

# CSAIO2

# CAPOI2



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**Conference of Staff Associations of International Organisations**  
**Conférence des associations du personnel des organisations internationales**

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## **Conference Proceedings**

## **Actes de la Conférence**

**25 & 26 October/Octobre 2001**

**CERN**



## Foreword and Acknowledgements

The 2<sup>nd</sup> Conference of Staff Associations of International Organisations (CSAIO2) was held at CERN, in Geneva, on October 25<sup>th</sup> and 26<sup>th</sup>, under the aegis of the CERN Staff Association. This was the second occasion for staff representatives of international organisations to gather and discuss topics of common interest (the 1<sup>st</sup> Conference was held at the OECD, in Paris). In all, there were 49 participants from 24 organisations with headquarters or main offices in Europe. The four “families” of international organisations were represented: the United Nations’ Common System organisations, the Co-ordinated Organisations, the financial and scientific organisations. Both the smaller and the larger organisations sent representatives and this diverse participation was one of the keys to the success of the Conference.

Another element in the success of the Conference was the Conference Dinner. Held on site, in one of CERN’s restaurants, this dinner was a unique opportunity for the staff representatives to become acquainted better in an informal atmosphere.

Yet another key element in the success of the Conference was the quality of the speakers and of the discussion session that took place after each set of presentations. It is very unfortunate that, because of limited resources, it was not possible to prepare summaries of these discussions to be included in these proceedings. However, we plan to make the recordings of these discussions available in the form of audio files. We will keep the participants informed of the availability of these files (some access and security issues still need to be addressed).

Last but not least, in addition to the Conference itself, the participants were invited to tour CERN’s installations and to discover the impressive machines and detectors needed to study elementary particles and their interactions.

This Conference could not have been possible without the hard work and dedication of many people: Sonia Casenove, Gunilla Santiard and Assette Meille in the CERN Staff Association Secretariat; Daniel Boileau and Patrick Gilbert de Vautibault, conference room operators; and the members of the Staff Association’s Executive Committee.

The 3<sup>rd</sup> Conference will be held at EBRD, in London, in the Autumn of 2002. All those who participated in the 2<sup>nd</sup> Conference certainly look forward to it, and to the continuation of this series of conferences.

Jean-Pol Matheys  
President  
CERN Staff Association



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# Conference Programme

## Thursday, October 25

<b>09:00 – 14:00</b>	<b>Preparation</b>			
09:00	Registration: At the CERN Staff Association Secretariat (Building 64)			
13:30	Chairs & Speakers' Meeting (Building 61 – Meeting Room)			
<b>14:00 – 14:30</b>	<b>Conference Opening</b>			
14:00	Welcome	CERN		
14:10	Welcome Address	CERN Director of Administration: J. van der Boon		
14:25	Conference Info	CERN		
<b>14:30 – 18:00</b>	<b>Session A</b>	<b>Internal Appeal &amp; Grievance Procedures</b>	<b>Chair: CoE</b>	
14:30	Invited Talk A	EBRD	T. Myron	
14:50	Discussion			
15:00	Talk A1	ESA	S. Fiorilli	
15:20	Talk A2	FICSA	A. Heitz	
15:30	Coffee Break			
16:10	Talk A3	ILO	D. Dror	
16:20	Talk A4	WTO	N. Lockhart	
16:30	Talk A5	OECD	M.C. Delcamp	
16:40	Discussion			
18:00	End of session A			
<b>18:00 – 19:00</b>	<b>Poster Session</b>			
18:00	In the corridor to the Council Chamber			
<b>19:00</b>	<b>Conference Dinner</b>			
19:00	In CERN's Restaurant 1			

## Friday, October 26

<b>09:00 – 12:15</b>	<b>Session B</b>	<b>Working Time</b>	<b>Chair: CERN</b>	
09:00	Invited Talk B	OECD	J.L. Rossi	
09:20	Discussion			
09:30	Talk B1	CERN	M. Vitasse	
09:40	Talk B2	WIPO	B. Fitzgerald	
09:50	Coffee Break			
10:30	Talk B3	FICSA	M. Richon	
10:40	Discussion			
12:00	End of session B			
<b>12:00 – 14:00</b>	<b>Conference Lunch</b>			
12:00	In CERN's Restaurant 1 ("Glass Box")			
<b>14:00 – 14:30</b>	<b>Preparation of the Next Conference</b>		<b>Chair: CERN</b>	
14:00	Venue & Format			
14:15	Themes/Topics			
<b>14:30– 17:00</b>	<b>Session C</b>	<b>Advancement &amp; Promotion Systems</b>	<b>Chair: EBRD</b>	
14:30	Invited Talk C	CERN	J.P. Matheys	
14:50	Discussion			
15:00	Talk C1	FAO/APS	J. Albert	
15:10	Talk C2	OMS/HQ	L. Belgharbi	
15:20	Talk C3	EC	F. Andreone	
15:30	Coffee Break			
16:00	Discussion			
17:00	End of session C			
<b>17:00 – 17:30</b>	<b>Conference Wrap-up</b>		<b>Chair: CERN</b>	





## List of Participants

Organisation	Participants	Organisation	Participants
<b>BIS</b>	SOLMI Silvia	<b>ESO</b>	ALLAERT Eric BALLESTER Pascal
<b>CERN</b>	DEFERT Philippe GHINET François LAHAYE Joël MATHEYS Jean-Pol ROY Ghislain SONNEMAN Florian TRILHE Philippe VITASSE Michel	<b>FAO/WFP</b>	ALBERT Janice (APS) GOTTS Olwen (UGSS)
<b>CoE</b>	NYCTELIUS Lars PALMIERI Giovanni	<b>FICSA</b>	EWART Leslie HEITZ André RICHON Marielle
<b>Commonwealth Secretariat</b>	DUGARD Jackie	<b>ILO</b>	DROR David SKALLI-BERNY Nadia
<b>EBRD</b>	HUNT John MYRON Tony	<b>IOM</b>	OHMS Jos SCHAEFFER Hasmig
<b>EC</b>	ANDREONE Fabrice	<b>ISO</b>	RODRIGUEZ Carlos
<b>ECB</b>	CERAFOGLI Concetta PALUMBO Guido	<b>ITU</b>	GIRARD Marie-Christine JOSEPH Varghese
<b>ECMWF</b>	BATAILLE Alain	<b>NATO</b>	GASPARINI Emilio
<b>EMBL</b>	TAPOLA Jorma	<b>OCDE</b>	DELCAMP Marie-Christine ROSSI Jean-Louis
<b>EPO</b>	ARESO Jesus (The Hague) RADFORD Desmond KOMINOWSKI Marie-Christine (Vienna) SENFTEL Hannes (Munich)	<b>WHO</b>	BELGHARBI Lahouari MOBIO Edmond
<b>ESA</b>	FIORILLI Stefano	<b>WIPO</b>	FITZGERALD Brett PITTET-ATTIE Shirine REGARD Annick
<b>WTO</b>	DELGADO Sergio	<b>WMO</b>	MBELE-MBONG Samuel SCHALK Monique



## Welcome Addresses

### A. Welcome by Jean-Pol Matheys, President of the CERN Staff Association

Chers Collègues, Dear Colleagues,

Au nom du personnel du CERN et de l'Association du personnel du CERN je vous souhaite la bienvenue au CERN. Nous sommes très heureux de pouvoir organiser aujourd'hui cette 2<sup>ème</sup> Conférence des associations et syndicats représentant le personnel des organisations internationales. Nous vous remercions d'être venu aussi nombreux. C'est un plaisir pour nous que de voir ici réunis les représentants du personnel de plus de vingt organisations internationales qui sont basées en Europe ou qui ont des bureaux en Europe.

Welcome everyone. We are very pleased to have you all here representing over twenty international organisations based in Europe. This is the second Conference in what we hope is going to be a long series of conferences. The first one was organised by our colleagues at OECD last year in Paris and we already know that our colleagues from EBRD will organise the next one in a year from now, in London. This conference is to have a successor and we are very pleased with that.

In organizing this Conference, we have benefited greatly from the help of our colleagues from OECD, and their experience in organizing the first Conference. In fact, we worked in a "Troïka" with colleagues from both OECD and EBRD, in particular to determine the three topics to be covered in the three sessions of the Conference.

We regret that, as we had announced in Paris last year, we cannot offer the interpretation of the presentations or discussions. This is simply because CERN does not have an in-house interpretation service and that whenever interpretation is needed CERN calls upon outside interpreters. The costs involved are high and the CERN Staff Association could not cope with them. We hope that this will not be too much of a hindrance though.

We have organized a Conference Dinner, this evening, in the restaurant right next to where we are now. We believe that this Dinner will be a nice, informal opportunity for all the participants to continue the discussions of the day, to discuss other topics, and to exchange further information. It will also be an occasion to better know one another.

I have spoken enough already, and I'd like now to give the floor to Jan van der Boon, the Director of Administration of CERN.

### B. Welcome by Jan van der Boon, Director of Administration, CERN

Chairman, Ladies and Gentlemen,

It is a great pleasure for me, as Director of Administration, to welcome you at CERN and to say a few words at the opening of the second Conference of the Staff Associations of International Organisations.

This second conference is held at a special moment. The terrible events in America will have – and have already – a deep impact on the world and the relations between nations. In this context, the existence and efficiency of international organisations is crucial once more.

But not only through the recent events are the international organisations confronted with new challenges. Many International organisations have been changing in recent years, to adapt to new circumstances and requirements, or to take up new roles. In this dynamic context, exchanges of ideas and experiences between the organisations, even if their missions are very different, is extremely useful. The European International Research organisations, including CERN, have recently established a network, that, coincidentally, also met here at CERN earlier this week. Today it is your turn.

Before touching the human resources issues and employment conditions, which are the subjects of your conference, I briefly introduce you CERN. CERN, the European Particle Physics Laboratory, was created 55 years ago. The founding fathers were driven both by idealism and necessity. Idealism, because shortly after the second world war, collaboration between European nations had to be re-established. Necessity, because this type of research required resources that could only be found by working together. Over the years CERN has changed much. CERN has grown from 12 Members States to 20, and through collaboration agreements with countries in many parts of the world, CERN has the dimensions of a true World Laboratory. CERN has proven to be very successful, not only in its field of science, but also as an example of international collaboration.

There is one thing that is even more difficult than achieving success: sustaining success. There are many management handbooks written on this. I am very tempted to talk about that subject, which is dear to my heart, but as the time available is limited I have to stick to the essential. And the essence is very simple. CERN's core asset is its human capital. Yes, you need much money for such research installations, but the critical success factor is quality, competencies, and staff motivation.

The human resources policy is therefore of major importance. I emphasise the word human resources policy because still too often, to my taste, we talk about rules and regulations and not enough of what is really behind it. I will give you two "snapshots".

The first point concerns, what is called in our jargon, the 5-yearly Review. In CERN decisions on the indexation of salaries are taken on a yearly basis, as in most organisations, either in the public sector or in the collective labour agreements in the private sector. Every 5 years however, there is an in-depth review of salaries and employment conditions. We review the needs of the Organisation, but also compare ourselves with other International Organisations, public sectors in our Member States, and also industry. Such a review has just been concluded at the end of 2000. This review resulted in a "package" of decisions. The general salary levels were adapted with around 5% gross, a new method of annual indexation was introduced, and last but not least – and this is where the human resources policy comes in fully - a new advancement and promotion system was decided, with less focus on seniority and more advancement based on merit. I am convinced that this type of change is necessary. Not because it is "fashionable" or because we have copy developments in public or private sectors, but because it reflects the way labour relations in highly professional organisations are organized.

This kind of change is not always easy and sometimes even painful, and this brings me in a natural way to my second point: the social dialogue. The importance is obvious, and coming myself from a country that achieved some fame for the so called "polder-model" I know what it can bring. In this respect I found much similarity at CERN. The Management and the Staff Association do not always agree, but I think that I can safely say that there is a mutual commitment to the dialogue. An interesting feature at CERN is that this dialogue is periodically also extended to our delegations, in the Tripartite Employment Forum. Where such a forum potentially carries a risk of diluted responsibilities, our experience has shown that it can work and can contribute to smooth decision making processes

Chairman, I stop here with my reflections and wish you a very fruitful conference.

## **Session A – Internal Appeal & Grievance Procedures**



## Session A – Internal Appeal & Grievance Procedures

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### Grievance and Appeal Procedures at EBRD

Presentation by Tony Myron (EBRD)

#### Summary

- The EBRD - Immunity of the Bank from suits by employees
- Internal System for handling complaints
- Role of the Staff Council
- Role of the Ombudsman
- Use of normal administrative channels
- Procedure of appeal

#### The EBRD

- International organisation established by treaty to serve certain international purposes agreed by its member countries
- Bank's employment arrangements are not governed by any national legal system or regulatory body
- Headquarters Agreement between the Government of the United Kingdom and the Bank
- General immunity from jurisdiction of the courts of the United Kingdom (with a few exceptions)

#### Internal system for handling complaints

- The Bank: employer immuned from claims in any domestic or national courts
- Special responsibility to set up effective internal procedures for staff complaints and grievances
- Staff Regulations (adopted by Board of Directors, 1991) referred to in every employee's contract: number of obligations by the Bank towards staff

#### Role of Staff Council

- Represent collective interests of staff to management
- Important role to represent staff on issues concerning staff as a whole or groups of staff
- Meets regularly with Vice President for Personnel, Director of Personnel and senior staff of Personnel Department to discuss issues of concern raised by either sides
- Important Initiatives in Personnel area taken through discussions with Staff Council
- Staff Council consulted by Personnel Department on new proposals involving personnel issues (ie. Adoption of new policies or changes in policy)

## Role of the Ombudsman

- Independent expert employed to listen to, and conciliate between, staff and management on staff grievances and to help resolve problems and disagreements which they have not been able to resolve directly with their line managers or the Personnel Department
- Gives information and advice to staff if staff is dissatisfied with explanation from Personnel Department
- The Ombudsman acts as an independent conciliator and does not make decisions or arbitrate
- The Ombudsman Report for 2000: number of new cases for 2000: 90 (in 1999: 86 cases)
- From Professional staff: 55
- From Support staff: 29
- Collective: 4, Resident offices 1, other 1
- Female staff: nearly 2/3 of cases
- 5 main areas of concern for 2000:
  - Performance appraisals, promotion, pay and benefits: 1/3 of cases
  - Gender discrimination, bullying and family friendly issues
  - Line managers (23 cases)
  - Job content and staff development
  - Appointments and separations

## Use of normal administrative channels

- For work assignment, salary or promotion decision, performance or career-related issues
- Right of employee to approach in order: employee's immediate line manager, then more senior managers, Department Head
- For matters where Personnel Department is responsible, employee to approach in order: Personnel Client Manager, Director of Personnel.

## Procedure of appeal

1. If staff's complaint or grievance outcome dissatisfied through normal administrative channels: formal administrative review (first through 3 tiers of review by managers, then request to Vice President of Personnel)
2. Then bring appeal against decision before the Bank's Appeals Committee (4 staff members plus outside Chairman) for matters concerning staff employment
3. Conclusion of the Appeal: Report to the President with recommendations.
  - New procedure of appeal being finalised for implementation in final quarter of 2001:
  - Proposal for internal administrative tribunal (like other IFIs)
  - Role of new tribunal: perform judicial review function and protect employment rights of staff
  - Composition of tribunal: independent outside lawyer as President and two members of staff as Assessors
  - Simplified administrative review: requests for review submitted directly to Vice President for Personnel
  - New regulations being finalised governing the administrative tribunal



## Session A – Internal Appeal & Grievance Procedures

### La procédure de règlement des litiges à l'Agence Spatiale Européenne

Présentation par Stefano Fiorilli (ESA)

#### L'Agence Spatiale Européenne : cadre institutionnel

- Organisation inter-gouvernementale créée par Convention signée à Paris le 30 Mai 1975.
- Article 2 de la Convention : *“mission d’assurer et de développer, à des fins exclusivement pacifiques, la coopération entre États européens dans les domaines de la recherche et de la technologie spatiales et de leur utilisation à des fins scientifiques et pour des systèmes spatiaux opérationnels d’applications”*.
- 15 États membres, Accord de Coopération avec le Canada
- 2 organes constituants :  
Conseil et Exécutif/Directeur général
- Fait partie des “Organisations Coordonnées” (avec : Conseil de l’Europe, OCDE, OTAN, UEO, Centre Européen pour les prévisions météorologiques)  
 (“Coordination” vise à fournir des recommandations aux organes directeurs des Organisations sur des sujets liés à la rémunération. But d’harmonisation.)
- Un “Statut du Personnel”, des modalités d’application fixées dans un “Règlement du Personnel”, et des détails de mise en oeuvre dans des “Instructions”. (Toute modification au Règlement et aux Instructions uniquement après négociation Directeur général/Association du Personnel.)
- Article 42 du Statut : “l’Association du personnel représente l’ensemble des membres du personnel de l’Agence ainsi que toute autre personne à qui le Statut est applicable”.

#### Un “quasi” double degré de juridiction

- Principe élémentaire dans tous les ordres juridiques : droit à l’appel d’une décision prise en 1er degré devant une instance supérieure, qui “juge le droit”.
- Semble présent à l’ESA : intervention possible dans le litiges de 2 instances, le Comité consultatif et la Commission de Recours.
- En fait, fiction :
  - Comité consultatif ne donne qu’un “avis” au Directeur Général
  - Parties peuvent convenir de ne pas demander l’avis du Comité consultatif et requérant peut dans ce cas saisir directement Commission de Recours
- État de fait inquiétant : organe de second ressort serait la seule garantie d’une justice administrative rendue mais aussi contrôlée et unifiée!

## Comité consultatif

- Avis au Directeur général
- Doit être demandé dans certains cas de résiliation de l'engagement ou de révocation disciplinaire
- 6 membres du personnel :
  - Une moitié nommée par le Directeur général,
  - l'autre moitié par l'Association du personnel
- Chacune des parties peut se faire représenter par un membre du personnel
- Réunions et délibérations non publiques
- Décision du Directeur général
  - de confirmer sa décision
  - de l'annuler ou la modifier Obligation de motiver uniquement si il maintient sa décision malgré l'avis contraire du Comité consultatif !

## La Commission de Recours

- Litiges relatifs à toute décision explicite ou implicite prise par l'Agence et l'opposant à un membre du personnel en fonction, un ancien membre du personnel ou ses ayants-droit.
- Annule la décision qui fait l'objet du recours si elle :
  - est contraire à la Réglementation applicable au personnel;
  - est contraire aux conditions d'engagement de l'intéressé ou à ses droits acquis;
  - porte atteinte à un intérêt personnel et direct du requérant.
- Peut condamner l'Agence à réparer tout dommage subi par le requérant à la suite de la décision entreprise.
- 6 membres de nationalité différente *désignés par le Conseil*. (!)
  - Pour siéger, au moins 3 membres. *L'un des trois au moins "doit être d'une compétence reconnue en matière juridique"* (!!)
- L'Agence est représentée par un mandataire qui peut être membre du personnel de l'Agence. Les deux parties peuvent se faire assister d'un conseil ou d'un avocat.
- Commission peut faire effectuer enquêtes et confier expertise à personne ou organisme de son choix.
- Procédure en principe publique.
- Décision "circonstanciée" dans les 30 jours.
  - "Lorsque ce délai de 30 jours ne peut pas être respecté, le Président, par décision motivée, en autorise la prolongation"* (!)
- Pas d'appel possible.
- Possibilité de demande en interprétation (ou en révision si fait nouveau) mais s'il estime que la demande constitue un recours contre la décision, le Président constate "*par décision motivée*" l'irrecevabilité de la demande. Cette décision est sans recours.

## Conclusions

- Un unique degré effectif de juridiction, exercé par des membres nommé par le Conseil, et dont un de ses membres seulement doit être “de compétence reconnue en matière juridique”.
- Pas de délai de absolu en termes de décision.
- Questions :
  - indépendance?
  - certitude du droit?
  - sécurité juridique?
  - confiance légitime?
- 23 instances juridiques internationales à ce jour : création d’un organe unique?
- Association du Personnel de l’ESA est sur le point d’ouvrir une réflexion et un débat avec l’Administration sur ce sujet. Système du Tribunal administratif de l’OIT : plus de 30 Organisations ont reconnu sa compétence juridictionnelle.
- Enjeu de ce débat est la protection juridique du fonctionnaire international. Cette protection est liée à :
  - privilèges/ immunités,
  - rémunérations/pensions
- Enjeu est donc essence même de la fonction publique internationale...

## Session A – Internal Appeal & Grievance Procedures

### A Second Degree of Jurisdiction?

#### Presentation by André Heitz (FICSA)

1. The title of this communication is, on purpose, somewhat provocative. The communication nevertheless fits into the global theme of “internal recourse procedures”.
2. “Recourse procedures” will be taken here *stricto sensu*, as the judicial or quasi-judicial procedures put in place by most organizations. There are other – “informal” – procedures to ensure the settlement of grievances and disputes through ombudspersons, etc. For a detailed analysis, reference is made to document ICSC/29/R.8 and its addenda from the International Civil Service Commission (ICSC); for those who might wonder why FICSA would promote an ICSC document, suffice it to say that it is essentially based upon a study by Mr. Witold Zyss, a former staff member of UNESCO and President of FICSA. Although the document dates back to 1988, a lot of the information is still relevant.
3. Regularly, there are requests for the institution of a second degree of jurisdiction for the review of the judgements delivered by the existing administrative tribunals, and those requests emanate from staff members (particularly those who have lost a case) and staff bodies, executive heads (particularly those who have lost a string of cases) and lawyers. In the following, we shall concentrate on the situation obtaining in the organizations that have recognized the jurisdiction of either the Administrative Tribunal of the International Labour Organization (ILOAT) or the United Nations Administrative Tribunal (UNAT).
4. It is recalled that UNAT has jurisdiction over the United Nations and its programmes and funds (e.g. UNDP, UNHCR and UNICEF), the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). UNAT is the tribunal of some 40 organizations, some belonging to the United Nations system and others not.

### Basic Principles

#### The Law

5. Intergovernmental organizations enjoy full immunity from the judicial process in national courts. This is compensated for in the conventions on privileges and immunities, and the headquarters agreements, by an obligation to make arrangements for the settlement of disputes. For instance:
 

“The Union shall enjoy immunity from criminal, civil and administrative jurisdiction, save insofar as such immunity has been formally waived in a given case by the Secretary-General of the Union or his duly authorized representative.”

“The Union shall take the necessary steps to ensure the satisfactory settlement of:

  - (a) any disputes arising from contracts to which the Union is party and any other disputes relating to points of private law.”

(Articles 5 and 22 of the Agreement between the International Union for the Protection of New Varieties of Plants (UPOV) and the Swiss Federal Council – this provision is standard in Geneva).
6. This, again, should be placed in the proper context. The International Court of Justice stated the following in respect of staff in an advisory opinion of 13 July 1954 (“Effect of awards of compensation made by the United Nations Administrative Tribunal”, ICJ Reports, 1954, p. 57):
 

“It was inevitable that there would be disputes between the Organization and staff members as to their rights and duties. The Charter contains no provision which authorises any of the principal organs of the

United Nations to adjudicate upon these disputes, and Article 105 secures for the United Nations jurisdictional immunities in national courts. It would, in the opinion of the Court, *hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.*” (Emphasis added.)

7. This legal background is worth mentioning for it is a fact that many organizations have not been up to standard, either generally or with respect to certain categories of workers:
  - (a) The author of this communication thus had the surprise to learn from ILOAT judgement No. 1033 that, in 1990, ILOAT was not competent to hear his complaint; this is anecdotal, however, was the result of erroneous assumptions on the side of both management and staff, and was swiftly remedied.
  - (b) Many colleagues working in organizations which are not part of a system of organizations – and for which, incidentally, associate membership in FICSA is of particular value – are not afforded a satisfactory “judicial or arbitral remedy”, to use the words of the ICJ, if at all.
  - (c) An undetermined number of colleagues working for organizations which have established a *prima facie* fair system of administration of justice “fall through the net” because of the rudimentary form of their employment contract or, worse, because they are expressly excluded from the benefit of the provisions that are associated with a “regular” contract.

## The Institutional Setting

8. With regard to disputes arising from regular employment contracts, most organizations from the United Nations family have established mechanisms whose main elements are:
  - (a) a review of the impugned administrative decision by the Executive Head;
  - (b) an examination by an appellate body (hereinafter: “Appeal Board”);
  - (c) an examination by an administrative tribunal.
9. The notion of “administrative decision” is key for a good understanding of the “formal” dispute settlement mechanism. Many grievances do not rest on an administrative decision and are thus not amenable to that mechanism unless and until they have been brought to the administrative decision level (for instance, in a conflict with a colleague – whatever his or her position relative to the complainant – unless and until a transfer, a disciplinary sanction, etc. has been requested). Many complaints about the effectiveness of the recourse procedures rest on misconceptions about their scope; and also on the lack of responsiveness of management to problems of interpersonal relations and the absence of institutions such as ombudspersons.

## The Appeal Board

### Purpose

10. To stay, initially, at the level of the principles, it is important to know that the Appeal Board has an important role to play for the staff member (this is obvious), for the Executive Head and, where relevant, to the Tribunal:
  - (a) According to UNAT judgement No. 905, El-Far,
 

“...administrative review is a very important internal procedure. It gives the Administration an opportunity to redress a grievance before it is taken further... It is of utmost importance that the Administration be given this opportunity, not only because it could result in avoidance of complicated and extended litigation but because it is only fair that the Administration be given the opportunity to reconsider and re-evaluate its decision before that decision is litigated. This is also the manner in which the process of settling grievances is generally structured in international administrative law.”
  - (b) In judgement No. 408, García and Márquez, ILOAT opined with regard to the waiving of the obligation to first exhaust the internal means of remedy that:
 

“Only by way of exception will the Tribunal allow that the condition [for waiving the obligation] is met. Otherwise it would in many instances forgo material evidence obtainable only from the hearings of the internal appeals body, which is more familiar with the position of the staff in the organization.”

For UNAT, it is standard practice to rely heavily on the findings in fact and in law of the Joint Appeal Boards. At times, UNAT also relies on their conclusions in law and thus acts like a second-degree jurisdiction.

## Typical Settings

11. The typical Appeal Board has the following features:
  - (a) It has an odd number of members (three, sometimes five): a chairperson, one or two members appointed by the Executive Head and one or two members appointed or elected by the staff. The chairperson is either a staff member or an outsider. However the case may be, he/she is appointed under a procedure that involves both the Executive Head and the staff, possibly also the Governing Body. The composition is thus very similar to that of an arbitration board or a *tribunal de prud'hommes*.
  - (b) It follows a procedure that ensures fair and equitable examination of the case and full equality of the parties to the proceedings. Ideally, the procedure is judicial or arbitral.
  - (c) It produces a report to the Executive Head which includes one or more recommendations. It is thus an advisory, not a jurisdictional body; its advice is not binding on the Executive Head.

## In-built Problems

12. In practice, there are some structural problems which are important limitations. The following are noteworthy:
  - (a) An appeal, in general, has no suspensive effect on the impugned decision. In many cases where the very employment is at stake, the proceedings outlive the notice of termination and the recommendation of the Appeal Board comes too late. The United Nations is, to some extent, a remarkable exception for it is possible to seek a suspension of action (Staff Rule 111.2 (f)):
 

“[...] However, upon request of the staff member, the panel constituted for the appeal may, after summarily hearing the parties, recommend to the Secretary-General the suspension of action on that decision; the Secretary-General’s decision on such a recommendation is not subject to any appeal.”
  - (b) Despite the fact that
 

“The right to be assisted or represented by a counsel is an essential part of any orderly judicial or semi-judicial procedure”

(Witold Zyss in document ICSC/29/R.8), many organizations limit the choice of counsel to a serving or retired (or perhaps former) staff member of the same organization or from an organization of the United Nations common system. Viewed from a practical angle, this may confer a considerable advantage on administration at the appeal stage.
  - (c) Appeal Boards may be restrained in their work. In the United Nations, Staff Rule 111.2 (k) provides that in cases of termination or other action on the ground of inefficiency or relative inefficiency, the Joint Appeals Board may not consider the substantive question of efficiency but only evidence that the decision was motivated by prejudice or by some extraneous factor. This is a highly problematic provision: in many cases, prejudice can only be established by inference, in part based upon the finding that there was no efficiency problem.
  - (d) The organizations which have recognized the jurisdiction of ILOAT have developed a practice of extending the final outcome of legal proceedings to all staff members who are in the same or a similar situation as the appellant (or the complainant if the case has gone to the Tribunal). A recent example for this is the decision of the UNESCO Director-General, Mr. Koïchiro Matsuura, to recalculate the salaries of all General Service staff members – and not just of the seven appellants – to eliminate the downward effect of two French social levies, CSG and CRDS. For its part, UNAT has developed a practice whereby decisions are not so extended. In judgement No. 942, Merani, it took the precaution to state:
 

“The final consideration presented, although not expressly addressed, is the possible financial impact of the Tribunal’s interpretation on the UNJSPF. This consideration cannot affect the Tribunal’s decision regarding the correct interpretation of the pension adjustment system. However, with regard to existing beneficiaries under the deferred benefit system, the Tribunal believes that the statute of limitations has run on similar applications.”

Based upon those considerations, the organizations which have recognized UNAT's jurisdiction are much more restrictive. To be on the safe side, any staff member wishing to benefit from a judgement must therefore become an intervening party (provided, of course, that he or she knows that an action has been brought), if not take action individually (in Steiner et al., judgement No. 986, faced with a request signed by the named Applicant on behalf of the other Applicants and other UNOMSA personnel, management had tried to argue at the appeal stage that the Staff Regulations and Rules did not provide for class action litigation, as understood in national legal systems); alternatively the sponsor of a collective case may seek the organization's prior consent to extend the final decision to all concerned.

- (e) There is no possibility for the Staff Association or Union to file a complaint instead of a staff member who may not wish to take action himself or herself, for instance for fear of harassment or retaliation. This is not a major problem with regard to administrative decisions of a collective nature (e.g. the payment of salaries based upon a flawed salary scale) under the ILOAT practice for it suffices that a few volunteers bring a case.

## The Human Factor

13. The most important problems, however, stem from the attitudes towards the judicial process. Appeal Boards are a perfect example of the principle that it is the people, not the rules, who make the success of an endeavour:

- (a) Some Executive Heads (or senior management) have ensured that the Appeal Board will eat out of the palm of their hand.
- (b) In some organizations, the officials who, in practice, act as respondents, show utter disregard for the appeal process. Here is a particularly remarkable jewel (UNAT judgement No. 981, Masri):

“X. Another aspect of this case, that merits special consideration is the year-long delay by the Respondent in replying to the Applicant's appeal to the JAB. The excuse offered by the Administration each time it asked for an extension of the time-limit, was that the ‘office is actively engaged in obtaining all the information necessary to complete the statement on behalf of the Secretary-General’. The Tribunal notes that, finally, the JAB decided to consider the case without the Respondent's reply and recommended in favour of the Applicant. It also notes that the Under-Secretary-General for Management remanded the appeal to the JAB for re-examination, because he felt that ‘it [was] not in the interest of the Secretary-General, or of an [a]ppellant, to have cases considered on the basis of one-sided accounts’, adding that before considering a recommendation, ‘especially a recommendation for the award of monetary compensation, [he] must be confident that the recommending body ha[d] gathered all the facts necessary for a full consideration of the issues raised by both parties, and not just one, and that its report reflect[ed] this full consideration’. However, the Tribunal finds that this explanation does not excuse the conduct of the Administration for its inordinate delay in answering the appeal, but that indeed ironically the entire situation was the sole creation of the Administration.”

In the United Nations, it would be quite presumptuous to expect a decision from the Joint Appeals Board within one year from the filing of the application.

- (c) On the side of management, a single person may be responsible for the impugned administrative decision, the review thereof, the defense before the Appeal Board and the decision on the latter's recommendation.
- (d) The Appeal Boards may not be up to standard, lacking legal and public administration expertise, or even judgement.
- (e) In this regard, it also happens, regrettably, that the Staff Association or Union is careless and does not promote the election of a member of the Appeal Board who is up to standard.
- (f) The Executive Head (or those who have authority to speak on his or her name) may have a policy of rejecting – with or without “explanation” – the recommendations of the Appeal Board or of ignoring them altogether.

## From Best to Worst

14. In short, subject to the structural problems identified above, a snapshot of the situation will show the whole array from the fully functional and effective appeal mechanism to the totally dysfunctional one.

15. Well-functioning Appeal Boards will not only consider a grievance from the purely legal angle but also make other recommendations, including on sound management practices. An example is offered in UNAT judgement No. 986, Steiner *et al.*

## The Tribunals

16. The Tribunals are the natural extension of the Appeal Boards and it is hardly possible to consider the internal recourse procedures without an outlook into that level of jurisdiction. A few elements are of importance in the context of this communication.

## Composition

17. ILOAT has “judges” who are top-notch judges with considerable expertise at national level (there have been exception, of course). UNAT has “members” who are appointed by the United Nations General Assembly on the basis of a procedure that allows politicized choices and the selection of persons who have no judicial experience, and sometimes no legal background.
18. This has a bearing on any proposal to create a second level of jurisdiction *above* the existing tribunals: the higher-level judges should be of a still higher caliber, relative to the ILOAT judges.

## Competence

19. The Tribunals are administrative tribunals. Their role is to judge whether a particular administrative decision was lawful. The concepts can be traced back to the League of Nations Administrative Tribunal, the predecessor of ILOAT:

“The proposed tribunal is to be exclusively a judicial body set up to determine the legal rights of officials on strictly legal grounds. [...] The function of the proposed Tribunal will be to pronounce finally upon any allegation that the administration has refused to give an official treatment to which he was legally entitled, or has treated him in a manner which constitutes a violation of his legal rights. [...] [T]he Tribunal will be the final authority for the interpretation of the terms of an official’s appointment and the regulations applicable to the official”

(League of Nations, Official Journal, Special Supplement No. 58, Records of the 8th Assembly, Meetings of Committees, Minutes of the Fourth Committee, 1927, p. 250).

20. Traditionally, with regard to the powers of an administration, a distinction is made between:

- (a) an *obligation* to exercise a power in a certain way;
- (b) a *discretion* to exercise a power.

This distinction, which may be blurred in practice (e.g. there may be an obligatory power based upon a discretionary assessment of the objective facts), is reflected in the judicial control exercised by the Tribunals:

- (a) Obligatory powers are subject to total and strict control.
- (b) Discretionary powers are subject to limited control. This is defined negatively as follows: tribunals will not substitute their own assessments or judgements for those of the defendant administrative authority. By way of positive definition, ILOAT, for instance, has set out the following in judgement No. 849, Pilowsky:

“The case law of the Tribunal supports the principle that when the Director General is granted authority [...] his power is discretionary and is subject to the implied condition that his authority must be exercised only for the good of the service and in the interests of the Organization. The Tribunal has held that a decision [...] taken in the exercise of this discretion is subject to review, but the consistent case law is that the Tribunal will interfere with the decision only if it was taken without authority, or violated a rule of form or of procedure, or was based on a mistake of law or of fact, or if essential facts were overlooked, or if the decision was tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts.”

21. UNAT applies the same principles. However, it tends to be more liberal on the recourse to equity with respect to details (particularly undue delays); but the compensation granted is paltry.



22. This also has a bearing on any proposal to create a second level of jurisdiction *above* the existing tribunals: except where the first instance erred (after all, justice is human), the second-level jurisdiction would be bound by the same principles. Moreover, it is quite possible that the second-level judges will exercise a limited control over the first-level judgements and be reluctant to substitute their own assessments or judgements for those of the first-level judges (there is something called courtesy or solidarity).

## Remedies

23. The difference between ILOAT and UNAT has already been hinted to above:
- (a) Article VIII of the ILOAT Statute provides that:
- “[...] the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him.”
- (b) Article 9 of the UNAT Statute provides that:
- “1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years’ net base salary of the applicant. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal’s decision shall accompany each such order.”
24. Given the time that elapsed between the date of the impugned administrative decision and the time of the judgement, ILOAT is frequently confronted with the question whether rescinding of a decision or execution of an obligation is possible and advisable. This has frequently been replied to negatively. Most cases of contract termination have thus lead to: “I won my case, but lost my job”. Recently, however, the Tribunal has been more strict; it has also tended to refer the case back to the organization for a new decision, which implies that the organization has to pay all salaries and emoluments up to the time of the new decision; it also offers an opportunity for both parties to negotiate.
25. In the case of UNAT, the “I won my case, but lost my job” is a rule that, to our knowledge, has known one exception only (Mr. Javier Perez de Cuellar reinstated three Chinese translators whose contracts had not been renewed based upon a faulty assessment of the notion of secondment. The absurdity of the obligation to set out the amount of compensation payable in lieu of action can be illustrated by judgement No. 960, Qasem, dated 2 August 2000: the Tribunal ordered reinstatement as from 23 June 1997, i.e. payment of salary and emoluments for more than three years (probably at least four since the judgements are published very late); but the defendant organization can elect to pay, in lieu, two years of net base salary.
26. The institution of a second degree of jurisdiction would exacerbate the above difficulties, because of the additional delays; however, the problem would be limited if the review were conducted expeditiously, in strict observance of all time limits. A further delay of one year to 18 months would seem unavoidable, though.

## Volume of Work

27. Both Tribunals adjudicate a few dozens cases a year (80 to 100 a year in the case of ILOAT). This volume includes a few applications for review. The latter, in turn, provide a numerical indication of the need for a second degree of jurisdiction.

## Review by the Same Tribunal

28. In principle, there are major differences between the two tribunals:

- (a) The ILOAT judgements are “final and without appeal” (Article VI.1). However, the Tribunal has developed case law to admit limited review. The general principles pertaining to the review of decisions have been laid out in judgement No. 442, Villegas (No. 4):

“2. *Inadmissible grounds for review*

“The Tribunal’s judgments carry the authority of *res judicata* from the date on which it delivers them. Though subject to review thereafter, they will be reviewed only in exceptional cases. That is the rule under all judicial systems which allow review. It must therefore be made clear at the outset that several pleas in favour of review will not be allowed.

“One is an alleged mistake of law. To allow an application for review on the grounds of the Tribunal’s legal reasoning would be to permit anyone who was dissatisfied with a decision to question it indefinitely in disregard of the principle of *res judicata*.

“Likewise the Tribunal will not allow review on the grounds of an alleged mistake in appraisal of the facts, i.e. the interpretation which the Tribunal has put on the facts.

“Failure to admit evidence is no valid reason for review; otherwise an unsuccessful party might challenge indefinitely the facts on which the judgment is founded.

“Lastly, the Tribunal will not allow review on the grounds that it has omitted to comment on pleas submitted by the parties. Otherwise it would have to pass express judgment on all such pleas, even if they are plainly immaterial. The purpose of an application for review is not to compel the Tribunal to pass judgment on irrelevancies.

“3. *Admissible pleas in favour of review*

“Other pleas in favour of review may be allowed if they are such as to affect the Tribunal’s decision. They include an omission to take account of particular facts; a material error, i.e. a mistaken finding of fact which, unlike a mistake in appraisal of the facts, involves no exercise of judgment; an omission to pass judgment on a claim; and the discovery of a so-called ‘new’ fact, i.e. a fact which the complainant discovered too late to cite in the original proceedings.

“[...]

“5. *Review and correction*

“Where a plea is not such as to affect its decision, the Tribunal will decline not only to reconsider its judgment but also to correct the summary of facts and its legal reasoning. It would lay an undue burden on a tribunal to require it to correct any flaws which had no effect on its decision.”

The latest statement thereon is as follows (judgement No. 2059, Abdur (No. 2) *et al.*):

“2. According to consistent precedent, and contrary to the Agency’s assertion, the Tribunal may allow an application for review, but only in quite exceptional circumstances. As stated in Judgment 1507 (*in re* Morier No. 2), in accordance with Article VI of its Statute, its judgments are “final and without appeal” and carry the authority of *res judicata*. Admissible grounds for review are therefore strictly limited: failure to take account of a material fact, an error of fact which involves no exercise of judgment, omission to rule on a claim, and the discovery of some new facts which the complainant was unable to rely on in the original proceedings. Moreover, the plea must be such as to affect the original ruling (see Judgment 1255, *in re* Bansal No. 4 and Harpalani No. 4, under 2). The grounds which are not admissible for an application for review are an alleged mistake of law, failure to admit evidence, misinterpretation of the facts and omission to comment on a plea (see in particular Judgment 442, *in re* de Villegas No. 4, under 2).”

- (b) The UNAT Statute contains an express provision (Article 11):

“The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.”

29. It is remarkable that ILOAT, despite the clear *res judicata* clause in Article VI.1, is more open to review than UNAT which is constrained by an express provision no doubt to be applied and interpreted narrowly.
30. There are a number of other noteworthy points as regards ILOAT:
- (a) Whilst applications for review are mainly filed by staff members who lost their case, there have been instances where the process was initiated by the Director General (e.g. judgement No. 2029, Coates (Nos. 1 and 2), confirming judgement No. 1871 against FAO). At one point in time, there were fears that the then Director-General of UNESCO (Mr. Federico Mayor) would challenge all decisions that fell against him.
  - (b) So far, the practice is to submit the review to the same panel as the one which delivered the original judgement (a noteworthy exception is judgement No. 2021, Reis-Ekelund, where the complainant sought to disqualify the President of the Tribunal). FICSA has proposed in the past that the review should be conducted by the Tribunal *en banc* (see *FICSA Quarterly*, October 1999).
  - (c) Of all the applications for review that have been filed one only was successful (judgement No. 1255, Bansal (No. 4) and Harpalani (No. 4). Complainants were paid an additional... 517 Indian rupees (and 100 US\$ in costs).

### Review by Another Body

31. The ILOAT Statute contains a provision allowing the respondent organization (e.g. the Governing Body in the case of the ILO) to seek an advisory opinion from the International Court of Justice where the issue is jurisdiction or a fundamental fault in the procedure followed. This is not an appeal procedure, as ICJ is limited to replying to questions on the regularity of the judgement, not merits. This procedure has been used once, by UNESCO in 1956 (ICJ Reports, 1956, p. 77).
32. The possibility of requesting an advisory opinion from ICJ was introduced in the Statute of UNAT in 1955 and removed in 1997 through Resolution 52/166. The opinion had to be sought by a Committee on Applications for Review of Administrative Tribunal Judgements, upon an action by a Member State, the Secretary-General (of the United Nations) or the applicant. The grounds for review were:
- (a) The Tribunal exceeded its jurisdiction or competence;
  - (b) The Tribunal failed to exercise the jurisdiction vested in it;
  - (c) The Tribunal erred on a question of law relating to the provisions of the Charter;
  - (d) The Tribunal committed a fundamental error in procedure which had occasioned a failure of justice.
33. According to Witold Zyss, 44 applications were made to the Committee, including one by a Member State, and three only were forwarded to ICJ (Fasla, ICJ Reports, 1973, p. 166; Mortished, ICJ Reports, 1982, p. 325; Yakimetz, ICJ Reports, 1987, p. 18).

## Conclusions

### “Justice for all”

34. It may be held that there should be no prioritization of the issues relating to the effectiveness of the system of administration of justice. However, recognizing that Rome was not built in one day, and that its history started with a furrow demarcating the new territory, we consider that there is an urgent need to ensure that all people working for an intergovernmental organization have access to an effective system of administration of justice.
35. The statement is simple, the task for individual staff associations and unions and for the federative bodies is challenging.
36. In January 1995, the Yearly Organizing Reunion of International Civil Servants (YORICS) – the first attempt made by the CERN Staff Association, the EPO Staff Union and FICSA to unite all staff representative bodies across continents and systems (this objective is now pursued through the status of associate member in FICSA) – organized a Symposium and adopted the New York Declaration on the Independence and Rights of International Civil Servants. The following principles were established under “Due Process and Judicial Review”:
- “International civil servants should be entitled to due process in the administrative hearing and the appeal process.

- “International civil servants should have access to an independent administrative tribunal composed of attorneys and jurists. This right of access shall include the rights of due process, a fair and speedy trial, and an oral hearing.
  - “This right of access to an administrative tribunal should extend to individuals, staff associations and unions to represent the collective rights of the staff.”
37. Support in this endeavour has been provided by the European Court of Human Rights through its decision in *Waite and Kennedy v. Germany* (application No. 26083/83, judgement of 18 February 1999), based upon Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides:
- “In the determination of his civil rights and obligations [...], everyone is entitled to a [...] hearing [...] by [a] tribunal [...]”
- The Court set out the following:
- “67. The Court is of the opinion that where States establish international organisations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attribute to these organisations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention, however, if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. This is particularly true for the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial [...].
- “68. For the Court, a material factor in determining whether granting ESA immunity from German jurisdiction is permissible is whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention.
- “[...]”
- “73. In view of all these circumstances, the Court finds that, in giving effect to the immunity from jurisdiction of ESA on the basis of section 20(2) of the Courts Act, the German courts did not exceed their margin of appreciation. Taking into account in particular the alternative means of legal process available to the applicants, it cannot be said that the limitation on their access to the German courts with regard to ESA impaired the essence of their “right to a court” or was disproportionate for the purposes of Article 6 § 1.
38. FICSA has successfully used *Waite and Kennedy* in relation to the International Plant Genetic Resources Institute (IPGRI), which has now recognized the jurisdiction of ILOAT (incidentally, the case which caused FICSA to intervene continues in the Rome Labour Court).

## Best Practice

39. Secondly, there is a need in a significant number of organizations to ensure that the existing system of internal justice works, and works efficiently.
40. The first part of this communication, furthermore, shows that there is room for improvement by collecting information on existing best practices and promoting their application across organizations. In this, it must be emphasized that the system of internal justice does not only serve the staff, but also the organization itself.

## Legal Theory

41. The request for a second degree of jurisdiction is frequently based upon superior principles of human rights. This is mistaken. In a communication to the YORICS Legal Symposium of 2 May 1996, Professor David Ruzié emphasized that “the principle of a double degree of jurisdiction is not considered as a fundamental right”. It is a fact, though, that “A system of two-stage judicial appeals is one of the basic principles of democratic law and is established in most countries” (Report of the Joint Inspection Unit on the administration of justice in the United Nations, document A/41/640 of 23 September 1986, paragraph 57). However, this in turn ignores the fact that ILOAT is comprised of top-notch judges.

42. ILOAT had the following to say on this in judgement No. 2029, Coates (Nos. 1 and 2) – application for review by FAO:

“3. The Organization takes the view that the Tribunal should be more flexible in applying the case law, which, it says, does not take into account recent developments in the legal systems of many countries which provide for two levels of jurisdiction or for appeal against court judgments. That argument in effect contests the Tribunal’s Statute, which says that the Tribunal’s judgments are ‘final and without appeal’. Furthermore, the lengthy reference to the means of appeal available under French administrative law overlooks the fact that the Council of State (*Conseil d’État*) rules directly as court of first and last instance on complaints concerning the position of public officials appointed by a decree of the Council of Ministers, and its decisions are not subject to appeal in any higher court.”

43. Of course, the Tribunal does not have the final word since its Statute is not its making and since the Statute can be amended after consultations with all parties having an interest therein. Incidentally, one may wonder why the Tribunal referred to the French *Conseil d’État*; the reason has obviously more to do with the Organization’s pleadings than with the nationality and background of the President of the Tribunal.
44. The view expressed by ILOAT appears to be shared by the European Court of Human Rights in *Waite and Kennedy*, the legitimacy of the ESA judicial system being confirmed:

“59. The Court recalls that the right of access to the courts secured by Article 6 § 1 of the Convention is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention’s requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved [...].”

“[...]

“68. For the Court, a material factor in determining whether granting ESA immunity from German jurisdiction is permissible is whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention.

“[...]

“73. In view of all these circumstances, the Court finds that, in giving effect to the immunity from jurisdiction of ESA on the basis of section 20(2) of the Courts Act, the German courts did not exceed their margin of appreciation. Taking into account in particular the alternative means of legal process available to the applicants, it cannot be said that the limitation on their access to the German courts with regard to ESA impaired the essence of their “right to a court” or was disproportionate for the purposes of Article 6 § 1.

“74. Accordingly, there has been no violation of that provision.”

## Pragmatism

45. Tribunals make mistakes or deliver arguable judgements. “[...] The principle of finality is vital to the administration of justice but judges are human and can make slips [...]” (judgement No. 570, *Acosta Andres, Azola Blanco and Véliz García* – application for review by ESO). Here are three examples from ILOAT:

- (a) In 1994, two FICSA members instituted proceedings in a case which involved, firstly, an error recognized by the Commission that was entitled to determine the methodology for the calculation of salaries and, secondly, delays in the correction of the error. This led in 1997 to judgements No. 1603, *Bensoussan, Bongiovanni and Freeman (No. 3) v. FAO*, on the one hand, and Nos. 1604, *Damond and others v. WIPO*; and 1605, *Heitz (No. 4) v. UPOV*, on the other. In *Bensoussan*, the Tribunal flatly rejected the notion of an error: “The method introduced in 1995 served the purpose better than the one it superseded, but the method in use from 1990 to 1995 was not for all that unlawful.” In *Damond and Heitz*, the same panel of judges considered that “It is common ground that the method was technically flawed.” The latter cases were then dismissed through methodical elimination of the other pleas.

- (b) The European Patent Organization used to follow the salary system of the Coordinated Organizations, without being a member thereof. Both had decided to introduce for the period 1 July 1983 – 30 June 1986 a levy of 1.5 per cent on the salary of categories A and L. A first complaint filed by EPO staff with ILOAT failed (judgement No. 726, Andres (No. 7)). A similar case filed by staff from the Council of Europe (Stevens and others) was subsequently allowed at the Appeal Board level, whereupon Andres filed a new complaint. The latter was also dismissed (judgment No. 785), despite the fact that EPO salaries were no longer on a par with those of the Coordinated Organizations.
- (c) In judgement No. 1317, Amira, which was concerned with termination of employment, the Tribunal castigated ITU for the considerable delay in convening the internal Appeal Board and the consequent prejudice suffered by the complainant. In judgement No. 1320, Figuera de Perez, which was concerned with (alleged) service-incurred eye problems, the Tribunal accepted the case as receivable, considering that the internal remedies had been exhausted as a result of the failure of ITU to convene the Appeal Board; however, the Tribunal did not comment on this in the judgement, nor did it grant compensation for the prejudice caused to the complainant. The judgements were delivered in the same session, but by two completely different panels.
46. These cases illustrate the difficulties that are afflicting the administration of justice: in 1997, when judgements 1603, 1604 and 1605 were delivered, at least in ILOAT, judges were overworked and the registry was clearly understaffed to cope with a total of 173 judgements; clearly, there was no discussion or coordination even in cases involving in effect the whole United Nations system (this is less true today since the volume has come down to some 80 judgements a year). There cannot be any other explanation for the *fiasco* of two perfectly contradictory judgments handed down by the same panel of judges. Some of the judges also seem to be lacking, or at least to suffer from absences, as shown in the case at issue by the denial of an error expressly recognized by its author.
47. The administration of justice is a human endeavour, and judges are no supermen. In particular, they are, like anyone else, sensitive to political, economic and social trends, and some of them yield to the subtle or direct pressures exercised by the powers. The incisively-worded dissenting opinion by Judge Pierre Pescatore in judgements 1118, Niesing (No. 2), Peeters (No. 2) and Rousot (No. 2), *et seq.* are plain criticism of his colleagues' lack of courage:
- “I am sorry that, though the Tribunal declared itself under 11 above to be fully competent, the majority have abstained, in 19, from exercising that competence by going into the merits of the Organisation's salary practices. In its advisory opinion of 12 July 1973 (Application for review of Judgment No. 158 of the United Nations Administrative Tribunal, 1973, pp. 166, 210 and following) the International Court of Justice declared that a tribunal has the minimum obligation of explaining its decisions. It is questionable whether this judgment and the others on the Eurocontrol reduction discharge that obligation.”
48. This kind of problems must be taken at their roots; a second degree of jurisdiction would, at best, have a curative effect. Staff associations have an important role to play, particularly:
- (a) They should press for adequate means to be made available to the Tribunals. FICSA is doing this with respect to UNAT, whose functioning is appalling.
- (b) They should be more proactive in the power play so as to balance out the pressures that come from member States, executive heads... and human resources management gurus.
- (c) They should be more proactive in the supervision of the functioning of the Tribunals.
49. The importance of doctrine cannot be overemphasized: the judges are very sensitive to constructive criticism and, contrary to the decisions of a second-degree jurisdiction, doctrine would be entirely in our hands and could address all deficiencies including, for instance, faulty argumentation in a judgement whose conclusion is correct.

### “Justice Delayed is Justice Denied”

50. The establishment of a second degree of jurisdiction should also be considered in the light of this maxim. There is little doubt that the time required to get a final decision will be doubled: the same applies to the costs for the staff member. The experience of the European Communities is that administration systematically challenges the first-instance decisions which fell against it. The benefit for staff members (i.e. the possibility of having a judgement overturned in their favour) may well be outweighed by the simple fact that it would take another two years, in the best case, to get a final decision.

## So: A Second Degree of Jurisdiction, and if so, Below or Above the Existing Tribunal?

51. The positions on the issue have been, not unexpectedly, variable. On the principle, the most compelling arguments seem to be the following:
- (a) “The two-tier judicial system is one of the key elements of the rights of the defence” (see, however, *supra*, 41) and “its absence frequently results in a sense of frustration and powerlessness (if not injustice) in the minds of the parties who are found against by the first judge” (Georges Vanderzantzen, Actes des journées d’études des 9–10 décembre 1994, Éditions A. Pedone, Paris, 1996).
  - (b) “For these reasons I have always held the view that the only true remedy for the drawbacks I have mentioned would be the introduction of a second-tier administrative court, in other words, a court with competence to review the decisions of the first-tier court in all respects, both legal and factual, and to correct and compensate any defects they may contain” (Judge Roberto Ago, separate opinion appended to the advisory opinion of ICJ of 27 May 1987 in the Yakimetz case).
50. Creating another level of jurisdiction, however, raises a number of major issues, as described above.
51. In 1995, Mr. Federico Mayor, then Director-General of UNESCO proposed to the UNESCO General Conference to renew the recognition of ILOAT for two years only. He alleged that:
- “the Tribunal has sometimes tended in its judgments not to take fully into account the legitimate interests of the Organization, notably, in ordering reinstatement of a complainant and giving no alternative solution to the Organisation, but also interpreting a rule of the latter without taking into account UNESCO’s request to re-examine an incorrectly interpreted rule” (document 28 C/74 of the General Conference).
- He then proposed the creation of an in-house tribunal (document 152 EX/35 of the Executive Board, dated 27 August 1997). This eventually led to consultations on a proposal to establish a second level with the ILO and subsequently among the organizations that had recognized the jurisdiction of ILOAT. The vast majority of them pronounced against an additional degree, in writing and at a meeting held in April 1999. A number of suggestions were made, however (see FICSA Quaterly, October 1999).
52. FICSA was also consulted, on an equal footing, and participated in the said meeting. FICSA replied that it shared the view expressed in Mr. Hansenne’s letter that the second degree of jurisdiction might be found more easily at the lower level by setting up a first degree worthy of the name in the framework of the internal procedure. In addition, beyond the considerations of efficiency, cost and expeditiousness of the legal process referred to in Mr. Hansenne’s letter, FICSA also cast doubts over the efficiency of a second degree that would be called upon to set aside decisions taken by a college of seven top-notch judges, all of whom have served on the highest national courts.
53. At the end of the day, the question of a second degree of jurisdiction is a matter of... judgement.
54. However, irrespective of whether we would like the internal Appeal Boards to be transformed into a first-degree jurisdiction – which would deliver binding decisions rather than recommendations – there is a need to make them more effective.
55. There is also a need to make the Tribunals more effective, particularly UNAT and some other in-house Tribunals.
56. For both endeavours, unity of the staff representation, reaching across the systems (United Nations common system, Coordinated Organizations, European Union institutions, etc.) is a key to success.

## **Session A – Internal Appeal & Grievance Procedures**

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### **Presentation by D. Dror (ILO)**

No text was submitted.



## **Session A – Internal Appeal & Grievance Procedures**

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### **Presentation by S. Delgado (WTO)**

No text was submitted.

## Session A – Internal Appeal & Grievance Procedures

### Appeal Procedures at OECD

#### Presentation by Marie-Christine Delcamp (OECD)

#### I. A FEW STATISTICS CONCERNING APPEALS PROCEDURES

##### AT THE OECD SINCE THEIR CREATION

Cases referred to the Mediator	225
Cases examined by the Joint Advisory Board	79
Cases examined by the Appeals Board	96 of which 60 dismissed
Cases examined by the Administrative Tribunal	50 of which 27 dismissed

#### PRELIMINARY PROCEDURES

##### CONCILIATION : THE MEDIATOR

At the end of 1994, a post of mediator was created at the OECD, as it has been in most other international organisations. It should be said in this respect that the OECD was lagging behind other international organisations, most of which appointed mediators in the 1970s.

We shall examine how the mediator function operates before studying possible changes that could be made.

- Appointment: The mediator, together with his deputy, are chosen by the Secretary-General on the joint proposal of the Head of Human Resource Management and the Staff Association from a list of four persons.
- Mandate: the mandate is for two years, renewable once.
- Mission: the mediator examines individual complaints by members of staff, endeavouring to help solve disputes using whatever means he deems appropriate. He has no power of decision or enforcement.

The results of the mediator's work are mixed, and the culture of mediation is not yet deep-rooted at the OECD, to say the least. The number of persons (20) referring cases to the mediator is very small, and has not changed over the last two years. This has led the Organisation to propose statutory changes to strengthen his role.

##### The Administration's proposals

- Constitute a team of between one and four mediators;
- Broaden and clarify their tasks, giving them the authority to act on their own initiative or at the request of the Secretary-General.

##### The Staff Association's proposals

- The Association feels that it is not by increasing the number of mediators that the culture of mediation will be strengthened. It has to be said that the mediator is not visible enough and lacks authority. This is probably due to the culture of the Organisation, where staff and managers do not always want to air their differences before a mediator. Then again, perhaps the Administration does not accord the function of mediator all the importance it deserves;
- The Association asks that the mediator be given more follow-up powers, and that members of staff should not be able to avoid participating in the process of mediation but, on the contrary, should facilitate the mediator's task by providing all the information he requires to understand the situation properly and succeed in finding a solution to the dispute.

The reform proposed by the Administration has just been implemented, and the recruitment of new mediators is under way.

## PRIOR WRITTEN REQUEST

A staff member must submit a reasoned request to the Secretary-General asking for the measure in dispute to be revoked. The primary purpose of this procedure is to ensure that a staff member does not dispute a decision taken at a lower lever when the Head of Administration himself might feel that it was inappropriate or irregular. The written request must be made within two months of the notification of the prejudicial decision. Should the Secretary-General fail to reply within one month, or should he refuse the request, the official may file an application with the Administrative Tribunal of the Organisation.

## AN ADVISORY BODY: THE JOINT ADVISORY BOARD

The procedure before this Board provides a guarantee to staff and is a precaution taken by the Organisation to avoid unnecessary appeals and to resolve disputes informally. Most international organisations have such bodies which, in most cases, were created before those responsible for conducting judicial proceedings.

- **Appointment:** The Joint Advisory Board (JAB), created at the OECD in the early 1970s, comprises a Chairman and a deputy, who are persons from outside the Organisation, and six members: three designated by the Secretary-General, and three by the Staff Association;
- **Mandate:** only the Chairman and his deputy are appointed for three years, the other members being appointed for a given case;
- **Mission:** the JAB gives an opinion to the Secretary-General on all individual disputes referred to it, and indicates whether the statutory provisions have been complied with and if the decision taken is not contrary to equity;
- **Functioning:** the JAB is obliged to meet within two months of the referral, which latter is not subject to any time limit.

## CRITICAL ANALYSIS OF THE FUNCTIONING OF THE JAB

In the light of experience, it may be wondered whether the JAB performs satisfactorily the duties for which it was set up. It is clear that the JAB is neither a conciliation body nor a court of first instance, and it is regrettable that its procedure has become too legalistic, and that its Chairmen are chosen from administrative jurisdictions rather than judicial ones. This latter point is not without importance since administrative judges have little or no experience of dealing with staff matters, and their natural tendency is to have regard to the requirements of the administration rather than the legitimate claims of the staff. It may be noted, indeed, that the Chairman of the OECD Administrative Tribunal is also an administrative lawyer, which facilitates the coherence of decisions... Lastly, the debate before the JAB is conducted in a very legalistic fashion by the two parties, which leaves very little room for considerations of equity.

The Association therefore regularly gives thought to possible reform proposals.

## LEGAL PROCEEDINGS

### ADMINISTRATIVE TRIBUNAL OF THE OECD

Legal proceedings are conducted by judicial bodies separate from the Administration. On 12 December 1991, the Administrative Tribunal of the OECD replaced the Appeals Board.

- **Appointment**

The OECD Council appoints, for a period of three years, three judges and three deputies from among jurists of different nationalities who represent the main legal systems of the Member countries of the Organisation. The Council appoints the Chairman from among the judges, having regard to his judicial experience.

- **Mandate**

The judges are appointed for a period of three years.

- Mission

The Tribunal decides individual disputes arising from a decision of the Secretary-General which an official considers as prejudicial to himself. The Tribunal has jurisdiction to resolve all questions relating to the Staff Regulations. It can annul decisions of the Secretary-General or order the Organisation to redress the damage resulting from any irregularity committed by the Secretary-General.

- Functioning

The Administrative Tribunal cannot examine applications unless the applicant has made a prior written request to the Secretary-General for withdrawal or modification of the contested decision. The application must be filed with the Registry of the Tribunal within three months from the date of notification of the Secretary-General's rejection or from his failure to reply. Applications must be in writing, set out all the grounds of complaint invoked by the applicant and be accompanied by any documentary evidence in support thereof. Although the filing of applications does not suspend the application of contested decisions, the Secretary-General, during the period within which applications may be filed or while proceedings are under way, must endeavour not to take any further steps which would alter the situation within the OECD to the detriment of the applicant and would thereby render impossible the redress claimed by the latter, should the Tribunal find the application well-founded.

The Tribunal may order any measure of investigation and may require the production of any document which it deems useful for the consideration of applications before it. Documents so produced must also be communicated to the Secretary-General and the applicant.

The Tribunal must, as a general rule, hear cases within six months of the filing of the application. The Tribunal is not validly constituted unless three members are present. Tribunal hearings are public.

- Judgements of the Tribunal

Judgements of the Tribunal are by majority vote and in writing. They address the grounds relied upon by the parties and state the reasons on which they are based. Judgements are not subject to appeal except for purposes of rectification of error, revision or interpretation. Within one month from the date of notification of the annulment by the Tribunal of a decision of the Secretary-General, the Secretary-General may, in exceptional cases, where he deems it impossible or inadvisable to take the steps which such annulment would imply, request the Tribunal to fix instead an amount of compensation to be paid to the applicant as redress for any injury incurred. The Tribunal may decide that the Organisation shall, within reasonable limits, reimburse justified expenses incurred by the applicant.

In the same way as for the JAB, the Staff Association would like to see changes to the way the Administrative Tribunal operates, and more particularly to the way judges are appointed. At present, the Organisation appoints the three judges and the three deputies of the Tribunal. The Association considers that it would be fairer if it could propose, on an equal footing with the Administration, names of persons qualified to sit on the Administrative Tribunal. This would allow it to propose, for instance, members of the legal profession with significant experience in dealing with labour disputes.

Another improvement which could be made at an earlier stage, before cases are referred to the Administrative Tribunal, would be if the Administration were obliged to give reasons for administrative acts prejudicial to staff. This would without any doubt facilitate appeals by staff.

## **APPEALS AGAINST JUDGEMENTS OF THE ADMINISTRATIVE TRIBUNAL OF THE OECD**

Parties may appeal against judgements of the Administrative Tribunal of the OECD in order to obtain the interpretation of an ambiguous judgement, rectification of a mistake ("erreur matérielle") or, where relevant, for revision of the judgement if new facts have come to light.

The Appeals Board of the OECD specified what it meant by "erreur matérielle": "... an error or mistake [which] may have decisively influenced the decision of the case". However, so as to avoid any misuse of such appeals, the OECD Administrative Tribunal refuses to examine appeals if their real objective is to obtain the revision of a judgement or the interpretation of clear wording.

This all shows that the existing mechanisms are not aimed at creating a second level of jurisdiction.

## PROPOSALS

The existence of an appeal court of course means that judgements handed down by a tribunal may be challenged on substantive points. The question of whether an appeal court should be created is a recurrent one. It cannot, however, be considered that access to two levels of jurisdiction is a fundamental right, except in criminal matters. Furthermore, very few international organisations provide for such a system. One solution would be that the Co-ordinated Organisations create a joint appeals body within their spheres of competence. Another approach would be for all international organisations at least to adopt provisions that were more protective of the interests of staff.

### CREATION OF AN APPEALS BODY FOR THE COORDINATED ORGANISATIONS

Discussion about the creation of an appeals body was first held in the Council of Europe in 1962. In 1978, the Co-ordinating Committee of Government Budget Experts recommended that the appeals boards of the Co-ordinated Organisations should inform and concert with each other so as to avoid different rulings on similar questions. This approach was reasserted in 1978, 1980 and 1981. In 1987, it was proposed to set up a jurisdiction competent exclusively to hear so-called co-ordinated questions. Such a jurisdiction could have been given the power to rule as a court of first and last instance, or to act as an appeals court or as a court of annulment (“*cassation*”). None of these proposals was accepted. In 1993, the Committee of Representatives of the Secretaries-General asked their legal advisors to look at this question again. They concluded once more that it was not desirable to set up a judicial body common to the Co-ordinated Organisations, but studied a number of alternative possibilities including optional direct referral for opinion, mandatory referral, referral back for a preliminary ruling on interpretation, or referral back for a preliminary ruling on interpretation plus an assessment of validity.

In 1995, the legal counsel of the Co-ordinated Organisations concluded that it was not desirable to create a common tribunal. Such a tribunal, specialised in interpreting and assessing the legality of Co-ordinated texts, would be a source of additional problems, expense and delay.

In 1997, the Committee of Staff Representatives asked a law professor, Monsieur Piquemal, to examine the problems posed by contradictions in the case law of the judicial bodies of the Co-ordinated Organisations. Monsieur Piquemal proposed a three-stage solution:

- i) The setting up of a joint committee for legal questions relating to Co-ordination. This body would give an opinion which would be binding on the parties.
- ii) A mandatory preliminary ruling which would require the tribunal hearing the case immediately to provide the five other administrative jurisdictions with information and, in addition to its ruling, to issue a separate instrument setting out its interpretation of the provision on which the solution to the dispute depends.
- iii) Unification of the various Staff Regulations and jurisdictions existing at present.

Lastly, in 2000, the legal counsel of the Co-ordinating Committee on Remuneration re-examined all these questions before finally concluding that the *status quo* should be maintained.

This position, which has now been held for nearly forty years, leads us to consider whether, rather than creating a double level of jurisdiction, existing procedures should not be improved instead.

### IMPROVEMENT OF EXISTING PROCEDURES

Improving existing procedures is a less ambitious goal than creating an appeals body, but has the advantage of being more realistic, since more acceptable by the Organisation. Work could be undertaken in three areas:

- Changing the provisions for appointing the judges of the Administrative Tribunal;
- Introducing interim measures in disputes submitted to the Administrative Tribunal: administrative summary procedure and suspension of application;
- Before cases are referred to the Administrative Tribunal, an obligation on the OECD to give reasons for administrative acts prejudicial to staff.

## Changing the provisions for appointing the judges of the Administrative Tribunal

At present, the Chairman and the two judges, as well as the three deputies, of the Administrative Tribunal are appointed by the OECD Council on the proposal of the Secretary-General.

The Staff Association is not at all consulted as to the selection of these persons qualified in labour law or civil service law.

It would seem fairer if the Staff Association could propose a list of candidates and if the Council chose from this list three of the six members of the Tribunal (for example one judge and two deputies).

## Introducing interim measures

### Summary procedure

The use of a summary procedure makes it possible to obtain interim measures or the suspension of application of an act so as to preserve the effectiveness of the main appeal.

Obviously, any request under such a procedure must be related to the subject of the main appeal but must not prejudice its outcome.

Three basic conditions should be met if interim measures are to be obtained:

- The existence of factual or legal grounds providing a *prima facie* justification for such measures;
- An urgent need to prevent serious and irreparable damage;
- A discussion of the interests involved, the outcome of which would have to tend in favour of the applicant if the interim measure requested is to be accorded.

Summary procedure requests would be submitted to the Chairman of the OECD Administrative Tribunal.

Of the possible measures which might be ordered, a suspension of application would mean that the applicant's situation would be maintained.

## Suspension of application

It is provided in the rules of all international administrative jurisdictions that the filing of an application does not suspend application of the disputed decision.

This rule seems open to criticism in as much as executing a decision can sometimes cause serious and irremediable prejudice to the applicant.

The Chairman of the Tribunal should therefore be able to issue a summary order that execution of the contested decision be suspended in any case where such execution could cause sufficiently serious, or irreparable, damage to the interests of the applicant.

## Giving reasons for administrative acts

Under the principle of giving reasons for administrative acts, decision-making authorities have to give reasons for all decisions which cause prejudice to one or more members of staff. This provision has a dual objective: it enables the official concerned to understand better the reasons underlying a decision, thus allowing him to assess the chances of success of a possible appeal. It also, and above all, facilitates judicial control.

Although the question of giving reasons for administrative decisions was examined by the OECD in early 1989 and was the subject of an agreement in principle between the Administration and the Staff Association in July 1989, reference to it has been confined to a memorandum from the Secretary-General to directors, and it thus remains a dead letter.

This question should therefore be re-opened with the Administration who should be asked to enshrine the requirement to give reasons for administrative acts in the Staff Regulations. It would be specified that written reasons, listing the legal and factual considerations underlying the decision in question, must be given for all administrative decisions causing prejudice.

## Session A – Internal Appeal & Grievance Procedures

### Les procédures de recours à l'OCDE

#### Présentation par Marie-Christine Delcamp (OCDE)

#### I. Quelques chiffres sur les procédures de recours à l'OCDE depuis leur création

Dossiers traités par le médiateur	225
Dossiers examinés par le Comité Consultatif Mixte	79
Dossiers examinés par la Commission des Recours	96 dont 60 rejets
Dossiers examinés par le Tribunal Administratif	50 dont 27 rejets

### LES PROCÉDURES PRÉALABLES

#### UN ORGANE DE CONCILIATION : LE MÉDIATEUR

Comme dans la plupart des autres organisations internationales, la fonction de médiateur a été créée à l'OCDE à la fin de l'année 1994. Il faut noter d'ailleurs que l'OCDE était la lanterne rouge des organisations internationales puisque la plupart d'entre elles étaient dotées d'un tel dispositif depuis les années 1970.

Nous examinerons successivement le fonctionnement de cet organe puis nous étudierons les éventuelles modifications qui pourraient être apportées.

- Nomination : Le médiateur ainsi que son suppléant, sont choisis par le Secrétaire Général sur proposition conjointe du Chef de la gestion des Ressources humaines et de l'association du personnel parmi une liste de quatre personnes.
- Mandat : son mandat est de deux ans renouvelable une fois.
- Mission : Le médiateur examine les plaintes individuelles formées par les membres du personnel, il s'efforce de contribuer à la solution des litiges par les moyens qu'il juge approprié. Il n'a ni pouvoir de décision ni de contrôle.

Le bilan que l'on peut faire de l'activité du médiateur est mitigé : Le moins que l'on puisse dire est que la culture de la médiation n'est pas encore ancrée profondément à l'OCDE. Ces deux dernières années le nombre de personnes ayant saisi le médiateur est resté stable et très peu important : 20 personnes. Ce constat a conduit l'Organisation à proposer des modifications statutaires visant à renforcer son rôle.

#### Les propositions de l'Administration

- Constituer une équipe de médiateur composée de une à quatre personnes;
- Élargir et clarifier ses missions en leur donnant le pouvoir d'agir d'initiative ou à la demande du Secrétaire Général.

#### Les propositions de l'Association du Personnel

- L'Association considère que ce n'est pas en multipliant le nombre de médiateurs que l'on renforcera la culture de la médiation. Or, force est de constater, que le médiateur n'a ni visibilité ni légitimité suffisante. Cela est vraisemblablement dû à la culture de l'Organisation, les agents et les managers ne souhaitant pas toujours exposer leurs conflits devant le médiateur. L'Administration de son côté n'accorde peut-être pas à la fonction de médiateur toute l'importance qu'elle mérite;
- C'est la raison pour laquelle l'AP demande que les pouvoirs de contrôle du médiateur soient renforcés, et que les membres du personnel ne puissent se soustraire à son action mais au contraire facilitent sa tâche en fournissant tous les éléments qui lui permettront de mieux appréhender la situation et de parvenir à la solution du conflit.

La réforme proposée par l'administration vient d'aboutir, et le recrutement de nouveaux médiateurs est en cours.

## **UN RECOURS HIÉRARCHIQUE**

Le recours hiérarchique est l'obligation qu'a l'agent d'adresser une demande motivée au Secrétaire Général afin que la mesure qu'il conteste soit rapportée. L'objet premier du recours hiérarchique est de faire en sorte qu'un membre du personnel ne conteste pas une décision qu'une instance subordonnée aurait prise de sa propre autorité alors que le chef de l'administration lui-même la jugerait inopportune ou irrégulière. Ce recours doit être intenté dans un délai de deux mois à compter de la notification de la décision qui fait grief. En l'absence de réponse du Secrétaire Général dans un délai d'un mois, ou en cas de réponse négative, l'agent peut introduire sa requête devant le Tribunal Administratif de l'Organisation. Le recours hiérarchique apparaît ainsi comme le préalable indispensable à tout recours devant la juridiction administrative.

## **UN ORGANE CONSULTATIF : LE COMITE CONSULTATIF MIXTE**

La procédure consultative est une garantie donnée aux agents et une précaution prise par l'Organisation pour éviter les recours inutiles et rectifier aisément les décisions contestables. La plupart des Organisations internationales disposent de ces instances qui ont dans la majorité des cas été créées avant les organes de recours contentieux.

- **Nomination** : le Comité Consultatif Mixte (CCM) a été créé à l'OCDE au début des années 1970, il comprend un président et un suppléant qui sont des personnalités extérieures et six membres : trois désignés par le Secrétaire Général et trois par l'Association du Personnel;
- **Mandat** : seuls le président et son suppléant sont désignés pour trois ans, les autres membres le sont pour une affaire donnée;
- **Mission** : le CCM donne son avis au Secrétaire Général sur tout litige d'ordre individuel qui lui est soumis et indique dans un avis si les dispositions du statut ont été respectées et si la décision prise n'est pas contraire à l'équité;
- **Fonctionnement** : le CCM est tenu de se réunir dans les deux mois suivant sa saisine qui n'est soumise à aucun délai.

## **ANALYSE CRITIQUE DU FONCTIONNEMENT DU CCM**

A la lumière de l'expérience on peut se demander si le CCM remplit de façon satisfaisante la fonction qui a présidé à sa création. En effet s'il est clair que le CCM n'est ni une instance de conciliation ni un premier degré de juridiction, on peut cependant regretter la trop grande juridiciarisation de la procédure, et déplorer que les présidents de CCM appartiennent aux juridictions administratives plutôt qu'aux juridictions judiciaires. Cette origine professionnelle n'est pas sans importance tant il est vrai que les magistrats de l'ordre administratif ont peu ou pas l'habitude de traiter de questions touchant aux relations du travail et que leur inclination naturelle les amène davantage à prendre en compte les nécessités d'une administration que les demandes légitimes du personnel. Ajoutons enfin que le Président du Tribunal Administratif de l'OCDE est également issu de la juridiction administrative ce qui facilite la cohérence dans les décisions... Enfin, les débats portés devant le CCM sont présentés de façon très juridique par les deux parties ce qui laisse très peu de place aux considérations d'équité.

Ce constat conduit régulièrement l'Association à s'interroger sur les propositions de réforme qui pourraient être envisagées.

## **LA PROCÉDURE CONTENTIEUSE**

### **LE TRIBUNAL ADMINISTRATIF DE L'OCDE**

La procédure contentieuse se déroule devant des organes juridictionnels distincts de l'administration. Le Tribunal Administratif de l'OCDE a succédé à la Commission des Recours à partir du 12 Décembre 1991.

- **Nomination** :

Le Conseil de l'OCDE désigne trois juges et trois suppléants pour une durée de trois ans, choisis parmi des personnes qui sont juristes, de nationalités différentes et représentant les principaux systèmes juridiques des pays



membres de l'Organisation. Le Conseil désigne le Président parmi les juges en tenant compte de son expérience juridictionnelle;

- Mandat :

Les juges sont désignés pour une durée de trois ans.

- Mission :

Le tribunal connaît des litiges d'ordre individuel auxquels pourrait donner lieu une décision du Secrétaire Général faisant grief à un agent. Le Tribunal a compétence pour résoudre, toute question relative au statut du personnel. Il peut annuler les décisions du Secrétaire Général ou condamner l'Organisation à réparer le dommage résultant d'une irrégularité commise par le Secrétaire Général.

- Fonctionnement :

Le Tribunal administratif ne peut examiner que les requêtes qui ont fait l'objet d'une demande écrite préalable tendant à obtenir le retrait ou la modification d'une décision faisant grief (recours hiérarchique). La requête doit être déposée auprès du greffe du Tribunal dans un délai de trois mois à compter de la notification de la décision de rejet ou de l'absence de réponse par le Secrétaire Général. Les requêtes doivent être présentées par écrit; elles doivent contenir tous les moyens invoqués par l'intéressé et être accompagnées de toutes les pièces justificatives. Bien que les requêtes n'aient pas d'effet suspensif, le Secrétaire général doit, pendant la période durant laquelle une requête peut être présentée ou est en cours d'instruction, s'efforcer de ne prendre aucune décision nouvelle qui modifierait la position au sein de l'OCDE au détriment du requérant et rendrait par là-même impossible la réparation demandée par ce dernier au cas où il serait fait droit à sa requête.

Le tribunal peut ordonner toute mesure d'instruction et peut obtenir la communication de toutes pièces qu'il estime utiles à l'examen des requêtes dont il est saisi. Toute pièce communiquée au tribunal doit également être communiquée au Secrétaire général et au requérant.

Le tribunal doit, en principe, examiner les requêtes qui lui sont soumises dans un délai de six mois à compter de leur dépôt. Pour siéger valablement, le tribunal doit comprendre trois membres. Les séances du tribunal sont publiques,

- Jugements du Tribunal :

Les jugements du tribunal sont rendus par écrit à la majorité des voix. Ils répondent aux moyens invoqués par les parties et indiquent les motifs retenus par le tribunal. Les jugements ne peuvent faire l'objet que d'un recours en rectification d'erreur matérielle, d'un recours en révision ou d'un recours en interprétation. Dans un délai d'un mois à compter de la notification d'un jugement d'annulation, le Secrétaire général peut, dans le cas exceptionnel où il estime impossible ou inopportun de prendre les mesures qu'impliquerait cette annulation, demander au tribunal d'y substituer une indemnité à allouer au requérant en réparation du préjudice subi. Le tribunal peut décider que l'Organisation remboursera, dans des limites raisonnables, les frais justifiés exposés par le requérant.

Comme nous l'avons indiqué à propos du CCM, l'Association du personnel souhaite que le fonctionnement du Tribunal Administratif et plus particulièrement le mode de nomination des juges, soit modifié. Actuellement, l'Organisation désigne les trois membres et les trois suppléants du Tribunal. L'Association considère qu'il serait équitable qu'elle puisse proposer à égalité avec l'administration des noms de personnalités qualifiées pour siéger au tribunal administratif, ce qui lui permettrait de proposer, notamment, des magistrats de l'ordre judiciaire très habitués à traiter des conflits du travail.

Une autre amélioration qui pourrait être apportée en amont de la saisine du tribunal administratif consisterait à ce que l'administration motive les actes administratifs qui font griefs aux agents. Cela faciliterait très certainement les recours des agents.

## **LES RECOURS CONTRE LES DÉCISIONS DU TRIBUNAL ADMINISTRATIF DE L'OCDE**

Les décisions du Tribunal administratif de l'OCDE peuvent faire l'objet de recours, de la part des parties en vue d'obtenir l'interprétation d'une décision dont la portée s'avère ambiguë, la rectification d'une erreur matérielle et le cas échéant le recours en révision pour faits nouveaux.

La Commission de recours de l'OCDE a été amenée à préciser ce qu'elle entendait par erreur matérielle : « erreurs susceptibles d'avoir exercé une influence sur le sens de la solution adoptée ». Pour autant et afin de ne pas détourner de

son but la finalité des dits recours, le Tribunal administratif de l'OCDE refuse d'examiner les recours s'ils ont en fait pour but d'obtenir la révision de la décision ou d'interpréter un texte clair.

Tous ces éléments démontrent bien que les mécanismes existants ne visent pas à créer une deuxième degré de juridiction.

## **PROPOSITIONS**

Comme on le sait, une instance d'appel permet de remettre en cause, au fond, un jugement rendu par un tribunal. La question de la création d'instance d'appel est récurrente. On ne peut pour autant considérer que le principe de l'existence d'un double degré de juridiction est un droit fondamental sauf en matière pénale. Il faut noter d'ailleurs que très peu d'organisations internationales bénéficient de cette disposition. Une solution consisterait à ce que les Organisations coordonnées aient une instance de recours commune dans leurs domaines de compétence. Une autre possibilité serait que l'ensemble des Organisations internationales bénéficient à tout le moins de dispositions plus protectrices de l'intérêt des agents.

## **LA CRÉATION D'UNE INSTANCE D'APPEL POUR LES ORGANISATIONS COORDONNÉES**

Les premières réflexions concernant la création d'une instance de recours ont eu lieu au Conseil de l'Europe en 1962. En 1978 le Comité de coordination des experts budgétaires des gouvernements, avait recommandé qu'une information mutuelle et une concertation soit instituées entre les commissions de recours des Organisations Coordonnées, afin d'éviter que celles-ci ne se prononcent différemment sur des questions similaires. Cette position a été réaffirmée en 1978, 1980, 1981. En 1987, la proposition a été faite de créer une juridiction compétente exclusivement pour les questions dites coordonnées. Cette juridiction aurait pu statuer soit en premier et dernier ressort, soit comme juridiction d'appel, soit comme juridiction de cassation. Toutes ces solutions proposées ont été écartées. En 1993, le Comité des Représentants des Secrétaires généraux a demandé aux conseillers juridiques de réexaminer cette question, ils ont à nouveau considéré qu'il était inopportun d'établir une instance juridictionnelle commune aux Organisations Coordonnées, mais ont étudié plusieurs variantes qui allaient de la saisine facultative pour avis, ou saisine obligatoire au renvoi pour décision préjudicielle obligatoire en interprétation ou encore renvoi pour décision préjudicielle obligatoire en interprétation et en appréciation de validité.

En 1995, les jurisconsultes des Organisations coordonnées ont considéré que la création d'un tribunal qui leur serait commun n'était pas opportune. La création d'un tribunal commun spécialisé dans l'interprétation ou l'appréciation de la légalité des textes coordonnés serait source de difficultés, de coûts et de délais supplémentaires.

En 1997, le comité de Représentants du Personnel a demandé à un professeur de droit, Monsieur Piquemal, d'examiner les problèmes posés par les contrariétés de jurisprudence des instances juridictionnelles des Organisations coordonnées. Celui-ci a proposé une solution en trois étapes :

- i) La première consiste en la mise en place d'un comité mixte pour les questions juridiques relevant de la coordination. Cette instance rendrait un avis qui lierait les parties.
- ii) La deuxième est un renvoi préjudiciel obligatoire qui imposerait au tribunal saisi de fournir une information immédiate aux cinq autres juridictions administratives et de rendre outre sa sentence un acte séparé qui fournirait l'interprétation de la disposition dont dépend la solution du litige.
- iii) La troisième consisterait à unifier les statuts du personnel et des juridictions existantes.

En 2000 enfin, le conseiller juridique du Comité de Coordination sur les Rémunérations a réexaminé l'ensemble de ces questions, pour finalement conclure au maintien du statu quo.

Cette position constamment maintenue depuis bientôt quarante ans nous amène à nous poser plutôt que la question de la création d'un double degré de juridiction celle de l'amélioration des procédures existantes.

## **L'AMÉLIORATION DES PROCÉDURES EXISTANTES**

L'amélioration des procédures existantes est une ambition plus modeste que la création d'une instance d'appel mais qui présente l'avantage d'être plus facilement réalisable parce que plus acceptable par l'Organisation. Trois pistes de travail peuvent être envisagées :

- La modification des conditions de nomination des juges du Tribunal administratif;
- L'institution de mesures provisoires dans les litiges soumis au Tribunal administratif : le référé administratif et le sursis à l'exécution;
- En amont de la saisine du Tribunal administratif, l'obligation pour l'OCDE de motiver les actes administratifs faisant grief aux agents.

### **La modification des conditions de nomination des juges du Tribunal administratif**

Actuellement le Président et les deux juges titulaires ainsi que les trois juges suppléants du Tribunal administratif sont désignés par le conseil de l'OCDE sur proposition du Secrétaire général.

L'Association du Personnel n'est associée en rien au choix de ces personnalités qualifiés en droit du travail ou de la fonction publique.

Il paraîtrait plus équitable que l'Association du Personnel puisse proposer une liste de personnalités et que le conseil choisisse parmi cette liste trois des six juges titulaires ou suppléants (par ex. 1 titulaire et 2 suppléants).

### **Institution de mesures provisoires**

#### Le référé

Le référé permet d'obtenir des mesures provisoires ou le sursis à exécution d'un acte afin de préserver l'efficacité du recours principal.

Bien évidemment, la demande en référé doit présenter un lien avec l'objet du recours principal mais ne doit pas préjuger de l'issue de celui-ci.

Il semble nécessaire que trois conditions de fond soient remplies pour obtenir l'octroi de mesures provisoires :

- L'existence de moyens de fait et de droit justifiant à première vue l'octroi des mesures;
- L'urgence à prévenir un dommage grave et irréparable;
- Une confrontation des intérêts en cause dont l'appréciation doit pencher en faveur du requérant pour que la mesure provisoire sollicitée soit accordée.

Les demandes de référé seraient présentées devant le Président du Tribunal administratif de l'OCDE.

Parmi les mesures susceptibles d'être ordonnées, le sursis à exécution permettrait de maintenir la situation de l'intéressé en l'état.

### **Sursis à exécution**

Les statuts de toutes les juridictions administratives internationales prévoient que l'introduction d'une requête n'a pas pour effet de suspendre l'exécution de la décision contestée.

Cette règle nous paraît critiquable dans la mesure où l'exécution de la décision peut parfois causer un préjudice grave et irréversible au requérant.

Aussi, il paraît souhaitable que le Président du Tribunal puisse, par voie de référé, ordonner de suspendre l'exécution de la décision contestée chaque fois que l'exécution de la décision serait de nature à porter un préjudice suffisamment sérieux, voire irréparable aux intérêts de la partie requérante.

### **Motivation des actes administratifs**

Le principe de la motivation des actes administratifs impose à l'autorité investie de pouvoir de décision de motiver toutes les décisions qui font grief à un ou plusieurs agents. La mise en œuvre de cette disposition a un double but : elle permet à l'agent concerné de mieux comprendre les raisons qui ont présidé à la prise d'une décision, ce qui lui permet d'évaluer les chances d'un recours éventuel. Il permet également et surtout d'assurer un meilleur contrôle juridictionnel.

Si la question de la motivation des décisions administratives a été examinée à l'OCDE au début de l'année 1989 et a fait l'objet d'un accord de principe entre l'Administration et l'Association du Personnel dès le mois de juillet 1989, elle n'a fait l'objet que d'un mémorandum du Secrétaire général aux directeurs et est par conséquent resté lettre morte.

Il serait donc nécessaire de réengager un dialogue avec l'administration et de demander l'inscription dans le Statut du personnel de la nécessité de motiver les actes administratifs. Il serait précisé que toute décision administrative faisant grief doit faire l'objet d'une motivation écrite et comporter l'énoncé des considérations de droit et de fait qui constituent le fondement de la décision.

## **Session B – Working Time**



## Session B – Working Time

### Working Time at OECD

Presentation by Jean-Louis Rossi (OECD)

*For a long time I worked a 40-hour week...*  
(Anonymous)

Time is a precious, non-renewable resource — hence the need to make the most of it. The focus here is on the time we « sell » to our employers (paid working hours) but inevitably, as we shall see, it overlaps increasingly with « other » time (unpaid working hours and time off).

#### WORKING TIME

##### OVERVIEW AND TRENDS

On this subject there are quantitative data available which, although approximate, reflect the broad trend in most of the major industrialised countries.

##### Working week

With regard to the length of the working week as laid down by law or in collective agreements, the trend is towards a reduction in every country in Europe, with the notable exception of the United Kingdom. The working week ranges from 40 to 35 hours, which is a short- or medium-term objective for representative trade unions in the EU. European directives, however, have been rather timid on this point and set the maximum weekly working time at **48 hours** (*Council Directive 93/104/EC*). In the United States, the figure has remained **virtually unchanged** since the late 1960s (see Bureau of Labor statistics [1]).

##### Paid annual leave

With regard to the number of days of paid annual leave, the trend is towards harmonisation across EU countries, with a **minimum of four weeks** (*Council Directive 93/104/EC*). The United States and Japan are well below this figure, and there is a strong tendency for the amount of leave to be linked to length of service in the United States (see *Employee Benefits Survey [2]*). One wonders about the impact this practice has on a labour market that otherwise values mobility.

##### Average annual working year

It is hard to interpret figures for the average annual working year on the basis of the two previous parameters, since they cover the entire labour force and include part-time work which may itself be freely chosen or imposed. In spite of this reservation, the **trend is towards European-wide convergence at between 1550 and 1600 hours**, and the figure is on the decline. **In the United States**, however, the average working year is 1900 hours, with **an upward trend** over the past 20 years. There would accordingly seem to be a contradiction in the US between the working week, which remains stable, and the average annual working year. Krishna Kundu explains this **apparent contradiction** by the growing number of women on the labour market, belying the initial impression that trends are radically different in the United States.

The conclusions to be drawn from this initial overview are as follows :

## A secular trend towards a reduction in paid working time

In the industrialised world there has been a secular trend towards a reduction in paid working time (see *Table 2 Grübler [3]*). Yet the decline has been slowing down for the past ten years or so, and even reversed in some countries such as the United States although there may be other reasons for this disparity, as we have just seen. Another problem not to be underestimated lies in gauging how much personal freedom of choice is involved when it comes to working time.

## The working week as a basis for calculation

The preferred approach when considering the reduction of working time is usually to take the working week, even if this involves subsequently scaling up to longer timespans. Thus the idea of « leave banks » or « time-off banks », whereby time worked in excess of normal hours may be converted to time off at a later date, has been introduced or proposed in many European countries.

## Gender issues

Gender issues have become an integral part of the shorter hours debate, because of the uneven distribution of domestic chores between men and women.

## Emerging strategies

As the scope for obtaining legal or negotiated reductions **without loss of income** declines, new strategies are emerging to achieve the desired objective which is, ultimately, to optimise the ratio of paid working time to the remaining time that structures our existence. Hence the demand for so many alternatives, including flexible working time, part-time work and telework. This goes to show that, in spite of what appear to be conflicting trends, all the economically advanced countries **are moving in the same direction**.

## REDUCING WORKING TIME AT THE OECD

### Special context

While the OECD is an international organisation, its staff are bound to be influenced by **recent developments in the host country** where the 35-hour week is becoming a more tangible reality by the day. People are therefore aspiring to shorter working time **with no loss of income**, particularly since they can all cite examples of the impact this reform is having on their family or friends.

Furthermore, given the situation regarding leave at the OECD, where staff enjoy a relatively long period of annual leave [**6 weeks**] but work a relatively long week [**40 heures**], there would seem to be dual grounds for reasoning in terms of the working week.

### Working week

The first very noticeable trend among some of the staff at least, particularly B and C grades who naturally tend to compare their situation with that of the best local employers, is to ask for the working week to be brought into line with French law, i.e. **35 hours**.

A review of trends in what are known in the co-ordinated organisations as reference countries, the findings of which might be used to counter our arguments, would indicate an average working week of **37 to 38 hours** (*Table 5, ISE [4]*), representing 14 extra days' leave a year.

### Shorter working time for everyone

Within its own context, the OECD is familiar with all the problems and contradictions encountered when France introduced the 35-hour working week. Even now, some colleagues do not have enough time to complete their work and, while B and C grades might in theory receive compensation for overtime, this would not apply to administrators. Furthermore, in the OECD's highly competitive work environment, remaining at one's desk beyond normal working



hours is a factor that might carry considerable weight in one's future career. But this should not prevent us from promoting the **principle of shorter working hours for everyone** via a change in the regulations.

### Flexible implementation

To solve the problems of introducing shorter working time, social partners in France and Europe in general have usually agreed **to view the time saved as capital** that can be used in a variety of ways, enabling everyone to make the most of reduced working time (higher productivity for employers and a better balance between work and family life for employees).

Depending on the employee's level of responsibility, departmental requirements and personal preferences, the shorter official working week may be reflected on a daily, weekly or longer basis but within certain limits, to avoid combining this time off with annual leave, for which the rationale is different. For a working week of 37<sup>1</sup>/<sub>2</sub> hours (representing 14 days a year), for instance, it could be made compulsory to take 4 days off every three months or otherwise lose the benefit.

### Annual leave

Although international organisations are beginning to lose their advantage over European enterprises in terms of annual leave, they are still well placed. Furthermore, a significant number of OECD officials find it hard, if not impossible, to exhaust all their accrued annual leave which may then be lost (no more than 20 days' leave can be carried over from one year to the next).

As with the working week, one option would be to allow annual leave to be carried over for a longer period (3 years ? 5 years ?). The time could then be used:

- to organise and finance longer periods of leave
  - sabbatical leave
  - training leave
- to leave the organisation sooner (stopping work)
- to reduce working time gradually up to retirement.

## FLEXIBLE WORKING TIME — A BETTER BALANCE BETWEEN WORK/PRIVATE LIFE

### OVERVIEW AND TRENDS

Flexibility is a word often associated with policies on working time. But it does not signify the same thing to employees as to employers. Unless indicated otherwise, the concept is used here in the positive sense (*see ISE page 18 [5]*). When referring to part-time work, for instance, we shall confine this report to part-time arrangements requested by the employee, not imposed by the employer.

Furthermore, as mentioned in the introduction, no debate on flexible working time can overlook the growing number of women in the workplace. Flexibility meets the need to optimise the ratio of paid working time to the other two aspects of our lives, i.e. unpaid working time and time off. Yet all the findings show, although to differing extents, that women must spread their time between household chores and paid work whereas men always focus on paid work (*Rubery, Smith & Fagan, 1995*).

Consequently, it is mostly women that take up opportunities for **flexible working time in the positive sense of the term**, even though such arrangements are not targeted solely at them. Listed below are some of these arrangements.

### Working hours

Relaxation of the rules on compulsory core hours.

Full-time workers authorised to work part time, and vice versa.

Automatic entitlement to work part time under specific family circumstances.

Meeting times set to cater for those who work part time.

### Family leave

In Europe in particular, more and more types of leave have been devised to help people meet their family obligations. These arrangements vary across countries in terms of sophistication and generosity (the front-runners being the Scandinavian countries) but the general trend is clearly towards more types of family leave. The most widespread are:

- Parental leave
- Paternity leave
- Maternity or adoption leave
- Leave to care for sick children
- Leave to care for sick relatives

The general trend in Europe has been to extend these policies and provide a genuine alternative to outside childcare. In the United States, on the other hand, the legislation in this area is far less advanced and confined to provisions under the *Family and Medical Leave Act (FMLA)* (see *Employment Policy Foundation : Fact and Fallacy, August 11, 2000 [6] [7]*).

There is great reluctance to pass restrictive legislation in the US, where many deem it contrary to the interests of both employers and employees, in particular women who are supposed to be the main beneficiaries.

In Europe, these benefits are funded by national health or social insurance systems. If there is any co-funding, it usually involves the employer and the State, but in a few countries workers also contribute directly.

### Other leave plans

Many other leave plans are not aimed at the family but form part of wider schemes to combat unemployment, encourage work-sharing and promote mobility, for instance. In Austria an extremely attractive plan for sabbatical leave was rejected by the unions because those on leave were not replaced.

- Education and training leave
- Paid study leave
- Sabbatical leave
- Career breaks.

In many cases these leave plans are remunerated and subsequent re-employment is guaranteed.

## OECD : FLEXIBLE WORKING TIME AND A BETTER BALANCE BETWEEN WORK AND PRIVATE LIFE

### Working hours

With regard to **flexibility**, progress has been made recently on flexible working hours (abolition of compulsory core hours), and plans to improve current provisions for **part-time work** (abolition of the requirement to opt permanently for either part-time or full-time work after five years on part-time work, and payment of the child allowance at the full rate) are expected to go before the OECD Council in the Autumn.

On the other hand, none of these provisions is ever an automatic entitlement (except on medical grounds). On principle, the OECD is reluctant to grant such entitlements, preferring to stress the interests of the Organisation. It is in fact the line manager who takes the decision to accept or turn down a request for more flexible hours or part-time work.

To date, organising work in such a way as not to penalise part-time workers has never been the subject of genuine debate at the OECD.

### Family leave

Here the situation is somewhat ambiguous. Because the OECD once belonged to the French social security system, it has remained in line with French legislation on **maternity leave** (*"The Secretary-General shall provide for paid maternity leave in accordance with local law."*). On the other hand, it does not award the same paternity leave as French law. Currently, the birth of a child gives male officials 3 days' **exceptional paid leave**, as do other family events. Even if the Organisation has never failed to award these types of leave, *the date and the actual number of days (are) determined at the discretion of the Head of Human Resource Management.*

The rules also state that *the Secretary-General may grant unpaid leave for urgent or private reasons for a maximum of two months, with all entitlements maintained.*

These benefits do not require any financial contribution on the part of individual members of staff. The full costs are accordingly borne by the Organisation alone, since it no longer belongs to the French social security system.

### Other leave plans

As for plans involving other than family leave, the OECD grants unpaid short-term training leave (for a maximum of two months) with all entitlements maintained, or unpaid long-term training leave (for a maximum of one year, renewable twice) with no guarantee of being re-assigned to one's post.

The OECD has lost considerable ground given the advances made in the past few years, particularly in Europe. OECD staff should begin by asking the Organisation to fall into line with the best employers, or at least :

- endeavour to close the most glaring gaps
- reduce the scope for discretion
- give statutory guarantees of re-assignment following long-term leave
- provide at least some funding for specific types of leave (e.g. training leave), possibly through the transformation of unused annual leave.

## TELEWORK

### OVERVIEW AND TRENDS

#### Telework is in vogue

The demand is there, and computerisation has meant that a considerable number of different tasks can theoretically be carried out from home (see Electronic Commerce and Telework Trends, Content survey [8] [9] [10] [11] [12]).

Europe is said to have some 9 million teleworkers, including 500 000 in France (host country). The figure for the United States is an estimated 19.6 million. Yet these figures mask some very different situations, given the many forms of telework and varying definitions of what telework actually is. In the United States, for instance, a teleworker is anyone who works at least one day a month from home during normal working hours. Hence the importance of not being misled by higher figures in absolute terms and by projections. It is safe to say that the normal form of work in enterprises comparable to international organisations is and will long remain on-site work, with the phasing-in of **multi-site (or part-time) telework**, where staff alternate between home and office, with employers providing the equipment needed to do specific work off-site.

**Advantages and drawbacks**

The success of telework lies in the fact that it is advantageous for both employers and employees.

<b>For employees</b>	<b>For employers</b>
More control over the work environment.	Higher productivity.
Greater organisational flexibility.	Protection of skilled resources. Lower staff turnover.
Less commuting and hence more time and money, less stress. Greater choice of where to live.	Lower overheads and labour costs.
Closer ties between home and work.	Less absenteeism.
Better skills.	More flexible work structures.
More job satisfaction.	Simpler way of meeting customer needs.
Better quality of life.	Broader staff recruitment base.
Labour efficiency.	Access to skilled human resources.
Enhanced time management.	More explicit knowledge of work content, workload and output.
Social commitment. Development of part-time work as a personal choice.	Culture shift from buying time to buying performance.

Source : Télétravail Magazine

However, there are also disadvantages.

<b>For employees</b>	<b>For employers</b>
Loss of status, protection, perks and salary.	Less proximity in terms of management, monitoring, communication and logistics.
Social / professional isolation.	Security and confidentiality of information and systems.
Fewer career opportunities.	Identity and loyalty vis-à-vis teams and society in general-costs.
Loss of interest in work, monotony.	Time required for planning and implementation.
Erosion of boundary between home and work, greater stress.	Childcare and care for the elderly, to allow staff to work without interruption
Higher home costs.	
Application of health and safety standards; childcare, care for the elderly.	
Worker representation, union membership.	

Source : Télétravail Magazine

**Complex implementation**

The difficulty of introducing a telework project should not be underestimated. Experience has shown that the key to success lies in a number of steps, which include:

- Involving management at the highest level
- Defining clear objectives
- Appointing a telework officer
- Maintaining technology watch
- Implementing organisational decisions
- Involving and training middle management
- Making contractual arrangements (in particular when defining selection, recruitment and training requirements)

## TELEWORK AT THE OECD

A preliminary project was submitted to the Staff Association in March 2001, outlining plans for multi-site (or part-time) telework; fairly conventional, it is based on schemes in the host country.

Outline proposal from HRM	Staff Association comments
An outline telework policy for the OECD Formal agreement	The agreement must be the subject of an amendment to the official's employment contract.
<b>1. General</b> <ul style="list-style-type: none"> <li>• details</li> <li>• voluntary</li> <li>• selection</li> <li>• officials only trial period (3 months)</li> <li>• compulsory presence on site: at least 2 days per week</li> <li>• working week: 40 hours</li> <li>• official place of residence</li> </ul>	Either party may withdraw at any time. Officials must be notified of the need for 11 consecutive hours' rest per day and at least one day off per week. The official place of residence need not be in Paris or the Paris area; Lyon is 2 hrs away by train and Marseille 1 <sup>1</sup> / <sub>4</sub> hrs by air.
<b>2. Management</b> <ul style="list-style-type: none"> <li>• preliminary study</li> <li>• training for managers</li> <li>• penalties for breaking terms of agreement</li> </ul>	
<b>3. Sick leave</b> <ul style="list-style-type: none"> <li>• same provisions as for on-site work</li> </ul>	
<b>4. Insurance</b> <ul style="list-style-type: none"> <li>• medical cover unchanged</li> <li>• dedicated workplace</li> </ul>	
<b>5. Equipment</b> <ul style="list-style-type: none"> <li>• supplied, maintained and insured by the OECD</li> <li>• dedicated telephone line</li> </ul>	Detailed study to ensure workstations are suitable and ergonomic. Study of insurance cover and policies covering risks to teleworkers and third parties.
<b>6. Financial aspects</b> <ul style="list-style-type: none"> <li>• Installation costs borne by OECD</li> </ul>	
<b>7. Introduction</b> <ul style="list-style-type: none"> <li>• pilot project</li> <li>• assessment before widespread introduction</li> </ul>	
	Equipment and data security <ul style="list-style-type: none"> <li>• availability of reliable equipment fitted with system and data back-ups;</li> <li>• need for teleworkers to repair minor equipment failures themselves;</li> <li>• need for confidentiality, data security and appropriate technical solutions;</li> <li>• need to bear in mind principles relating to Computerisation and Privacy.</li> </ul>
	Private Life <ul style="list-style-type: none"> <li>• staff should be given details of how employer will monitor telework;</li> <li>• staff should have the right to switch off and be unavailable at certain times.</li> </ul>
	Consultation Plan consultation with SCHSWC.

Discussions are under way and the document will evolve over the coming months. It is vital for staff (line managers and subordinates) to be educated about this form of work, if only to dispel certain illusions and misunderstandings.

The Staff Association is ready to help with the introduction of telework, provided that certain conditions are observed, and would like to emphasize that this form of work is not without risks to staff (*see Electronic Commerce and Telework Trends, Content survey [13]*) and will not necessarily further other objectives, in particular equal opportunities.

Besides the « normal » obstacles listed by managers (*see Electronic Commerce and Telework Trends, Content survey [14]*), the prospect of launching telework at the OECD when a move to new premises is under way calls for reflexion. It will be interesting to see how officials and managers will react to this initiative. In a period of uncertainty as to location, as well as working conditions and other facilities, there is no guarantee that volunteers will be queuing up to apply for telework.

## CONCLUSIONS

International organisations with their headquarters in Europe are already or may soon be receiving requests from their staff for shorter working hours or more flexible working arrangements including telework, reflecting opportunities in host countries.

A shorter working week should be viewed as the starting point for a broader debate on the organisation of work and the balance between work and family life.

Compared with situations in individual countries, international organisations differ in that they:

- Enjoy specific advantages, including decision-making autonomy, lighter legal constraints, and less risk of political interference, but they also:
- Suffer from some serious drawbacks: often conservative decision-making bodies, a « privileged » reputation, and a narrower funding base.

## Session B – Working Time

### Le temps de travail à l'OCDE

Présentation par Jean-Louis Rossi (OCDE)

*Longtemps j'ai travaillé 40 heures...*  
(Anonyme)

Le temps est une ressource précieuse non renouvelable d'où la nécessité d'en tirer le meilleur parti possible. Nous nous intéresserons ici à cette partie de temps que nous « vendons » à notre employeur (Temps travaillé rémunéré), mais nous verrons justement qu'il y a des interférences inévitables et croissantes avec les « autres temps » (Temps travaillé non rémunéré et Temps libre).

#### LA DUREE DU TEMPS DE TRAVAIL

##### BREF ETAT DES LIEUX ET EVOLUTION

On possède sur ce paramètre des données quantitatives, certes approximatives, mais qui permettent de dégager la tendance générale dans la plupart des grands pays industrialisés.

##### La durée hebdomadaire

En ce qui concerne la durée hebdomadaire du travail fixée par la loi ou par conventions collectives la tendance reste à la baisse dans tous les pays d'Europe, à l'exception notable du Royaume Uni. Elle se situe entre 40 heures et 35 heures qui est un objectif à court ou moyen terme pour les syndicats représentatifs des pays de l'UE. Les directives européennes restent cependant assez timides sur ce point puisqu'elles fixent la durée maximale du travail hebdomadaire à **48 heures** (*Directive 93/104/CE du Conseil*). Aux États-Unis, on note une **quasi stabilité** depuis la fin des années 60 (Voir Bureau of labor statistics [1]).

##### Les congés payés annuels

En ce qui concerne le nombre de jours de congés payés annuels, la tendance est à l'harmonisation dans les pays de l'union européenne à partir d'un **minimum de quatre semaines** (*Directive 93/104/CE du Conseil*). Les États-Unis et le Japon restent très en deçà avec une forte tendance à lier la durée des congés à l'ancienneté aux États-Unis (Voir *Employee Benefits Survey [2]*). On peut s'interroger sur l'impact effectif de cette pratique dans un marché du travail où la mobilité est par ailleurs valorisée.

##### La durée annuelle moyenne de travail

Il est difficile d'interpréter les chiffres concernant la durée annuelle moyenne de travail qui résultent des deux paramètres précédents car ils concernent l'ensemble de la population active et intègrent le temps partiel qui peut lui même être aussi bien choisi qu'imposé. Malgré cette réserve on observe une **convergence en Europe autour de 1550 à 1600 heures**, avec une tendance à la baisse. **Aux États-Unis** en revanche, on enregistre une durée moyenne de 1900 heures, avec **une tendance à la hausse** au cours des 20 dernières années. Il semble donc y avoir une contradiction dans ce pays entre la durée hebdomadaire qui reste stable et la durées annuelles moyennes de travail. Krishna Kundu explique cette **contradiction apparente** par l'importance croissante des femmes dans le marché du travail et donc récuse l'idée première d'une évolution radicalement différente aux États-Unis.

Les conclusions provisoires que l'on peut tirer de ce premier tour d'horizon très sommaire sont les suivantes :

## Une tendance séculaire à la réduction du temps travaillé rémunéré

On constate dans les pays industrialisés une tendance séculaire à la réduction du temps travaillé rémunéré (*Voir Tableau 2 Grübler [3]*). On observe cependant un ralentissement de cette tendance depuis une dizaine d'années, voire une renversement dans quelques pays, notamment aux États-Unis, encore que cette divergence a sans doute d'autres explications comme on l'a vu plus haut. Il ne faut pas non plus sous-estimer de la difficulté d'apprécier le degré de liberté individuelle dans la durée du travail.

## Partir de la durée hebdomadaire

L'approche privilégiée pour la réflexion sur la Réduction du temps de travail (RTT) est le plus souvent la durée hebdomadaire, quitte à trouver ensuite des traductions à une échelle de temps supérieure. Ainsi, la notion d'épargne-temps en vertu de laquelle les heures en excès des heures normales peuvent être converties en temps libre à un moment plus ou moins choisi est appliquée ou proposée dans de nombreux pays européens.

## Questions d'égalité hommes/femmes

Les questions d'égalité hommes/femmes sont devenues indissociables de la réflexion globale sur la réduction du temps de travail compte de la répartition toujours inégale des tâches familiales entre les deux sexes.

## Apparition de nouvelles stratégies

Parallèlement à la diminution des possibilités d'obtenir des réductions légales ou négociées **sans perte de revenus**, de nouvelles stratégies apparaissent pour atteindre l'objectif visé qui est en dernière analyse d'optimiser le rapport entre le temps travaillé rémunéré et le reste du temps qui structure notre existence. D'où la multiplication des demandes alternatives — aménagement du temps de travail, temps partiel, télétravail. On voit par là qu'en dépit de certaines tendances apparemment contradictoires **le mouvement est le même** dans tous les pays économiquement avancés.

## RÉDUIRE LE TEMPS DE TRAVAIL A L'OCDE

### Un contexte particulier

Malgré son caractère international, l'OCDE et son personnel ne manquent pas d'être influencés par **l'évolution récente du pays hôte** où le passage aux 35 heures devient chaque jour une réalité plus concrète. Il y a donc une aspiration à une diminution du temps de travail **sans perte de rémunération**, d'autant plus forte que chacun a des exemples à fournir sur les effets de cette réforme parmi ses amis ou ses proches.

Par ailleurs, compte tenu de la situation de l'OCDE en matière de congés (congés annuels encore relativement longs [**6 semaines**] et horaires hebdomadaires dans le haut de la fourchette [**40 heures**]), il apparaît donc doublement logique de raisonner à partir de la durée hebdomadaire.

### La durée hebdomadaire

La première tendance très marquée dans une partie du personnel au moins surtout dans les grades B et C qui ont plus naturellement tendance à se comparer au personnel des meilleures entreprises locales est de demander un alignement sur la législation française c'est-à-dire **35 heures**.

Un examen de la tendance dans les pays dits de référence des organisations coordonnées, qui pourrait nous être opposée, donnerait plutôt une moyenne comprise entre **37 et 38 heures** (*Présenter tableau 5 de l'ISE [4]*) ce qui traduit en journées représente environ 14 jours par an.

### Réduction du temps de travail pour tous

L'OCDE connaît à son échelle toutes les difficultés et contradictions qui ont été relevées pour la mise en œuvre de la semaine de 35 heures en France. Certains collègues manquent déjà de temps pour effectuer leur travail et s'il y a une possibilité plus ou moins théorique pour les agents de grades B ou C de recevoir une compensation pour les heures supplémentaires, il n'en va pas de même pour les administrateurs. Par ailleurs, dans l'environnement professionnel très



compétitif de l'OCDE la durée de la présence au bureau au delà du temps réglementaire est un élément qui peut jouer un rôle non négligeable dans le déroulement d'une carrière. Cela ne devrait pas nous amener à renoncer au **principe d'une réduction du temps de travail pour tous** par la voie réglementaire.

### Une application souple

Pour résoudre les difficultés d'application d'une diminution des horaires de travail, les partenaires sociaux en France et en Europe en général sont le plus souvent convenus de **considérer le temps épargné comme un capital** qui peut être réalisé selon des modalités différentes de façon à permettre à chacun de tirer le meilleur parti de la réduction du temps de travail (productivité accrue pour l'employeur et meilleur équilibre entre vie professionnelle et vie privée pour l'employé).

Selon le niveau de responsabilité, les besoins du service et les préférences de l'employé, la RTT par rapport à l'horaire hebdomadaire officiel est consommée sur une base journalière, hebdomadaire ou à plus long terme, mais sans dépasser certaines limites pour éviter un télescopage avec les congés annuels qui ne répondent pas à la même logique. Ainsi, si l'on retient le principe d'une semaine de 37 heures et demi (soit 14 jours), on pourrait envisager, par exemple, l'obligation de prendre 4 jours par trimestre, sous peine d'en perdre le bénéfice

### Les congés annuels

Même si les organisations internationales se distinguent de moins en moins du reste du monde du travail dans ce domaine en Europe, elles demeurent bien placées. En outre, un nombre significatif d'agents de l'OCDE éprouvent des difficultés, voire ne parviennent pas, à épuiser leurs congés annuels qui peuvent éventuellement être perdus sans recours (Report maximum d'une année sur l'autre : 20 jours).

Selon le même principe que pour la durée de travail hebdomadaire, on pourrait envisager d'autoriser le report des congés annuels sur une période plus longue (3ans ?; 5ans ?). Le temps ainsi capitalisé pourrait servir :

- à organiser et financer des congés de plus longue durée
  - congés sabbatiques
  - congés de formation
- à quitter l'organisation plus tôt (cessation d'activité)
- à réduire graduellement ses horaires avant le départ en retraite.

## AMENAGEMENT DU TEMPS DE TRAVAIL ET CONCILIATION VIE PROFESSIONNELLE/VIE PRIVEE

### BREF ETAT DES LIEUX ET EVOLUTION

La flexibilité est un mot que l'on trouve très souvent associé aux politiques d'aménagement du travail. Mais il n'a pas le même sens pour l'employé que pour l'employeur. Sauf indication contraire, ce concept est entendu ici dans le sens positif (*citer ISE page 18 [5]*). Ainsi, concernant le temps partiel, nous n'envisagerons ici que le temps partiel souhaité et non pas imposé.

Par ailleurs, comme nous l'avons indiqué dans l'introduction, il n'est pas possible de réfléchir à l'aménagement du temps de travail sans prendre en compte la place croissante des femmes dans les entreprises. L'aménagement répond au désir d'optimiser le rapport entre le temps travaillé rémunéré et les deux autres composantes, à savoir le Temps travaillé non rémunéré et le Temps libre. Or, même si les proportions peuvent varier toutes les études montrent que les femmes doivent répartir leur temps entre les tâches ménagères et le travail rémunéré alors que les hommes se concentrent toujours sur le travail rémunéré (*Rubery, Smith & Fagan, 1995*).

En conséquence, beaucoup de possibilités d'aménagement du temps du travail **au sens d'une flexibilité positive**, même si elle ne s'adressent pas exclusivement aux femmes, sont majoritairement saisies par elles. On trouvera ci après une liste non exhaustive de ces mesures.

### Les horaires

Assouplissement des plages d'heures obligatoires

Passage de plein temps à temps partiel et vice-versa

Autorisation du temps partiel de plein droit dans certaines circonstances familiales

Organisation des réunions prenant en compte les horaires des employés travaillant à temps partiel

### Les congés destinés à faciliter la vie familiale

On observe en particulier en Europe une multiplication des plans destinés à faire face à des obligations familiales. Leur sophistication et leur générosité varient selon les pays (les pays scandinaves étant très en pointe) mais la tendance générale est clairement à l'élargissement de ces dispositifs. Les plus communs sont :

- Le congé parental
- Les congés de paternité
- Les congés de maternité ou d'adoption
- Congés pour s'occuper d'un enfant malade
- Congés pour s'occuper d'un parent malade

La tendance générale en Europe a été à l'élargissement de ces politiques de façon à fournir une véritable alternative aux structures extérieures pour la garde d'un enfant. Aux États-Unis par contre la législation est beaucoup moins élaborée en la matière et se résume aux prestations au titre du *Family and Medical Leave Act (FMLA)* (*Voir Employment policy foundation Fact and Fallacy August 11, 2000 [6] [7]*).

En effet, les législations contraignantes continuent de susciter des fortes réticences dans ce pays où elles sont jugées par beaucoup comme contraires aux intérêts des employeurs et des employés, en particulier des femmes qui sont sensées en être les principales bénéficiaires.

En Europe, le financement de ces prestations est pris en charge par le système national d'assurance médicale ou sociale. Si contribution il y a, c'est généralement l'employeur et l'Etat qui en prennent la charge, mais dans quelques pays les employés contribuent aussi directement.

### Autres plans de congé

Il existe en outre de nombreux plans de congé sans vocation familiale et qui s'inscrivent dans des programmes plus vastes de lutte contre le chômage, du partage du travail, de la promotion de la mobilité, par exemple. En Autriche un plan extrêmement séduisant de congé sabbatique a été refusé par les syndicats au motif que le bénéficiaire n'était pas remplacé pendant son congé.

- Congé de d'éducation et de formation
- Congé d'étude rémunéré
- Congé sabbatique
- Plan d'interruption de carrière

Ces plans sont souvent rémunérés et assortis de garanties de réemploi.

## AMENAGER LE TEMPS DE TRAVAIL ET CONCILIER VIE PROFESSIONNELLE ET VIE PERSONNELLE A L'OCDE

### Les horaires

En ce qui concerne les **horaires flexibles**, des progrès ont été réalisés récemment concernant la flexibilité des horaires de travail (fin des plages horaires obligatoires) et un projet améliorant **le temps partiel** (fin de l'obligation de faire un choix définitif entre temps partiel et plein temps après cinq années à temps partiel et paiement de l'indemnité pour enfant à charge sans réduction) en vigueur devrait être présenté au Conseil de l'organisation dans le courant de l'automne.

En revanche, aucune de ces dispositions n'est jamais un droit (sauf pour des raisons médicales). Par principe, l'OCDE est réticente à l'idée d'octroyer des droits et met toujours en avant l'intérêt du service. C'est en fait le manager direct qui possède le pouvoir d'octroyer ou de refuser un assouplissement des horaires ou un temps partiel.

L'organisation du travail de façon à ne pas pénaliser les personnes travaillant à temps partiel, n'a pas fait à ce jour l'objet d'une véritable réflexion à l'échelle de l'OCDE.

### Les congés destinés à faciliter la vie familiale

En la matière la situation est quelque peu ambiguë. Du fait de son ancienne appartenance au système français de sécurité sociale, l'OCDE, suit la législation de la France concernant **les congés de maternité** (*"Le Secrétaire général prend des dispositions pour accorder des congés payés de maternité, conformément à la législation du pays du siège."*). En revanche, il n'y a pas de congé de paternité au sens de la législation française. Actuellement, en cas de naissance d'un enfant l'agent de sexe masculin a droit à 3 jours de **congé payé exceptionnel** au même titre que pour d'autres événements familiaux. Même si la pratique d'accorder ces congés ne s'est pas démentie, *la date et la durée [en] sont laissées à l'appréciation du chef de la gestion des ressources humaines.*

Le règlement prévoit en outre que *le Secrétaire général peut accorder un congé non payé pour des raisons impérieuses ou d'ordre privé d'une durée maximum de deux mois avec maintien des droits.*

Ces prestations ne donnent pas lieu à une contribution des agents. Elles sont donc intégralement à la charge de l'Organisation puisque celle-ci n'appartient plus au système national de sécurité sociale.

### Autres plans de congé

Quant aux plans de congés à des fins diverses non familiales, l'OCDE prévoit des congés de formation de courte durée (deux mois maximum), non payés mais avec maintien de l'ensemble de ses droits, ou de longue durée (un an, renouvelable deux fois) sans garantie de retrouver son poste.

L'OCDE a accumulé un retard considérable par rapport à l'évolution qui s'est produite ces dernières années en particulier en Europe. Dans un premier temps Il s'agit pour le personnel de l'OCDE de demander sinon un alignement sur les meilleurs du moins

- un effort pour combler l'écart dans les cas les plus flagrants
- une réduction de l'élément discrétionnaire
- des garanties statutaires de réaffectation après les congés de longue durée
- un financement au moins partiel de certains types de congé (congés de formation), éventuellement par transformation de congés annuels non pris.

## LE TELETRAVAIL

### BREF ETAT DES LIEUX ET EVOLUTION

#### Le télétravail est à la mode

La demande est là et les moyens informatiques rendent en principe possible l'exécution à distance d'un nombre considérable de tâches. (*Voir Electronic Commerce and Telework Trends, Content survey [8] [9] [10] [11] [12]*).

L'Europe compterait aujourd'hui environ 9 millions de télétravailleurs dont 500 000 en France (pays hôte) On estime aujourd'hui à 19.6 million le nombre de télétravailleurs aux États-Unis. Cependant ces chiffres recouvrent des réalités très différentes correspondant à différentes formes de télétravail ou même des définitions plus ou moins larges du télétravail. Ainsi aux États-Unis, est considéré télétravailleur toute personne travaillant au moins une journée par mois à son domicile pendant les heures normales de travail. Il importe donc de ne pas se laisser abuser par la grandeur des chiffres en valeur absolue et les projections annoncées. On peut parier que la norme pour l'employé d'une entreprise comparable à une organisation internationale demeure et demeurera encore longtemps le travail sur place avec l'introduction progressive du **télétravail alterné** dans lequel le salarié partage son temps de travail entre l'entreprise et son domicile, l'employeur fournissant le matériel nécessaire pour pouvoir mener à distance des missions distinctes.

## Avantages et inconvénients du télétravail

Le succès du télétravail tient au fait que l'employeur et l'employé peuvent y trouver des avantages.

Pour l'employé	Pour l'employeur
Meilleur contrôle de son environnement de travail.	Meilleure productivité.
Plus grande souplesse dans l'organisation.	Protection des ressources qualifiées. Réduction du turnover.
Moins de trajets et donc plus de temps et d'argent, moins de stress. Plus de flexibilité dans le choix du domicile.	Réduction des frais généraux et des coûts de main-d'œuvre.
Intégration plus étroite entre le domicile et le travail.	Réduction de l'absentéisme.
Meilleures qualifications.	Plus grande flexibilité des structures de travail.
Meilleure satisfaction vis-à-vis de son travail.	Réponse plus simple aux besoins des clients.
Meilleure qualité de vie.	Plus grande base de recrutement du personnel.
Efficacité du travail.	Accès à des ressources humaines qualifiées.
Meilleure gestion individuelle du temps.	Connaissance plus explicite du contenu du travail, de la charge de travail et du rendement.
Investissement citoyen. Développement d'un temps partiel réellement choisi.	Passage d'une culture d'achat du temps à une culture d'achat du résultat.

Source : Télétravail Magazine

Mais, il y a aussi des inconvénients pour l'un et l'autre.

Pour l'employé	Pour l'employeur
Perte du statut, de la protection, des avantages, et du salaire de l'employé.	Éloignement du management, du contrôle, de la communication, de la logistique.
Isolement social et professionnel.	Sécurité et confidentialité des informations et des systèmes.
Réduction des opportunités de carrière.	Identité et loyauté vis-à-vis des équipes et de la société. Coûts.
Perte d'intérêt dans le travail, monotonie.	Temps nécessaire à l'étude et à la mise en œuvre.
Perte de distinction domicile/travail et augmentation du stress.	Soins apportés aux enfants et aux personnes âgées pour assurer un temps de travail sans interruption.
Augmentation des coûts induits au domicile.	
Normes de santé et de sécurité et leur application; Soins aux personnes âgées/aux enfants.	
Représentation des employés/adhésion à un syndicat.	

Source : Télétravail Magazine

## Une mise en œuvre complexe

La difficulté de la mise en œuvre d'un projet de télétravail ne doit pas être sous-estimée. L'expérience montre que son succès suppose des étapes indispensables, en particulier :

- Impliquer la direction au plus haut niveau
- Définir des objectifs clairs
- Nommer un responsable
- Maintenir un veille technologique
- Mettre en œuvre les décisions d'organisation
- Impliquer et former la hiérarchie intermédiaire
- Contractualiser l'organisation (notamment définir les conditions de sélection, de recrutement et de formation)

## LE TELETRAVAIL A L'OCDE

L'Association du personnel a été saisie en mars 2001 d'un projet préliminaire qui définit les grandes lignes d'un projet de **télétravail alterné** qui apparaissent assez classiques et inspirées de ce qui se fait dans le pays hôte.

Grandes lignes du Plan proposé par la GRH	Observations de l'Association du personnel
Principes pour un projet de politique de télétravail (TT) à l'OCDE accord formalisé	Cet accord doit faire l'objet d'un avenant dans le contrat de travail.
<b>1. Généralités</b> <ul style="list-style-type: none"> <li>• modalité</li> <li>• volontariat</li> <li>• sélection</li> <li>• agents seulement période d'essai (3 mois)</li> <li>• présence au bureau obligatoire : 2j/semaine minimum</li> <li>• durée du travail : 40h/semaine</li> <li>• domicile officiel</li> </ul>	Abandon de part et d'autre possible à tout moment. Notifier à l'agent la nécessité d'un repos quotidien de 11h consécutives et un repos hebdomadaire de 24h minimum. Le domicile officiel ne signifie pas qu'il doit être à Paris ou dans la région parisienne, Lyon (2h de train), Marseille (1h1/4 d'avion).
<b>2. Management</b> <ul style="list-style-type: none"> <li>• étude préalable</li> <li>• formation du manager</li> <li>• sanction des manquements à l'accord</li> </ul>	
<b>3. Absences pour raisons de santé</b> <ul style="list-style-type: none"> <li>• mêmes dispositions que sur le lieu de travail</li> </ul>	
<b>4. Assurances</b> <ul style="list-style-type: none"> <li>• couverture médicale inchangée</li> <li>• local dédié</li> </ul>	
<b>5. Équipement</b> <ul style="list-style-type: none"> <li>• fourniture, maintenance et assurance par l'OCDE</li> <li>• ligne téléphonique dédiée</li> </ul>	Étude précise de l'adaptation et de l'ergonomie du poste de travail. Examen des garanties et des polices d'assurances couvrant les risques affectant le télétravailleur et les tiers.
<b>6. Aspects financiers</b> <ul style="list-style-type: none"> <li>• frais d'équipement à la charge de l'OCDE</li> </ul>	
<b>7. Mise en œuvre</b> <ul style="list-style-type: none"> <li>• projet pilote</li> <li>• évaluation avant généralisation</li> </ul>	
	<b>Sécurité du matériel et des données</b> <ul style="list-style-type: none"> <li>• disposer d'un matériel fiable équipé d'un système facilitant la restauration du système et des données;</li> <li>• nécessité pour le télétravailleur de remédier lui-même aux dysfonctionnements courants;</li> <li>• confidentialité, sécurité des données et solutions techniques appropriées;</li> <li>• rappel des principes IVP.</li> </ul>
	<b>Vie privée</b> <ul style="list-style-type: none"> <li>• Préciser à l'agent les modalités de contrôle du travail à distance;</li> <li>• entériner le droit de se déconnecter et d'être injoignable pendant certaines périodes.</li> </ul>
	<b>Consultation</b> Prévoir une consultation du SCHSCT.

Le processus de discussion est en cours et le document évoluera encore dans les mois que viennent. Un travail pédagogique auprès du personnel (responsables et subordonnés est impératif), ne serait ce que pour dissiper quelques illusions et malentendus

L'Association du personnel est prête à contribuer à l'instauration du télétravail à condition que certaines conditions soient respectées et en rappelant que cette forme de travail n'est pas sans danger pour le personnel (*Voir (Electronic*

*Commerce and Telework Trends, Content survey [13]*) et ne va pas nécessairement aller dans le sens d'autres objectifs, en particulier celui de l'égalité des chances .

Outre les obstacles « normaux » recensés par les managers (*Voir Electronic Commerce and Telework Trends, Content survey [14]* ), la perspective de lancer le télétravail à l'OCDE au moment où celle-ci déménage demande réflexion. Il sera intéressant de voir comment les agents et les managers vont réagir à cette initiative. Dans une période d'incertitude concernant la localisation du lieu de travail ainsi que ses conditions et capacités d'accueil, il n'est pas évident que les volontaires se précipitent.

## CONCLUSIONS

Les organisations internationales ayant leur siège en Europe sont où devraient être soumises à plus ou moins brève échéance de la part du personnel à des demandes de réduction ou d'aménagement du temps de travail ou de télétravail, en référence à la situation dans le pays hôte.

La réduction hebdomadaire du temps de travail devrait être considérée comme un point de départ d'une réflexion plus générale sur l'organisation du travail lui-même et de l'équilibre entre vie professionnelle et vie privée.

Par rapport aux contextes nationaux, la situation particulière des organisations internationales

- présente certains avantages : autonomie de décision, contraintes juridiques plus légères, risque de dérives politiques plus faibles, notamment,
- mais s'accompagne de sérieux inconvénients : organes de décision souvent conservateurs, réputation de privilégiés, assiette de financement plus étroite.

## Session B – Working Time

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# Réduction et flexibilisation du temps de travail au CERN

## Présentation par M. Vitasse (CERN)

Cette présentation décrit les programmes volontaires qui ont été introduits au CERN. Il y en a trois : le travail à temps partiel, le temps choisi et le temps épargné.

Le premier programme propose un travail à temps partiel comme mesure de pré-retraite. C'est un travail entre 60 et 80%, et il existe depuis fin 1993.

Le deuxième programme est un programme de retraite progressive, donc un travail à temps partiel à 50%. Ce programme existe depuis avril 1997.

Le troisième et dernier programme est un programme de recrutement financé par un congé épargné qui existe depuis janvier 1998.

Il est à noter que les deux derniers programmes ont été introduits à l'initiative de l'Association du personnel, qui en a élaboré les grandes lignes, les a présentées à la Direction et aux États membres, avant de discuter des mesures d'application détaillées avec l'Administration.

### Pré-retraite à temps partiel

Le premier programme a été créé pour répondre à des demandes de membres du personnel qui souhaitaient avoir plus de temps libre, notamment à l'approche de la retraite. C'est un programme de préparation à la retraite, une transition douce vers la retraite. Cela permet en même temps de transmettre des compétences puisqu'il permet d'anticiper des recrutements et donne plus de souplesse dans le budget du personnel (une des raisons pour laquelle l'Administration l'a accepté).

Trois conditions doivent être remplies pour accéder à ce programme :

- avoir un contrat de durée indéterminée ;
- travailler à plein temps ;
- avoir au moins 55 ans.

La rémunération est versée au pro-rata selon l'horaire choisi, sauf pour les frais scolaires, le congé dans les foyers et l'assurance maladie qui restent identiques au travail à temps plein.

L'avantage du système est relatif à la Caisse de pensions où le membre du personnel peut choisir un pro-rata ou le maintien de la cotisation à temps plein. S'il choisit un maintien de cotisation à temps plein, l'Organisation verse la part correspondante.

Quelques avantages et inconvénients du système tel qu'il est vu par les membres du personnel.

Plus de souplesse d'horaire, possibilité de regrouper tous les congés sur une ou deux années, l'option de cotisation pour la Caisse de pensions et dans ce cas il y a une subvention de l'Organisation, pas besoin de fixer une date de préretraite à l'avance mais les personnes qui souhaitent démissionner doivent donner un préavis de six mois. Évidemment ce système a un impact sur le montant du traitement effectivement perçu.

L'inconvénient majeur pour les membres du personnel est qu'ils n'ont pas la possibilité de changer d'avis après être entrés dans le système.

Nous avons réussi à obtenir des changements pour quelques personnes qui ont eu des difficultés sérieuses et inattendues (p. ex. un conjoint qui décédait) mais en règle générale, il n'y a pas de possibilité de retour à plein temps.

## Retraite progressive (PRP)

Le programme de retraite progressive a été mis en œuvre en avril 1997, dans le cadre de mesures devant permettre de surmonter les difficultés financières que l'Organisation connaissait alors. Certains États membres avaient réussi à obtenir une baisse du budget de l'Organisation de l'ordre de 10%. Pour arriver à réduire le budget d'une telle ampleur, il a fallu essayer de trouver des mesures d'économies. L'Association du personnel a fait à cette époque deux propositions : le PRP et le RSL.

Nous avons proposé ce programme de retraite progressive (PRP) parce que nous avons bien observé notre courbe du personnel. Nous avions à l'époque une courbe qui était telle que les 2/3 de notre personnel se situaient dans une tranche d'âge assez élevée et 80% des dépenses étaient dues à ces 2/3 du personnel.

Il fallait trouver un moyen pour rajeunir la population, transférer l'expérience des personnes qui se trouvent dans cette tranche d'âge vers les jeunes.

C'était l'idée de cette proposition: faciliter la retraite progressive, en même temps ce système permettait de rajeunir le personnel et de transmettre les compétences.

Ce programme fonctionne de la façon suivante : Supposons que nous avons un salaire de base égal à 1, sur lequel le membre du personnel paye une cotisation à la Caisse de pensions (environ 10%) et l'Organisation verse une cotisation qui est d'environ 25%. Ce programme de retraite progressive est un programme à mi-temps. Le salaire de base correspondant au mi-temps est économisé par l'Organisation. Le membre du personnel, quant à lui, va toucher l'équivalent de 70% puisqu'il va garder sa part de cotisation à la Caisse de pensions (il ne cotise plus à celle-ci) et l'Organisation va lui verser directement 20 des 25% qu'elle cotisait jusqu'alors à la Caisse de pensions. L'Organisation verse à la Caisse de pensions les 5% restants, pour lui permettre de faire face à d'éventuels surcoûts dus au système (p.ex. si la personne décède avant d'atteindre l'âge de la retraite, on va considérer qu'elle a travaillé à plein temps jusqu'à l'âge de 65 ans).

Les principales conditions requises sont :

- avoir un contrat de durée indéterminée ;
- être à temps plein ;
- avoir au moins 55 ans ;
- avoir 30 années d'affiliation à la Caisse de pensions ou à un autre régime.

L'idée c'est de ne pas donner le sentiment aux États membres que nos pensions sont tellement élevées qu'on peut se contenter d'avoir simplement 25 annuités pour avoir quelque chose de raisonnable ; tout en assurant à nos collègues une pension de retraite correcte.

La rémunération est au pro-rata (50%) sauf pour les frais scolaires, les congés dans les foyers et la Caisse maladie mais il y a en plus une indemnité spéciale équivalent à 20% du traitement de base à temps plein.

Quant à la Caisse de pensions, les personnes entrées dans le programme restent membres de la Caisse de pensions mais arrêtent de cotiser, ce qui veut dire qu'elles n'acquièrent pas de nouvelles périodes d'affiliation. Dès qu'un collègue entre dans le système c'est comme s'il était mis en pension différée.

## Avantages et inconvénients du système

Grande souplesse d'horaire puisque les congés peuvent être regroupés à la fin de la carrière avec un maximum de deux ans. Pas besoin de fixer une date de préretraite à l'avance mais il faut donner un préavis de 6 mois. Maintien du statut de fonctionnaire CERN (et donc maintien du versement des allocations afférentes et des autres avantages liés à ce statut). Impact limité sur le traitement puisque l'indemnité spéciale permet d'avoir 70% du « take-home pay » alors que le temps travaillé est réduit de 50%. Pour ce qui est des inconvénients : Impact sur la Caisse de pensions puisqu'il y a un gel des périodes d'affiliation et engagement définitif jusqu'au départ de l'Organisation.



## Temps épargné (RSL)

Le dernier programme a aussi été proposé par l'Association du personnel au moment de la crise. Au moyen de ce programme et sur une base volontaire (ce qui était et est toujours pour nous un élément clef du programme), les membres du personnel peuvent à la fois financer du recrutement supplémentaire et obtenir des congés.

Le but de ce programme c'est de maintenir le recrutement de personnel jeune, surtout dans un contexte budgétaire difficile. L'entièreté de l'économie qui est faite avec ce programme est consacrée au recrutement. Le programme offre la possibilité de moduler davantage le temps de travail et cela sans réduction notable de la force de travail pendant la réalisation des différents projets car il y a une incitation à garder ces congés pendant la durée du projet sur lequel chaque membre du personnel travaille. Cette incitation est donnée sous forme d'un bonus qui permet d'accumuler un jour de congé supplémentaire chaque année pour chaque groupe de vingt jours de congé déjà épargnés.

Chaque membre du personnel peut souscrire de une à quatre tranches de 5,5 jours et 2,5% du salaire de base chacune<sup>1</sup>. Pour une réduction maximale de 10% du salaire de base vous pouvez obtenir 22 jours de congés supplémentaires, que vous pouvez prendre à votre guise, dans le courant de l'année, ou regroupés sur plusieurs années, ou à la fin de votre carrière.

### Avantages et inconvénients du programme

L'un des avantages les plus significatifs de ce programme est sa flexibilité : Il est possible de souscrire une, deux, trois ou quatre tranches et de changer ensuite ce nombre de tranches (dans une large mesure, mais sans pouvoir en changer chaque mois). Il est aussi possible de sortir complètement du programme, avec un préavis de six mois (qui peut être réduit en cas d'événement exceptionnel).

Ce système est pour l'instant limité au maximum à 10% du temps de travail mais l'Association aimerait obtenir plus (jusqu'à en tout cas 20%). Ce système ne s'applique pas aujourd'hui aux personnes travaillant déjà à temps partiel : nos collègues doivent choisir l'une ou l'autre formule.

### Succès du programme

Près de la moitié du personnel participe au programme RSL, pour un nombre total de tranches de l'ordre de 1600. Cela démontre l'attractivité du programme. La plus grande partie des participants a souscrit au programme pour une tranche, soit une réduction de l'horaire annuel de travail de 5,5 jours ou un réduction hebdomadaire de 1 heure. La plus grande partie de ces collègues accumulent ces jours de congé, en vue de prendre un congé sabbatique ou de partir plus tôt à la retraite, tout en conservant leur salaire de base. Ce programme est particulièrement apprécié par celles/ceux de nos collègues qui souhaitent disposer d'une demi-journée de congé par semaine (p.ex. le mercredi après-midi) pour s'occuper de leurs enfants ou mener à bien un projet spécifique.

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<sup>1</sup> La première tranche ne coûte maintenant plus que 1,5% du traitement de base, depuis le début de cette année 2001. Le réduction du coût de cette tranche est une mesure incitative.

## Session B – Working Time

### Flexible Working Time at WIPO

#### Presentation by B. Fitzgerald (WIPO)

Changes to the system of flexible working time were to be introduced at WIPO in September 2001, but as they have not yet been announced they are to be treated as confidential for the time being and therefore, this presentation will concentrate on the current system with references at the end concerning areas where we would like to see improvements.

At WIPO, we basically have two systems: (1) Fixed working hours which are from 8:15 a.m. to 12:15 p.m. and 2:00 p.m. to 6 p.m.; and (2) Flexible working hours. In addition to the two systems there are a handful of people, i.e. some staff working in the print shop, who have special working hours which the Director General may prescribe for certain areas.

Today's presentation, however, will focus solely on the flexible working time which is the system used by the majority of staff in WIPO.

#### Flexible Working Time

The elements of the current system are as follows:

- Between 30 and 50 hours per week.
- Core time: 9 a.m.–11:45 a.m. and 2:15 p.m.–4:30 p.m.
- A total of 5 hours of core time per day.
- The normal work week is 40 hours to be done between 7 a.m. and 7 p.m.
- Mandatory minimum lunch break of 30 minutes.
- When staff member works more than 40 hours/week between 7 a.m. and 7 p.m., the surplus goes into a bank of credit hours (unless overtime has been requested and approved).
- Maximum of 10 credit hours can be accumulated in the bank of credit hours (anything above 10 is lost).
- Balance of current week is carried over to following week.
- When a staff member has a minimum of 4 credit hours in his bank, said staff member can, upon authorization of his supervisor, take 1/2 day of credit leave for a maximum of 12 half days per year. At least two weeks must elapse between such requests.
- Overtime definition: when the time spent at work exceeds both 8 hours per day and 40 hours per week.
- Overtime for General Service staff is in the form of either compensatory leave or additional remuneration but, for Professional category staff or higher, it's limited to compensatory leave, but only upon the prior approval of the Director General.
- Part-time work exists at either 50% or 80%.
- Annual leave: 30 working days per year. Obligated to take at least 15 days per year. Can accumulate maximum of 90 days.

## Authorized absences

Authorized absence is/can be obtained for:

1. Official WIPO business in Geneva
2. Mission outside of Geneva
3. Participation in UN or ILO language courses
4. Absence for medical appointment
5. Absence for exceptional and important reasons

Unauthorized absence implies sanctions

## Areas for improvement

- More flexibility
- Shorter core periods
- Increased total number of credit hours which can be accumulated in bank
- Possibility to take credit leave more often
- Find an alternative way of dealing with the 160 authorized forms which HRMD receives every day for absences due to exceptional and important reasons.
- More flexibility in the working period (presently 7 a.m. – 7 p.m.)
- More generous provision for language courses

## Conclusions

- No magic solutions.
- Shop around, compare and use your own judgment in choosing what is most appropriate for your particular Organization.
- Remember, all which is being discussed during these conferences is but tools and mechanisms which are only as effective as the people who use them. Therefore, let us foremost ensure that we, as Staff representatives, have the proper skills and training to be able to effectively and efficiently do what we have been entrusted to do, which is to defend the interests of the people we represent, the Staff.

## Session B – Working Time

# Working Hours in the United Nations System: the Case of France

## Presentation by Marielle Richon (FICSA)

1. The United Nations system provides for a **hybrid system** with regard to working time:
  - (a) There is a **standard number of days of annual leave** (30 working days) and **official holidays** (10 "working days" – when one of these days falls on a Saturday or Sunday, a working day is granted as a substitute). It should be noted that these conditions of employment have **not changed for the last 50 years**, save for the recent granting of two Muslim holidays, one of which had to be compensated by the surrender of an existing holiday.
  - (b) The length of the working week **varies from one duty station to another**. Also, some organizations have a summer work week and a winter work week. In New York, for instance, it is 35 hours during nine months and 37.5 during three months (in principle for the duration of the United Nations General Assembly). In Geneva and Paris, it is 40 hours. At UNESCO Paris, it is 44 hours during General Conference sessions, every two years.
2. The guiding principle is that the United Nations common system organizations **follow local practice**. In document ICSC/38/R.15 ("Relationship between hours of work and remuneration" – 28 June 1993), the secretariat of the International Civil Service Commission (ICSC) had the following to say on how "local practice" may affect the working week:

*"... the work schedule is an element of remuneration that is taken into account at the time of General Service salary surveys. Not only is an adjustment made to surveyed salaries on an employer-by-employer basis for differences in internal/external work schedules, but also organizations are encouraged to maintain a work schedule that, as far as possible, is in accord with local practice. The Commission has, on occasions, made recommendations to the executive heads for a change in the internal work schedule, when it was noted, in reviewing General Service results, that there was a significant difference between internal/external work schedules. Accordingly, the General Service survey process influences the work schedules of the organizations and thereby the work schedule of the Professional and higher categories. The organizations' work schedules are therefore often a reflection of local practice as related to the General Service category."*
3. Following local practice implies a strong incentive to fix the length of the working week at a level which is equal to – possibly lower than – the official, legal length. Although the organizations enjoy a great degree of freedom under the Headquarters Agreement, they are generally expected to **abide by the social laws of the host country**, that is, provide conditions of employment that match, at least in global terms, with those in force at the national level.
4. Thus the situation in France becomes very interesting given the fact that the official working week has been reduced from 40 to 39 and then, as from 1 January 2000, to **35 hours** for employers with more than 20 staff. This law will be extended to all employers on 1 January 2002. The United Nations system organizations established in France still maintain a **40-hour work week**.
5. The question that arises for both management and staff representation is: **what to do?**

6. In France, the United Nations system is represented by several organizations:
  - (a) **UNESCO** has its headquarters in Paris.
  - (b) **The International Agency for Research on Cancer (IARC)**, which enjoys a certain degree of autonomy relative to WHO, has its headquarters in Lyons.
  - (c) Several Organizations have larger offices in Paris, for instance the International Civil Aviation Organization (**ICAO**) or the United Nations Environment Programme (**UNEP**).
  - (d) Still **other Organizations** have smaller – liaison – offices, for instance ILO, UNHCR.
  - (e) For practical reasons, the conditions of employment in **Monaco** are aligned with those in Paris. The United Nations common system (sensu lato) is represented there by the International Atomic Energy Agency (**IAEA**).
8. As is the case in all duty stations where there are several Organizations, one of them acts as "**lead agency**". In Paris, this is **UNESCO**. Given that coordination is far from ideal, the issues of interest to all organizations tend to be addressed from the exclusive point of view of the lead agency. We shall, therefore, by necessity, deal with the **various aspects of the working time reduction** in both a **generic and a specific way**.
9. Before going further into the issue of the working week, however, it is necessary to describe **specific aspects of the conditions of employment of the two categories of staff**:
  - (a) With regard to **working time**, irrespective of category, all the time of the officials is at the disposal of the Organization. In United Nations language, this becomes: "*A staff member shall be required to work beyond the normal tour of duty whenever requested to do so*" (Staff Rule 101.2(c)). At UNESCO, it reads: "*The whole time of staff members shall be at the disposal of the Director-General. The Director-General shall establish a normal working week*" (Regulation 1.2.1).

In many specialized agencies it is:

*"While the whole time of staff members is at the disposal of the [Organization], the normal working week [...] shall be [...]"*

- (b) The **overtime of staff in the General Service category** is compensated through **compensatory time off or payment**. In Geneva, for instance, "special" overtime (worked on week days after 8 p.m. and before 7 a.m., or on Saturdays before 7 a.m. or after 1 p.m., or on Sundays and official holidays, are compensated at the 2:1 rate; "ordinary" overtime at the 1.5:1 rate.
- (c) Staff in the **Professional** and higher categories of staff usually is **not compensated**. However, at UNESCO, under Rule 103.5 (d), Professional staff may be granted occasional time off if they have been required to work substantial or recurrent periods of overtime.

Furthermore, as an illustration of this full time disposal of staff members, the former Director-General of UNESCO established a Duty Officers' Scheme at Headquarters (in French, "un système de permanences") in 1995, not only for duty on week ends but also from 6 p.m. to 9 a.m. on week days, on a rotating basis, with equivalent compensatory time off.

- (d) With regard to **salaries**, staff in the Professional and higher categories are paid, in accordance with the Noblemaire principle, by reference to the best-paid national civil service (the United States federal civil service) in such a way that purchasing power is achieved throughout the system. Parity is achieved (in principle!) through the **post adjustment system**, which is so irrespective of the length of the working week. In other words, **staff in Paris and Geneva have to work some 12% more time than their counterparts in New York to get the same salary**.

For example, a Professional staff in Paris works 2,080 hours a year whereas the same Professional staff, if employed by the United Nations in New York, works 1,820 hours a year for the same salary.

Thus, one of the major injustice in the United Nations' common system is precisely the difference in the working time.

Incidentally, in the famous and infamous **Derqué et al. judgement** (No. 1460), the Administrative Tribunal of the International Labour Organization (ILOAT) found that:

*"The whole time of staff members in the Professional and higher categories is at the Organization's disposal and they are properly expected to complete the work assigned to them without compensation for any overtime.*

*It is therefore permissible to base their working week on the conditions prevailing at their duty station and to make no adjustment in pay to take account of differences in hours of work within the common system."*

- (e) **Staff in the General Service** category are paid according to the **Flemming** principle: their salaries and, to some extent their other benefits, are determined by reference to the **best-prevailing conditions of employment in the locality**. Those conditions are assessed periodically, in principle **every five years**, through a **salary survey**. Salary comparisons are made after adjustment for the difference in working time between the outside employer and the organization. The last survey in 1999 showed that comparator employers had a 37.5 hours work week.

So, the number of weekly working hours is one of the major cornerstones of conditions of service for both Professional and General Service staff.

10. Obviously, it is rarely the appropriate moment for any organization (company) to **reduce the working time**; particularly **favorable circumstances** – if one may use this phraseology – are the economic difficulties believed to be temporary and the employer's desire to maintain its workforce. Any organization which sets about to do it is faced with the following two questions:
- (a) Should the **reduction be compensated by a reduction in salaries** or should the latter be maintained?
- (b) If the reduction occurs against the background of a stable workload, should it be **compensated by increased staffing or increased productivity**?
11. With regard to salaries, the organizations of the United Nations common system are confronted with a peculiar situation in the event of a working time reduction:
- (a) **Professional staff will not incur any salary reduction,**
- (b) All other things being equal, **General Service staff will incur a salary reduction.**

Obviously, this is **not at all a favorable scenario: the lower salaries would be affected, the higher would not!** The additional free time has a cost for General Service staff, but not for Professionals! This does not sound politically correct: lower salaries become lower while higher ones stay equal.

12. However, one should **not be entirely negative for the "French case"**. We do not know yet what strategy will be implemented by the comparator employers and, hence, what will be the effect on the salaries of General Service staff in the United Nations common system organizations based in France.
13. In terms of workload, we should look at the **particular circumstances** of UNESCO. The issue of working hours started to become topical at a time when UNESCO was undergoing a severe **downsizing exercise**. The paradox is as follows:
- (a) In principle, the working time reduction would have **alleviated the problem**, and saved jobs.
- (b) But there was a **political drive for a reduction of the staff**, and it is not at all sure that the new Director-General would have been able to save the jobs through a working time reduction (in this connection, the CERN Staff Association could provide valuable information on their own case).
14. Today, the situation possibly is different. The new Director-General has initiated reforms and gained the (volatile!) confidence of Member States. A fairly large number of posts have been advertised for – it is no secret – filling by outsiders. Many seasoned staff members (at UNESCO, some 300–400 in the next four years) are retiring. They will be replaced, if at all, by the younger – and in the initial years cheaper – generation. Whether the Organization would be **ready to hire even more to offset a working time reduction** must, however, remain **unanswered**.
15. The **"lead agency syndrome"** must be underlined here: the issue of the working time reduction is tainted by the **specific circumstances** of one organization, which circumstances are largely irrelevant for the others.
16. This also applies to the staff and their attitudes. In short, there is **no united staff representation** in UNESCO, and even less of a sense of unity and collegiality among the staff. It would therefore be extremely difficult for any one staff grouping to take an initiative to get things moving. Also, the issue of the 35 hour work week is frequently perceived as emphasizing the gap between the diverging interests of the two categories of staff: Professional and General Service.

17. The question of the adoption of a **35-hour work week** by the intergovernmental organizations is on the table in France. For the staff representation, there are several options:
- (a) The matter can be **left to the individual organizations** and, in the case of the United Nations common system organizations, to UNESCO. This would be the best recipe for haphazard "solutions".
  - (b) On the contrary, the **staff representation can seek to join forces** – and rub out the respective weaknesses and P vs GS antagonisms – in order to achieve the best possible result for all the staff.

But in both options, the proposal to reduce the work week could be used as a bargaining tool.

18. This issue illustrates the need for a **strong coordination** between the various staff associations and unions. FICSA seeks to unite the staff associations and unions of the United Nations common system and, through the category of associate members, the staff associations and unions of the other organizations.





## **Session C – Advancement and Promotion Systems**



## Session C – Advancement and Promotion Systems

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### The Evolution of CERN's Career System

Presentation by Jean-Pol Matheys (CERN)

#### A. Overview

This presentation covers the evolution of the career system (advancement and promotion mechanisms) in use at CERN over the last two decades. There is no attempt to cover career systems other than CERN's: Career systems are difficult enough to understand in one's own Organisation, understanding those in other organizations is (nearly) impossible.

At CERN, the concepts underlying career development have evolved with time in a very significant manner. From what one could call *old* ideas into *new* ones. Career systems impact staff members' careers at different levels: recruitment, advancement, promotion. This presentation will review the evolution of these three elements over the last two decades.

#### A.1. Recruitment level

Career systems start to impact staff members' careers when they are recruited. The first thing that happens is the initial classification which is also called grading. And already here, there has been an evolution in the practice and/or policy of CERN. At the beginning, given functions corresponded to one grade and that was it, there was no discussing it. Slowly however, CERN started to take into account experience before recruitment such that rather than being assigned in a grade's first step, one was assigned at a varying step depending on how much experience one had. What came next in the evolution is that for a given job, if one had no experience or very little experience, rather than being assigned initially to the correct grade, one was assigned one grade below the correct grade. Saving money was all this was about. The latest step up is labour market premiums. One may think this is non existing in international organisations, but, alas, CERN is a counter example. A number of other international organisations have followed similar evolutions from systems that were very strict (one function = one grade and one step) into flexible systems that sometimes even include labour market premiums.

#### A.2. Advancement

Advancement normally comes through a step increase. The original idea was to simply reward staff members for staying in the same organisation. The simple fact that a staff member stayed rather than joined a private company was rewarded by a step increase. That was a way to keep staff members in house rather than see them go away.

The first evolution away from this concept was the introduction of the idea that increases in technical competence, rather than fidelity to the organization, was to be rewarded with a step increase.

The second evolution, currently observed at CERN (and shortly in other organizations) is that advancement now recognises and rewards *performance*:

- it is possible to award staff members whose performance is significantly above average an *extra* step in addition to the normal, default step; and
- it is possible to refuse or delay the award of the normal, default step to a staff member's whose performance is significantly below average.

The concept of advancement has thus also evolved significantly with time.

#### A.3. Promotions

Promotions (moving into a higher grade) originally recognized a change in functions: when one did something of a significantly different, more complex nature one moved into the next grade. What came little by little into the process was that merit, performance was used to determine *when* you moved. So, not only did you need to have really new, higher functions, but your merit was also taken into account as to *when* you actually moved into the next grade.

Today, CERN may be going even further away from the original idea of promotions by introducing responsibility allowances, which are a totally different concept: staff members receive additional compensation in the form of an allowance while they assume new, higher functions; but, as soon as they no longer assume these functions, the allowance is removed.

The concept of promotion has thus evolved so much that it is, in some cases, on the brink of disappearing altogether.

## B. Recent Changes in the CERN Career System

The changes in CERN's career system have been introduced through two (sweeping) reforms, which are described in Section B.1. Each of these reforms has brought in new concepts, which are described in Section B.2. Some of the most significant changes affected the advancement mechanism. These are presented in Section B.3.

### B.1. Systemic Changes

CERN started off with a simple grade/step system, automatic steps, and grade changes that were directly, intimately linked to changes in functions. That system corresponds, for the most part, to the one that was introduced when CERN was founded, in 1954. This system had drawbacks, two of which were to be addressed by the introduction of MOAS in 1992:

- there existed a significant backlog of staff members who met the promotion criteria but who couldn't be promoted simply because the quotas didn't allow it (as the overall number of promotions was constrained);
- a significant fraction of the staff (nearly one third) was at the end of their career i.e. at the last step in the last grade corresponding to their functions.

#### B.1.1. MOAS – 1992

The first significant move away from this classical career system was the introduction of a systems called “Merit-Oriented Advancement System” (MOAS), in 1992. The most important change was that the annual step was then linked directly to performance and was no longer automatic. The positive aspect of this change was that MOAS made it possible to grant more than one step for superior performance, which was appealing to a number of people.

MOAS introduced new concepts:

- the concept of “Career Paths” which comprise three grades, within which the transition from one grade to the next is automatic (hence addressing the first drawback above);
- the concept of the “Exceptional Advancement Zone” (EAZ), to enable people whose careers were exceptionally good to continue advancing beyond the last step in the last (normal) grade of their career path (hence addressing the second drawback mentioned above); and
- the concept of “First Employment Grade” for the recruitment of staff members with no or very little experience one grade below the normal grade (i.e. that corresponding to their functions).

These concepts are described in Section C below.

So, in 1992, CERN broke the automatic annual step rule. Worth noting too is the fact that in the exceptional advancement zone a step is granted only every two years, a significant break-away from the “one step a year” rule. These changes were approved by few staff members: in general, the staff didn't much like the changes, to say the least.

#### B.1.2. MAPS – 2001

In 2001, the “Merit Advancement & Promotion System” (MAPS) was introduced. The official interpretation of the name is not known yet but it likely means “merit advancement” on one side and “promotion” on the other. It could be that merit also affects promotion. Only time will tell. What is clear however is that the changes this new system brings are even more significant than those introduced by MOAS.

MAPS introduced bi-annual step zones where previously steps were annual (note that this has nothing to do with a system in which one had bi-annual steps from the very beginning). MAPS also introduces a fully discretionary advancement zone, which is a zone in which staff move from one step into the next at the total discretion of the Director General. That zone is reached only at the end of one's career, but this is nonetheless a very significant change as far as principles are concerned.

MAPS re-introduced grade to grade transitions and introduced labour market premiums. This last element is used by private outside industries quite frequently: one receives a lump sum at recruitment, a lump sum the following year(s) but thereafter is no longer granted. This has serious impact in a number of places elsewhere (see below).

What does it all mean ? Essentially: 1) less and less protection for staff against arbitrariness (because arbitrariness comes with discretion and discretion is more and more present into the system) 2) less and less clear or predictable career perspectives (it's nearly impossible to project one's career into the medium- or long-term future, there are too many possibilities, too many unknowns).

## **B.2. Conceptual Changes**

### **B.2.1. The Concept of Career Paths**

The original concept of Career Paths is somewhat similar to what is being discussed at the moment in the UN system under the name of "broad-banding". Essentially, one career path spans the expected career evolution of somebody from recruitment nearly up to retirement, assuming there is no major change in function. A career path spans three normal grades in which annual steps are granted and one exceptional grade in which one enters if one had a very good previous career evolution and in which bi-annual steps are awarded. This seemed justified at the time career paths were introduced (1991) because it was really for those staff members who were at the end of their careers, but it has had far-reaching implications, as will be shown below.

The career paths overlap one another a lot (more than one grade). This implies that one can change from one career path into the next while remaining in the same grade. Indeed, each career path contains three normal grades (e.g. grades 9, 10 and 11) such that the middle grade (grade 10) was also belonging to the next career path. So, without a change in remuneration in basic salary one could move from one career path into the next. The advantage of the career path change was to extend the career by one grade.

CERN does not have the distinction between D, P and GS staff, but in the career paths one can identify career paths for non-university educated staff and career paths for staff with a university education. So there is a differentiation introduced in the system, but the possibility to move from non university type career paths into university career paths does exist (even though it is a difficult transition to make — similar to the transition from G to P in the UN system).

#### **Advantages**

Career paths clarify the expected career progression of staff members: one knows that when one enters a career path at recruitment, one has three grades one can go through, and then, possibly, the exceptional advancement zone.

Career paths make it possible for staff to envisage a longer normal salary progression. When entering the grade system, one could look forward to changing from one grade to the next, but that was always something which was far from automatic and sometimes very tough. Here, in the career path system, the transition from one grade to the other in the original system (MOAS) became automatic as soon as one reached the crossover point (the step which existed in both — one's current grade and the next — in terms of basic salary amounts).

Career paths also significantly reduce the reclassification load on for the Administration, and the reclassification stress for the staff, because one goes from one grade into the next without having one's functions analysed. So, staff no longer have a barrier in front of them every ~6 years: they can go smoothly from one grade into the next.

#### **Disadvantages**

The only disadvantages is that it is somewhat more difficult to change from one career path into the next than it used to be to change from one grade to the next.

In 2001, the system was changed. Career paths now contain salary bands rather than grades (this is a one-to-one transformation). Bands are, however, quite different from grades in that each band is unique to a career path, whereas each grade was found in at least three career paths. Career paths made up of bands are thus no longer interlocked in terms of salary which means that they could evolve differently. That is something one should be very careful about if one introduces career paths or broad-banding. The fact that one found the same grade in different career paths made it such that all the career paths were interlocked. One could not move (in terms of basic salary) one career path without moving all the others. In the new system (MAPS), since bands are unique to career paths, one can change one career path's salary span without moving the others, and we believe this is something which is very dangerous. For example, one could think of moving up the career path for young university degree staff, without moving all the rest, thus introducing a distortion of in the overall salary grid. This could easily introduce friction between different categories of staff, something staff associations and unions should be and are rightly very reluctant to allow.

#### **Overall: A good idea, if done correctly**

Overall, career paths are thus not such a bad idea after all, provided one builds into the career path system mechanisms which are reasonable in terms of evolution of function, in terms of the number of changes, and how difficult it is to change from one grade into the next and from one career path into the next.

### **B.2.2. The Concept of Exceptional Advancement Zones**

Exceptional Advancement Zones are for staff members who are specially meritorious throughout their career. Normally, after having gone through the three normal salary bands of a career path and reached the topmost step of the third salary band, staff members can advance only if they change functions i.e. if they are promoted into the next career path. Yet, it is sometimes desirable to be able to give staff members who do not change functions a push, so as to re-motivate them. This is made possible by the introduction, above the last normal salary band of each career path, of the exceptional advancement salary band (in which there are bi-annual steps). In itself, this is a good idea. Yet, the disadvantage is that it introduces the notion bi-annual steps (even for staff members whose performance is fully satisfactory) where there were none before. This concept is in itself dangerous, as it can be generalized slowly. This is, in fact, what has happened at CERN: when MAPS was introduced in 2001, bi-annual step zones were introduced in the second part of each salary band in each career path. The concept of the EAZ is thus useful, but its implementation should be thoroughly studied before it is accepted by staff representatives.

### **B.2.3. The Concept of Additional Steps**

Additional steps are steps beyond the normal automatic step. They reward superior performance. The question which was raised by our colleagues from FAO/APS is “How does one manage to get extra steps which cost, of course, more than simply giving everybody a step?”. It is true that additional steps do cost more, but for the CERN staff they counter-balanced the idea of delaying, refusing steps to poorly performing staff. But it is not fully counter-balanced in that, if one would like 30 additional steps one does not need to find 30 staff members whom are refused a step. Management granted additional money for advancement in the form of extra steps for staff members whose performance is above average. This may seem attractive, but it should be remembered that it does come with the idea that performance is rewarded. And as soon as one starts rewarding performance, then one immediately questions the fact that the annual step is automatic. There is no such thing as a free lunch.

### **B.2.4. The Concept of First Employment Grade**

Very briefly, this is a way for CERN to save money by recruiting young people (nearly) right out of school. Indeed, in the classical system in use before MOAS, only people with at least three years of experience were recruited. The first employment grade changed that: 1) people with no experience at all could be recruited and 2) they were recruited one grade below the normal grade (i.e. for people with at least three years of experience).

There are no advantages for the staff in this. It is interesting for just out-of-school people to be able to enter the employment market, but the price they pay is heavy: very often a 10% difference in starting salary. Overall, this has also made CERN less attractive on the employment market.

When MAPS was introduced, the first employment grade was replaced by three steps placed below the first step in each career path. The concept thus is still existing, with the mentioned drawbacks, but the starting salary difference has been reduced significantly (it's now around 5%).

### **B.2.5. The Concept of Labour Market Premiums**

Labour Market premiums are quite often found in private industry and have just been introduced at CERN. They make it possible to adapt the entrance remuneration to the market. Management maintains that they make it possible to attract people to CERN who would otherwise not be interested. Indeed, CERN salaries and their evolution with time are not very appealing, in particular for those people whose area of expertise is one for which the employment market is narrow. So, Management maintains that to recruit, for example, information technology specialists you have to give them a premium on top of their basic salary, at least at the time of recruitment and for the first one or two years.

What are the advantages? We see none. In CERN's case these premiums will be granted on a case-by-case basis and this is something we consider very dangerous. For us, it will have very bad side effects: geographical and gender imbalances. Also, and this is very important, it reduces in the minds of Member States (and those are the guys who decide on this) the need to increase the salary grid. We thus consider that one should try and avoid labour market premiums as much as possible. It is much better to raise the whole salary grid to address recruitment problems.

## **B.3. Advancement Mechanism Changes**

In many international organisations today, the annual step is (still) pretty much automatic. Many organisations grant the annual step unless something really bad happens, or (for some organisations) unless one is sick for a long period of time (more than two quarters in a year). This is the general situation. As shown above, this has changed very significantly at CERN in the last 20 years. It is interesting to see how this came about and what the consequences were.

### B.3.1 Moving Away from Automatic Steps

One of the conclusions that can be drawn from the experience at CERN is that as soon as one does away with annual steps which are *automatic* anything can happen. Why is that? How can it happen?

Well, usually it starts with the Management saying “if you have somebody who is especially well performing, why give that person only one step, after all he’s doing wonders which others don’t do. Why don’t we give that person two steps?” Why not indeed? And some people really like it. Of course, it’s subject to performance evaluation and, of course says the Management, there must be a budget limit to it because it’s not simply because your own supervisor thinks one is doing wonders that one gets an extra step. There is a limit to the amount of money organizations can “throw at” advancement. Next, the Management will want to address poor or under-performance as well: if extra steps are given to some staff members, maybe others shouldn’t be given steps or, at least, should receive them only after some delay (e.g. January 1<sup>st</sup>, rather than July 1<sup>st</sup>). Last, but not least, Management will insist that so-called “high-flyers” be recognized as such and be allowed to move faster up the career ladder, by making it possible to grant not just the normal (previously automatic) step and one additional step, but two or three such additional steps. As the overall volume of steps is constrained by the budget available for advancement, this can only be done at the expense of other staff members. This leads to very flexible advancement systems in which differentiation between staff members, not to mention discrimination, will be exacerbated.

### B.3.2 Automatic steps are a key protection

Observing closely CERN’s recent past, one has to conclude that “automatic” annual steps offer staff a protection against a number of adverse evolutions in the advancement system. Maintaining “automatic” annual steps may well be seen as anachronistic, and is certainly a challenge for staff representatives, but it is well worth the effort. Let’s review briefly three adverse evolutions of advancement systems which are possible once “automatic” annual steps are abandoned.

First, once “automatic” annual steps are abandoned, Management can quite easily introduce an advancement system in which the (normal, annual) steps are awarded only as long as the budget allows it. When applied to extra, additional steps this reasoning is quite understandable. But the Management may well want to change the Staff Rules and Regulations in such a way that no distinction be made between the annual “automatic” steps and the merit-rewarding, additional steps. In such a situation, assuming the organisation enters a budget crisis, it is likely that Management will try to and succeed in reducing the overall advancement budget, to make savings. This readily implies that it will not be possible to grant an annual “automatic” step even to staff members who are performing correctly. Clearly, this would be dramatic.

Second, as soon as one loses the automaticity of the annual step, the Staff Rules and Regulations can be modified to replace annual steps with bi-annual ones. In some organisations, bi-annual steps are (and have long been) the default when one gets to a certain point in one’s career. This is different: this is changing from what was an annual step zone into a bi-annual step zone. This is exactly what has been done at CERN. And the very reason why that could happen is because once one had previously agreed to have steps based on merit. On this basis, Management will argue that the merit of staff members who are at the end of their careers is not (anymore) the same as that of staff members at the beginning of their career; the logical conclusion being that the former should get a little bit less than the latter, hence the proposal to introduce bi-annual steps.

Lastly, advancement becomes increasingly discretionary. Indeed, the award of the step relies strongly on the evaluation of the work of staff members by their supervisor. Essentially, as the supervisor is the only one who can do the evaluation, if he does or doesn’t like the staff member concerned, maybe the evaluation is done quite differently. And it is quite difficult to demonstrate that this has tinted the evaluation? Discretion is very, very difficult to distinguish from arbitrariness.

The dangers in releasing, relinquishing the automatic step are thus very real and diverse. The only advantage in abandoning of the “automatic” steps is that those staff members who are very good performers may be awarded more than one step. Is it worth to risk all the above for this? My own personal opinion is no, not really.

To summarize graphically:

- More than 1 step per year can be awarded 😊  
 ... subject to performance evaluation & budget limits
- Steps can be delayed/refused if poor performance 😞
- Steps awarded if budget allows it 😞😞😞  
 ... budget crisis may result in “normal” steps being delayed
- Steps can become bi-annual rather than annual 😞😞
- Advancement becomes increasingly discretionary 😞😞  
 ... more and more like promotions

**B.4. Career Progression Examples**

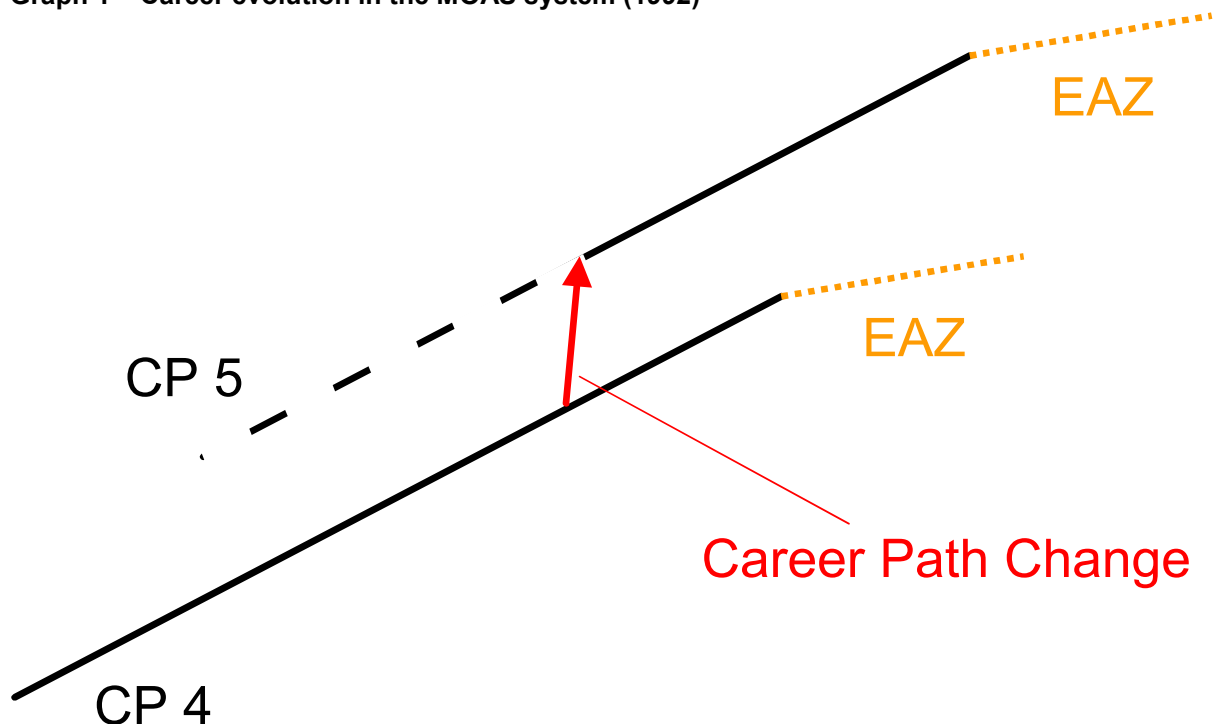
The two figures below give examples of career progression in the MOAS and MAPS systems. The examples cover two career paths. In each graph, the career development of an individual is presented as from recruitment.

Before looking at the graphs in detail, it is worth describing what would have happened in the classical (automatic annual steps and grade to grade promotions) system: The person would have been recruited in a grade, would have moved up in it by virtue of the automatic yearly steps, eventually got a promotion into the next grade, moved up automatically again, and eventually got a promotion into the next grade. Grade to grade changes would have been closely related to functions that evolved. Essentially, it was a straight line in one grade, a little bump at each grade change, and that was it.

In the MOAS system (see top graph) the situation changes in two respects: 1) the annual step is no longer automatic (even though nearly so) and 2) the grade to grade transitions are automatic. The latter change may seem more significant and be quite attractive for staff but, as a matter of fact, it is heavily loaded with dangers. These dangers have materialized when MAPS was introduced.

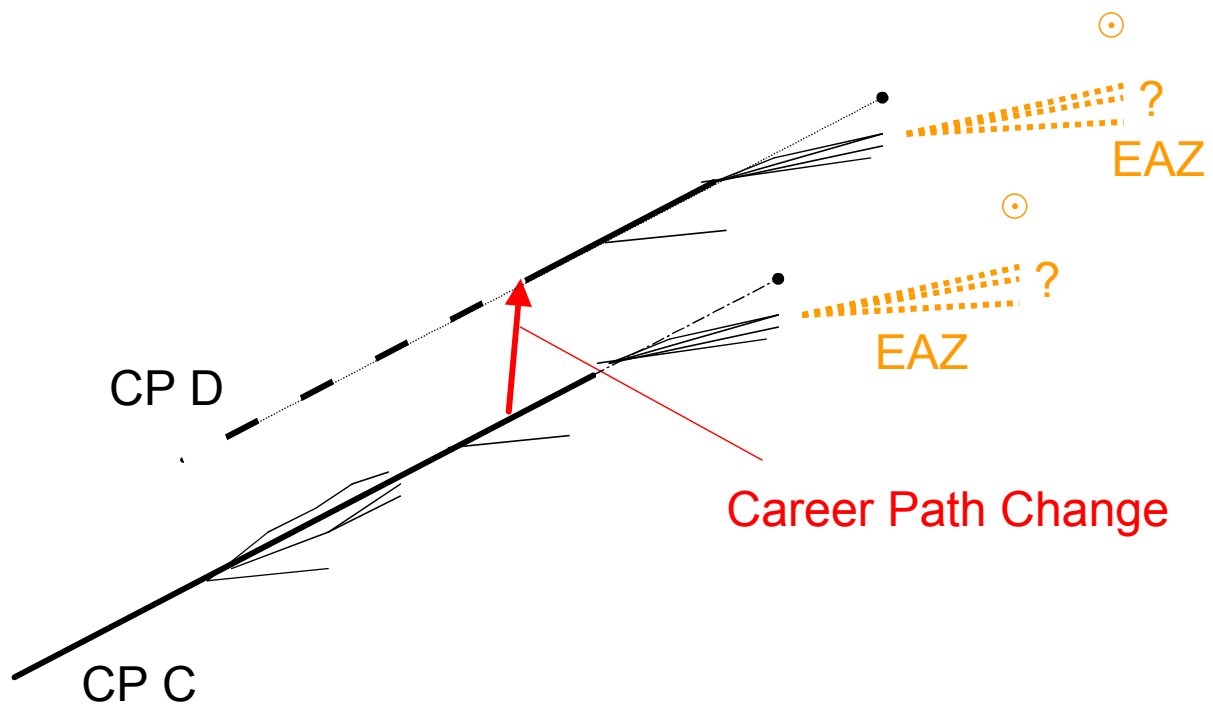
Indeed, the situation in the MAPS system (see lower graph) is very different: assuming the person would enter at the same place (note that this would not normally be the case), he/she would move up in the first band (assuming his/her performance would be fine — note again that this may not always be the case), and if he/she did not change functions enough, the person would be moved into a half speed area in the same band, where he/she would get only a step every two years. So the concept that was brought in for some special cases at the end of the career (EAZ) is now introduced into even the beginning of the careers, for those people whose functions do not develop according to the plan. This is a marked and dangerous change.

**Graph 1 – Career evolution in the MOAS system (1992)**





Graph 2 – Career evolution in the MAPS system (2001)



Also new in MAPS is the fact that one can now get three extra steps, four extra steps, five extra steps. There's no limit in the Staff Rules and Regulations. But one can also get one's step refused for a number of years and so there's no longer a single line of career progression, but really a large number of them. The risk in there is that all the additional extra steps given to so-called "high-flyers" come at the expense of lower or even from normally performing colleagues.

What is more is that good performers who change supervisor or activity often lose their career history: the new supervisor doesn't know they were a (very) good performer, so he/she doesn't give them a boost. So they miss a boost when they could have one. When they have a dip in performance, they don't get a boost at all, they get a dip, as no account is taken of previously good performance that reduce the importance of the (little) performance dip.

What happens when people move into the second part of the third salary band? They get, whatever they do, one step every two years, even if their functions have evolved correctly. But they still have the chance of getting extra steps, so they can still make it better than is normal, but it is clear that they will never make it as far and as fast as was possible in the past when the annual step was automatic.

## C. Conclusions

The trend is obviously for more and more flexibility. Why not? The reason not is that flexibility very often means arbitrariness. It first means discretion and you say why not. Well, better not. Simply because discretion often implies arbitrariness.

Links established between steps and budget is a major risk. When CERN's Management proposed (yes, they did propose it) that the overall advancement would depend on the overall budget available for it, including the annual (nearly automatic) step, we resisted very strongly against it and managed to avoid it. But if we had let that go through, in days like those which we have today, with Organisation suffering a financial crisis the size of one annual budget, Management would have been very tempted to reduce the overall advancement budget by as much as 50%. They would have done it. And they would have done it even in those areas where one would normally get one step a year. And that would have been very dramatic.

The automatic step is the only retaining wall. If one lets go of that, really anything can happen. Career systems are a major challenge. To stop Administrations from introducing arbitrariness and systems like described above is very difficult. Some of the younger colleagues like those flexible systems, push for it in fact. Top management may want it, middle management is often undecided, and the association/union is thus often hard put to actually exert a lot of pressure. Yet, this is very much needed. The consequences of not fighting to keep the automatic steps can be very dire.

## Session C – Advancement and Promotion Systems

### Career Development – A Gap Between Expectations and Experiences

Presentation by Janice Albert (FAO/APS)

My association represents the professionals at the headquarters of the Food and Agriculture Organization (FAO) and the World Food Programme (WFP). Before I begin, I should say that my talk focuses on the experiences of professionals in FAO. WFP has a very different set of staff issues and I will not discuss these today.

FAO was the first technical agency established by the UN. It is more than 50 years old and I think this fact is relevant to the discussion of expectations regarding career development. First, we have some long established mechanisms, rules and customs regarding upgradings and promotions. Second, we have an older generation of staff who were hired in the 1970s and rose through the ranks over the years. This gave the expectation to a middle generation, those who came in the 1980s and 1990s that it would be possible to rise to higher posts as the older generation retired. Last we have a younger generation coming in now.

The middle and younger generations are being told that times have changed since the 1970s, the organization is not expanding as it was then and the staff is top heavy. Essentially, the middle and younger generations are told to produce more and to expect less. This dilemma has a serious impact on staff morale and may be the number one issue among APS members.

#### Who is responsible for career development?

Whose responsibility is it when a person's career is stifled? In certain countries or industries, it is not unusual for individuals to move frequently from one organization to another, advancing with each move. In this case, the full burden of career development is borne by the individual. This is not necessarily the best approach or a realistic approach for people working in highly specialized fields or complex organizations where it takes years to fully understand the work and to be effective. Further, it is costly to recruit and repatriate international civil servants, probably far more costly than giving an upgrading to a deserving staff member.

Even if staff remain in their organizations, they can become demoralized. When low morale affects work, managers and the organization's members should be concerned. Thus, career development really is a shared responsibility.

#### Systems of promotion and advancement

The title of this session is "Systems of promotion and advancement". Every system is comprised of components which must function together for the system to work. What are the essential components of a system of advancement and promotion?

- Ability and willingness to invest money in staff;
- A structure which allows for career paths;
- Rules which are applied fairly and transparently;
- Supervisors and managers who can critique work appropriately;
- Training and staff who want to learn and change;
- Communication and planning.

In FAO we have some, but not all, of these components. Unfortunately, the components which do exist, do not work as well as they should. The old system is breaking down but there is not a new system to replace it.

At FAO, there has been no growth in the budget for a number of years. While this puts real limitations on opportunities to upgrade and promote staff, it can also become a convenient excuse for inaction and lack of willingness to solve the problems of career development.

There have to be career paths and ways of marking achievements. FAO is part of the UN Common System, and as such the rules of the International Civil Service Commission (ICSC) apply in terms of the grade structure and salaries. The ICSC master standards are generic job descriptions which are open to interpretation. This may work in favour of or against a staff member. In FAO, there seems to be less adherence to these standards now and this may be detrimental. In fact, our management is aware of the need to improve vacancy announcements.

Demographics are also important. If many staff are retiring, as will happen in FAO in the next 5 years, it may mean that new opportunities will open up for younger staff. It may also mean that posts will be abolished or downgraded which would have a very demoralizing impact on the existing staff.

Objective appraisals for job performance are a problem. FAO has a system of annual performance appraisals, which includes assessments of accomplishments and weaknesses. Yet, this system is not applied to everyone, and many of our members believe that the system is applied very differently in different units. There may be differences in communication and working styles between the supervisor and staff member. Some managers may discriminate against staff members consciously or unconsciously. Greater oversight to make Performance Appraisals an Organization-wide system rather than an individual tool is required at FAO.

It is said that seniority is less important than merit. While we all want to be recognized for merit and our contributions to an organization, this can be difficult to measure. How does one assess the value of institutional memory and knowledge of an organization? How are these factors compared with the value of new skills or attitudes that fresh recruits bring? Isn't it possible to retrain and motivate existing staff rather than replacing them? This is an example of the shared responsibility of staff and others.

FAO spends approximately 1% of its budget on training. Yet, the programme is less effective than it could be and some divisions do not even spend their training funds. Recently, some staff members conducted a study of the FAO training programme. They found that the majority of staff were unaware of the training opportunities and that many managers did not encourage training. Some staff feel that there are no incentives for training because it is not linked to promotion. While it may be satisfying to become more skilled or knowledgeable, it is frustrating when one is not allowed to apply these new capabilities.

In FAO we have procedures for upgrading an individual. Upgrading is cumbersome and takes a long time but it is possible. Unfortunately, many managers and staff do not know about this or are unwilling to use it. Some managers view a request for an upgrading, which includes a desk audit to assess a person's work, as a hostile act. There is no routine mechanism at the present time for reviewing whether a person should have promotion. Instead, the staff member needs to have a supportive supervisor and be very persevering to get an upgrading.

Usually, a person obtains a higher grade by waiting for a post to become vacant. Then the staff member must compete for the job against other candidates. There is always the chance that the deserving staff member will not be selected. One way to provide advancement and promotion for staff would be to use of internal vacancy announcements for higher positions. This mechanism can be applied when there are four internal candidates competing for a position. This is subject to the discretion of the manager and becoming very difficult.

Internal vacancy announcements do not mean that the Organization would not acquire the new staff that it needs: it means they would enter the system at entry levels. Nor does it mean that FAO would have to sacrifice its goals of gender and geographic balance. While many staff members share these diversity goals, they do not want to see their own careers being blocked because of past failures to hire a diverse staff. One social goal should not be pitted against another.

## **Fairness in applying rules**

Staff members need to have confidence that their efforts to advance will not be ignored because of bias or favoritism. Opportunities for advancement can be highly dependent on supervisors. Staff need to believe that the people judging them are competent and consistent in their appraisals. When the hiring process is not transparent and objective, it is open to abuse and criticisms of unfairness.

## **Conclusions**

What conclusions can we draw? First, staff representatives can gain a sense of the strengths and weaknesses of the system by talking to their members. We have found that situations can vary greatly among divisions. Where supervisors

are supportive, upgradings and promotions are happening. When supervisors are not willing to help, the picture can be very bleak and there are not many options for remedying the situation.

While management styles and organizational structures may be changing, staff associations should not be too quick to reject the rules and procedures from the past. Some of these rules can be empowering for a staff member. As new people enter the organization, staff associations can help their members to understand when the responsibility is with the staff member, the supervisor or the organization.

Finally, staff associations can use their influence to ensure that procedures are followed and that processes are transparent. The importance of fairness cannot be stressed enough. Unfortunately, this is something that is difficult to pinpoint. Yet, this is vital to a successful career development system.

## **Session C – Advancement & Promotion Systems**

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### **Presentation by L. Belgharbi (OMS)**

No text was submitted.

## Session C – Advancement and Promotion Systems

# Le système de carrières à la Commission

Présentation par Fabrice Andreone (EC)

## 1. Le système actuel

### 1.1 Les catégories

Le personnel de la Commission est classé en quatre catégories :

- La catégorie A : fonctions d'encadrement. Recrutement au niveau universitaire. La catégorie LA correspond aux traducteurs et interprètes.
- La catégorie B : fonctions d'assistants administratifs. Recrutement au niveau baccalauréat.
- La catégorie C : fonctions de secrétariat ou de gestionnaire.
- La catégorie D : fonctions d'huissier.

Il faut noter que le changement de catégorie peut se faire en interne par un concours de passage de catégorie réservé aux fonctionnaires. Il en existe de D vers C, de C vers B et de vers A. Ils sont organisés tous les deux ans.

### 1.2 Les grades

Chaque catégorie est divisée en grade. A titre d'exemple, pour la catégorie A, la division se fait ainsi :

- A8 : administrateur adjoint; (= P1)
- A7/A6 : administrateur; (= P2/P3)
- A5/A4/A3: administrateur principal (=P4/P5). Un fonctionnaire peut entrer dans l'encadrement à partir du niveau A5, avec le titre de chef d'unité.
- A2 : directeur (=D1)
- A1 : directeur général (= D2 ou S/ SGA)

### 1.3 Les échelons

Chaque grade comprend 8 échelons (sauf les grades de base D4, C5, B5, A8 et A7 ainsi que les grades A1 et A2). L'article 44 du statut dispose que chaque fonctionnaire bénéficie d'un échelon tous les deux ans.

### 1.4 Notation et promotion

Le chapitre 3 du statut est consacré aux questions de notation, promotions et avancement d'échelon.

#### 1.4.1 Le système de notation

L'article 43 du statut dispose qu'en dehors des A1 et A2, les fonctionnaires font l'objet d'un rapport périodique d'évaluation (au moins tous les deux ans) dans les conditions fixées par chaque institution.

La notation est organisée sur cette base. Le système à la Commission est le suivant: double dialogue, notation d'appel, CPN, article 90 et TPI.

### 1.4.2 Le système de promotion

L'article 45 du statut prévoit que la promotion est attribuée par décision de l'AIPN. Elle se fait sur base d'une ancienneté minimum (6 mois dans le grade de base, 2 ans dans les autres grades) et sur l'examen comparatif des mérites des fonctionnaires promouvables.

Pour les personnels B, C et D, les promotions sont faites en grande partie sur des critères objectifs (âge, ancienneté de grade) mais aussi sur base du rapport de notation. Pour les fonctionnaires A, la promotion est faite sur base du mérite (rapports de notation), les critères objectifs ne font que départager les ex-aequo.

L'exercice de promotion est réalisé tous les ans. Les comités paritaires de promotion se réunissent pour recommander une proposition de liste des fonctionnaires promus à l'AIPN.

Les promotions ne nécessitent pas de changement de poste et un fonctionnaire peut théoriquement faire toute sa carrière sur un même poste; ce qui distingue la fonction publique de carrière de la fonction publique de position.

Le volume de promotion est calculé sur base de taux annuel de promotion « historiques » qui sont accordés par l'autorité budgétaire (par exemple 25% des A7 passe en A6 et la durée moyenne dans ce grade est de 4 ans). Les taux réels varient d'une année sur l'autre et d'une institution à l'autre. On doit souligner que les taux dépendent du « turn over » (fonctionnaires décédés ou en retraite) et des transformations de postes consentis par l'autorité budgétaire.

### 1.5 Le passage de catégorie

L'article 45 du statut prévoit que le passage d'une catégorie à une autre ne peut se faire autrement que par concours. Ainsi, la Commission et les autres institutions organisent régulièrement des concours de passage de catégorie. L'administration doit également demander des transformations de poste à l'autorité budgétaire qui permettent les passages de catégorie.

Il existe une exception pour les passages de LA vers A qualifiés de décloisonnement et qui se font par voie de mutation.

### 1.6 La grille des rémunérations

L'article 66 fixe la grille de traitement qui adaptée chaque année grâce au système d'adaptation des rémunérations.

## 2. La proposition de nouveau système de carrière

Le contexte politique (démission Santer, Commission Prodi, Livre blanc, réunion de la Commission du 28 février 2001, création d'une instance de négociation à haut niveau, positionnement de chaque OSP) est expliqué oralement.

Il faut également souligner que la Commission et l'instance de négociation à haut niveau ont conservé de fait deux options de carrières sur lesquelles la Commission doit trancher le 30 octobre 2001.

La première option dite option A+ est basée sur le maintien de la matrice de la grille actuelle, ajoutant en fait des grades supplémentaires à la base. Elle est basée sur l'hypothèse qu'un lien renforcé entre mérite et promotion peut être obtenu par le ralentissement d'échelon.

La deuxième option dite option C repose sur une matrice rénovée et sur la création de deux catégories. Elle lie davantage le mérite entre avancement et carrière en diminuant le nombre d'échelon (de 8 à 5) et en augmentant le nombre de promotions au long de la carrière (d'environ 3 à 6/7). C'est cette nouvelle grille qui est présentée ci-dessous.

### 2.1 Les catégories

Le nouveau système ne comprend plus les catégories actuelles. En fait, les catégories B, C et D sont fusionnées dans une catégorie « assistants » qui correspond à l'évolution actuelle des professions.

Dans la période de transition, les catégories C et B seront maintenues. Et les C seront certifiés en B sur une période à définir. Quant aux D, ils seront « revalorisés » en C puis être certifiés comme assistants.

La catégorie administrateurs recouvre les catégories A et LA.

### 2.2 Les grades et les fonctions

La nouvelle grille comprend 16 grades, avec un chevauchement entre les catégories, sur 5 grades entre les grades 5 et 10.

Pour ces grades, il existera deux définitions de fonctions.

## 2.3 Les échelons

La Commission souhaite lier plus l'avancement de carrière au mérite. C'est la raison pour laquelle la nouvelle proposition comprend seulement 5 échelons automatiques (obtenus tous les deux ans) contre 8 en moyenne, aujourd'hui.

La nouvelle grille est donc plus linéaire et ne comporte plus les chevauchements actuels qui sont très importants (B1 = A6)

Dans cette perspective, les fonctionnaires auront en moyenne 7 à 8 promotions dans une carrière contre 3 à 4, aujourd'hui.

## 2.4 Notation et promotion

### 2.4.1 La notation

La Commission européenne prépare actuellement un nouveau système de notation qui sera basé sur des points de mérite (rapport de notation) et points de priorité (hiérarchie).

Les points sont accumulés au fil des ans quelle que soit la mobilité effectuée par le fonctionnaire. Au-dessus du seuil de point pour la promotion, le comité de promotion examine chaque cas et recommande une liste des fonctionnaires promus à l'AIPN.

### 2.4.2 La promotion

Elle est basée sur des seuils de points qui seront décidés de manière paritaire par l'administration et le personnel, chaque année.

Les taux de promotions plancher d'un grade vers un autre, devraient être inscrits dans le statut, sous forme de taux annuel. L'autorité budgétaire sera alors tenue de donner ce qui inscrit dans le statut.

Le nouveau système de promotion sera basé sur uniquement sur le mérite (rapport de notation, points de la hiérarchie).

## 2.5 Simplification du système des catégories

Dans la période transitoire, le passage des fonctionnaires de catégorie C au sein de la catégorie « assistants » se fera sur base des fonctions exercées et de formations. La catégorie « assistant » continuera de distinguer les C et les B pendant cette période encore à définir, mais regroupera à terme l'ensemble des anciennes catégories B, C et D.

Le changement entre « assistants » et « administrateurs » se fera sur base des fonctions et des mérites mais également de tests et de formation.

## 2.6 Période de transition

Dans la période transitoire, 80% des fonctionnaires seront reclassés dans la nouvelle grille. Il a néanmoins fallu créer des échelons virtuels pour ceux qui ne peuvent être placés.

Ils y resteront tant qu'il ne sera pas possible de les mettre dans la grille suite à une promotion, par exemple.

La période de transition durera au maximum 14 ans pour ceux qui sont dans l'échelon 1 d'un grade qui en comporte 8, au moment du changement, puisque chaque fonctionnaire en poste se voit garantir par la Commission de pouvoir aller jusqu'au dernier échelon de son grade, tous les deux ans et selon l'augmentation de salaire correspondante aussi longtemps qu'il n'a pas eu de promotion.

Cette période concernera en fait peu de fonctionnaires puisqu'il est prévu que 90% du personnel évolue normalement, dans le cadre de promotions.

## 2.7 Garanties demandées par les OSP comme conditions de la nouvelle grille

### 2.7.1 Garanties individuelles

- Garantie du salaire acquis : reclassement dans un niveau salarial immédiatement inférieur, avec compensation;
- Garantie d'échelon automatique dans le grade : voir ci-dessus. Le fonctionnaire reçoit la rémunération qui correspond à la position la plus avantageuse soit dans l'ancien, soit dans le nouveau système.



- Garantie de position: la Commission a établi des correspondances entre grades. Si le salaire du fonctionnaire dans la nouvelle grille dépasse l'échelon 5, il est classer avec des échelons virtuels provisoires.

### **2.7.2 Garanties collectives**

- Maintien du revenu au long de la carrière : elle est obtenue à l'aide de l'inscription dans le statut de profil de carrières minimum (pourcentage de promotion d'un garde vers un autre).

## **2.8 Nouvelle grille**

Voir schéma.



## CSAIO3 – Preparation

### A. Topics to be discussed

**Suggested at the conference at CERN in 2001 by the Organisations interested:**

- Structure and operation of staff associations: EPO (dual system of staff committee and union)
- Work Life Balance: FICSA, WEU
- Medical Insurance: FICSA, WEU, EMBL, ECB
- Pensions: FICSA, WEU, EMBL, ECB, IOM
- Networking among Staff Associations: FICSA
- Staff management relations: ECB, WHO
- Relationship Management–Staff Association: WTO

**Other topics suggested by Organisations:**

- Legal aid systems: WEU
- AT systems of justice: ILO
- Various types of contracts: NATO
- Salary adjustment and salary policy: NATO
- Downsizing policies (termination policies, separation policies): EBRD
- Sexual and moral harassment in the workplace: ITU, WTO
- Fund raising activities: WHO
- Broad compensation and benefits packages: WTO

### B. Venue

It was decided to hold CSAIO3 at EBRD, London, roughly at the same time of the year (September–October).

### C. Scientific Organizing Committee

It was decided to set up a permanent Scientific Organizing Committee which would steer the selection of topics to be covered in future CSAIO conferences (in consultation with the Local Organizing Committee e.g. for CSAIO3: the EBRD Staff Council), help in finding speakers, and ensure a continuity in the series of Conferences in general. Marie-Christine Delcamp (OECD) and Jean-Pol Matheys (CERN) were appointed to the Scientific Organizing Committee.