHT OF APPEAL to a higher authority
- NO SELF SCRUTINY EITHER: ILOAT has almost always rejected requests to review its own decisions.
- ILOAT has refused to review even obvious errors in law or in fact

## Problem 7: Collective Agreements Ignored

- ILOAT only considers cases of alleged violations of the Staff Regulations.
- ILOAT only considers violations of the Administration to single individuals.
- So far, ILOAT has refused to deal with Harassment and Sexual Harassment cases (re Qin), matters addressed through Collective Agreements

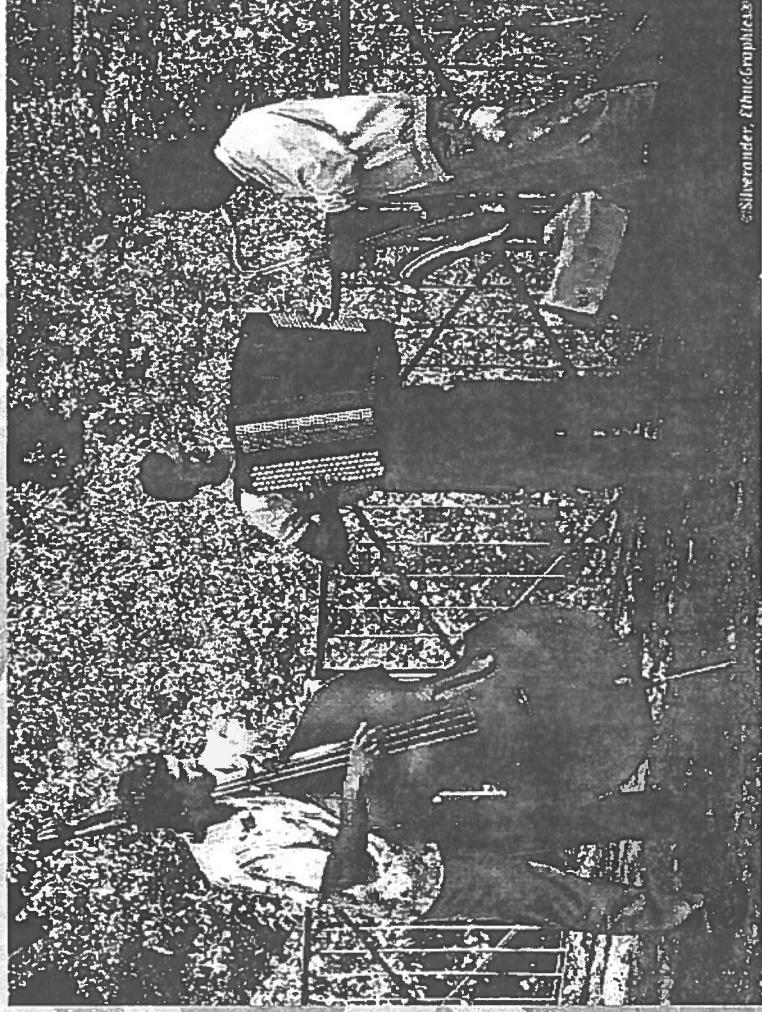


## Problem 8: Taboo Topics

- Some fundamental conditions of work are outside the competence of the ILOAT; examples:
  - Disputes over health insurance (SHIF)
  - Discretionary decisions of the DG
  - Decisions to implement Common system conditions of work and employment

# Separation of powers?

- ILOAT does not seek to exercise the role of a true judiciary, similar to its role elsewhere under the principle of “Separation of Powers” of the executive, legislative and the judiciary





# Solution: Abolish or Amend

- Abolish immunity from jurisdiction? Last recourse option; Might be considered only for severe cases (e.g. criminal offenses) which the ILO cannot handle internally. In such cases, Swiss national courts might be an alternative, but making this change is complex
- Correct the flaws in the internal system of justice!

The internal system, notably the ILOAT, will continue to prevail, for which purpose it must guarantee the rule of law without delay

# Remedy the System: Why Now?

- The ILO Staff Union has signed collective agreements with the Administration on a revision of the internal system of justice
- The ILO Admin agreed to
  - negotiate proposed amendments, and the possible establishment of a 2nd appellate instance, and the introduction of class action before the ILOAT
  - Commence negotiations by 13 Sept 2001, and conclude before Sept 2002
  - Submit proposals to the ILO Governing Body



# State of Play Until Now

- SUC submitted an agenda on 7 July 2000
- SUC submitted a detailed draft 7 August 2001
- Negotiations started 18 October 2001
- Statement to GB made by ILO on 8.3.2002
- Joint Working Group finished work on 4.4.2002
- JNC adopted JWG recommendations on 28.4.2002
- Staff Rep's information on 6 May 2002

# Statement to the ILO GB, 3/2002

- *“Since the last GB, discussions were held concerning possible improvements to the functioning of the ILO Administrative Tribunal.*
- *These discussions have identified a number of improvements which could be made to the functioning of the AT.*
- *The Office and the Staff Union Committee will further develop these proposals in order that consultations with all the concerned parties can be conducted. A considered decision paper will be presented to the November Governing Body. As you know, this would have to go to the 2003 International Labour Conference for final decision, and implementation in 2004.*



# Agreement with ILO

- The union submitted 39 points (Annex to letter dated 15 Jan 2002)
- Agreement on Points 1, 2, 3, 4, 11, 12, 13, 26, 32
- Partial agreement on point 7 (*locus standi*)
- Agreement to seek ILOAT opinion on oral hearings
- Agreement that the ILOAT should publish an annual report

# Next Moves on Agreed Points

- May 02: ILO writes to President of ILOAT
- June 02: JNC will consider next steps, including consultations with other organizations and unions
- By Sept 02: Obtain support and views of other unions / organizations
- Sept 02: Submit doc to GB
- Nov 02: GB decision to submit to ILC in 2003
- Nov 02(?): ILOAT decision on Admin Rules
- June 03: ILC decision on Statutes



# Next Steps on Other Points

- On all other points, SUC seeks the advice of this meeting as to
  - What priority others attach to items within the list ?
  - The best way to advance the remaining issues
  - Your involvement with ILO-SUC, and how?

# What You Can Do

- Provide comments and feedback
- Help explain the changes, and gather support for them, in your organization
- Confirm in writing your committee's support for our positions and for the specific proposals
- Any other proposal for more progress