

CSAIO3



Conference of Staff Associations of International Organisations

Conference Proceedings

26 & 27 September 2002

**European Bank for Reconstruction and
Development, London**

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Foreword and Acknowledgements

The 3rd Conference of Staff Associations of International Organisations (CSAIO3) was held at EBRD, in London, on September 26th and 27th, under the aegis of the EBRD Staff Association. This was the third occasion for staff representatives of international organisations to gather and discuss topics of common interest (the 1st Conference was held at the OECD, in Paris, the second at CERN in Geneva). There were participants from 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 the EBRD’s restaurant, 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, the recordings of these discussions are available in the form of audio files and can be requested from us (staffc@ebrd.com).

The 4th Conference will be held at EIB, in Frankfurt, in October 2003. All those who participated in the 3rd Conference certainly look forward to it, and to the continuation of this series of conferences.

Conference Programme

THURSDAY 26 SEPTEMBER

13h30 – 14:00 Conference Registration at EBRD Exchange Square Reception

14:00 – 14:30 Conference Introduction Chair: EBRD, Mark King Board Room, 10th Floor

14:00 Welcome by Chair of Staff Council and information on conference

14:15 Welcome Speech by the President of EBRD, Jean Lemierre

14:30 – 17:30 Session A Modus Operandi of Staff Associations and their right

Chair: OECD, Marie-Christine Delcamp

Board Room

14:30 OECD S.A: Functions and scope of activities

OECD

Anya Demarle

14:40 Modus Operandi

EPO

Philippe de Heering

14:50 Modus Operandi

CERN

Jean-Pol Matheys

15:00 Discussion

15:20 Coffee Break

16:00 Modus Operandi

ESO

Claudio Cumani

16:10 Modus Operandi

FAO/APS

Christian Løvendal

16:20 Discussion

17:30 End of Session A

18:00 Reception in Board Ante Room

19:00 Dinner in EBRD Executive Dining Room

FRIDAY 27 SEPTEMBER

09:00 – 12:00 Session B Medical Cover Chair: EBRD, Paul Byfield Board Room

09:00 Medical cover at EBRD

EBRD

Steve Crowther/Mark King

09:10 Medical Cover at FAO

FAO/WFP

Margaret Eldon

09:20 EMBL Health Insurance scheme

EMBL

Frieda Glöckner

09:30 Discussion

09:50 Coffee Break

10:30 Medical Cover at CERN

CERN

Michel Goossens

10:40 Medical Cover at ECB

ECB

Marc van de Velde

10:50 Discussion

12:00 End of Session B

12:30 – 14:00 Buffet Lunch in Board Ante Room

14:00 – 14:30 Preparation of the Next Conference Chair: EBRD, François Lecavalier Board Room

14:00 Venue & Format

14:15 Themes/Topics

14:30 – 17:30 Session C External Systems of Justice Chair: CERN, Jean-Pol Matheys Board Room

14:30 The fundamental limitation

ILO

David Dror

14:40 Legal Security in International Organisations

EPO

Philip Bocking

15:50 The EC Courts

EC

Fabrice Andreone

15:00 Discussion

15:20 Coffee Break

16:00 The UNAT system

FICSA

May Hansen

16:10 Procedures for appointing members of the administrative tribunal and Appeals Board of the Co-ordinated Associations

OECD

Marie-Christine Delcamp

16:20 Discussion

17:00 End of Session C

17:00 – 17:30 Conference Wrap-up Chair: EBRD, Mark King Board Room

List of Participants

ORGANISATION	PARTICIPANTS
ADB (African Development Bank)	Mathew Charles Rukerebuka
AWEU (Assembly of Western European Union)	Sinead Gillen
BIS (Basel) (Bank for International Settlements)	Philip Wooldridge (Chair)
CERN (European Organization for Nuclear Research, Geneva, Switzerland)	Jean-Pol Matheys, (President) Michel Goossens (Vice Pdt)
CS (Commonwealth Secretariat, London)	Jos Johnston Nicole McIntyre Alan McLeod
CoE (Council of Europe, Strasbourg, France)	Patrick Penninckx (Chair, Staff Committee) Anna Trigona (Pr.Admin. Assist, SACE) Danielle Schmitt (Secretary of FFPE) John Parsons (FFPE)
ECB (European Central Bank, Frankfurt, Germany)	Marc van de Velde (Deputy Spokesperson) Humphrey Rudgard
EC (European Commission Brussels, Belgium)	Fabrice Andreone Brendan Ryan (Chairman)
ECMWF (European Centre for Medium Range Weather Forecast, Reading, UK)	Petra Berendsen Peter Darnell
EIB (European Investment Bank, Luxembourg)	Roderick Dunnett (Deputy Spokesman) Michel Marciano
EMBL (European Molecular Biology Laboratory, Frankfurt, Germany)	Frieda Gloeckner Jorma Tapola Tom Cord
EPO (European Patent Organisation Munich, Germany)	Philip Bocking (Berlin) Philip de Heering (The Hague) Michel Timmermans (Munich) Marie Christine Kominowski (Vienna)
ESO (European Southern Observatory, Germany)	Claudio Cumani (Chairman) Francoise Delplancke
Europol (Holland)	Ingrind Gengler
WHO EURO (World Health Organization, European Regional Office, Copenhagen)	Tina Andersen (President) Simone Tetz
FAO/APS (Food and Agriculture Organization/Association of Professional Staff, Rome, Italy)	Christian Lovendal
FAO/UGSS (Food and Agriculture Organization, Union of General Service Staff, Rome, Italy)	Margaret Eldon (General Secretary) Paolo Romano Barchiesi
FICSA (Federation of International Civil Servants' Associations, Geneva)	Anne-Marie Pinou, (FICSA research and liaison officer) May Hansen (Regional member of FICSA Executive Committee for Europe + see IMO staff union)
ILO (International Labour Organisation)	Mike Shone (Chair Staff Union Committee) David Dror (Co-chair joint negotiating committee) Jean-Yves Legouas, (1 st vice chair of Staff Union Committee)
IMO (International Maritime Organisation, London, UK)	Mr Anton Pushparajah (Vice Chair, Staff Committee) Mr Milhar Fuazudeen Mr Alfredo Garofalo Ms Ingrid Lopez

ORGANISATION	PARTICIPANTS
	Ms Christine Lowe
IOM (International Organization for Migration, Geneva)	Diane Grammer
ITU (Geneva)	Maite Comas Barnes (Treasurer)
NATO (Brussels)	Mr Gasparini (Vice Chairman)
OECD (Paris)	Marie-Christine Delcamp (Executive Secretary) Anya Demarle (Deputy Executive Secretary)
UNIDO	Anthony Spina (President) Marie Odile Dorer (exec. Secretary)
UNWRA	Diab Tabari
WHO Headquarters (Geneva)	Edmond Mobio (Vice-President) Isabelle Nuttall (President)
WHO/WPR (Manilla, Western Pacific)	Mrs Elvira Arciaga (Chair)
WHO/PAHO (Pan-American Health Org, Washington DC)	Brenda Simons
WIPO	Ulrike Dicke



Welcome by the President of the EBRD

Dear Colleagues,

Good Afternoon. We have been discussing shared experiences in international organisations and it is good for the Bank and for you that we understand each others concerns and experiences. I am very happy with the work of the Staff Council of the Bank.

There are two words we like in the Bank and which are very important for us, these words are 'social dialogue'. There is no progress or efficiency without social dialogue. We, the European Bank for Reconstruction and Development, are an international organisation, where many nationalities work together. It is crucial to have a good dialogue with representatives of these nationalities to talk about expectations, misunderstandings and difficulties; without this there could be tension among staff members. Good social dialogue comes with good elected representatives. It is very important for us. We work in the regions where we have a mandate to promote democracy, to represent the views of the staff in good discussions.

We learn quite a lot from you. We can teach you a little. We are young; we do not yet have a tradition. We are able to open doors and go to areas which need to be exposed to social dialogue. We are a bank in London with its market conditions and this is very important; one of my concerns is the benchmark with this market. This is crucial to the wage policy of the Bank. It was more of a concern two years ago than it is today, because today there is a difficult economic situation outside the Bank, in which people are being made redundant. We exist in the market. We work with the private sector. These are the specifics of this institution. We promote public interest using private sector tools and money. This requires specific skills. We have the skills of civil servants and are looking at long term and public interest. We are proud of this. The turnover is high. When I joined it was 17%. It has been much reduced, because there are now fewer opportunities outside. This is neither good nor bad, it is fact. We have built a social policy which has been adapted to this situation. It is a challenge today to adapt to a more stable staff than before. Flexibility must be at the core of the social dialogue within the Bank. For these reasons, if good people want to come here for 4-5 years then go to a bank outside, I feel very happy, and if they want to stay longer, and if they are good, then I am equally happy. I must have a management which provides them with good opportunities and choices. This is the spirit of what we try to do year after year and when you look at the social system it is based on this. It is not perfect. We have an ongoing dialogue on many questions, because staff raises concerns and we have to address them. The EBRD staff is more stable and we have to address questions which were not as relevant before, questions related to career development. We want to achieve two goals at the same time: to have good people stay and to ensure that the Bank retains the skills it requires. Thus, our key aim is to keep the best opportunities in the Bank and we can achieve this only through dialogue with the Staff Council. This is not always easy, because we have different views; but that is fine. As long as we agree on the real target, which is the mission in our countries of operation, we can find a good solution.

I will add that one dimension of our policy is to provide opportunities for people in the Bank's countries of operation. We have a special programme and a specific approach in both the Resident Offices of the Bank and Headquarters to recruit and give good opportunities to bankers coming from the countries of operation. I see some of them here coming from quite far afield. This is very good and they are an asset to the Bank. Sometimes they stay in London, sometimes they go back to the region to join companies or become part of the state system. Maybe I will add one unique element of the institution. We are not here for ever. I say this because I have worked with some public institutions which felt as if they would still be around in a thousand years. This is not the case with us, because our mission is to promote transition and transition will be accomplished one day. It may take a few years, but it will be achieved and the pride of the institution and of the people of the institution is to work towards not being here for one hundred years. We shall be happy when the work is done. The challenge is to bring progress. When we recruit people they know this. I say this quite passionately, because one thing becomes clear when talking to my colleagues: we are proud of what we have achieved. We had a few problems at the beginning. It has been a good lesson, as there is only one key element in the institution: let's do it, let's deliver, let's have action rather than speeches. I say this because this is the heart of the culture of the institution and I am very grateful to Mark King, who is at the core of the dialogue with the Staff Council which has a shared vision of the mission of the Bank. We want to show that the private sector can do a lot using the skills of the private sector whilst having a public mission.

I am very grateful to the Staff Council for the very good discussions we have, I say this for Mark and his colleagues. I will finish on one remark. The work is difficult today when times are troubled, there is more need for sound public institutions which give confidence and bring some hope. We try to do this in a humble way and pay attention to social dialogue and to

the social questions we have; we cannot do this if people in the bank are not comfortable in their seats. We need to bring clarity and confidence as a public institution.

Jean Lemierre
President of the Bank

Session A – Modus Operandi of Staff Associations and Their Rights

OECD Staff Association: Functions and Scope of Activities

Anya Demarle (OECD)

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L'Association du personnel est un organe statutaire qui a pour principale mission la défense des intérêts professionnels et l'amélioration des conditions d'emploi de l'ensemble du personnel. L'Association est seule habilitée à parler au nom du personnel.

Après avoir présenté l'ensemble des moyens dont dispose l'Association pour exercer sa mission, nous examinerons l'étendue des droits qui lui sont conférés et qui en font un partenaire indispensable au bon fonctionnement de l'Organisation.

CHAPITRE I

STRUCTURE INTERNE

ASSEMBLÉE GÉNÉRALE

L'Assemblée générale comprend tous les membres de l'Association du personnel, qui sont à l'heure actuelle près de 1 300. Elle se réunit au minimum une fois par an pour approuver notamment les comptes de l'Association du personnel, voter le budget prévisionnel et discuter le rapport d'activité de l'Association.

ASSEMBLÉE DES REPRÉSENTANTS

Les quarante quatre représentants du personnel se réunissent régulièrement (une fois par mois) pour fixer la politique à suivre et prendre les mesures et décisions qu'impose la situation. Ils assurent en outre les contacts permanents avec leurs collègues.

COMITÉ EXÉCUTIF

Le Comité exécutif, composé de neuf représentants du personnel, se réunit chaque semaine pour traiter les questions d'actualité qui se posent et entreprendre toutes démarches conformes aux intérêts du personnel.

BUREAU

Le Bureau est composé du président et des deux vice-présidents de l'Association. Ses membres sont détachés de leur service d'origine et travaillent à temps plein (président) ou à mi-temps (vice-présidents) pour l'Association. Ils sont membres de droit du Comité exécutif de l'Association.

COMMISSIONS

Des commissions permanentes ou temporaires, composées de membres de l'Association, sont instituées pour étudier et suivre les dossiers intéressant le personnel. Elles sont chargées d'effectuer les études techniques nécessaires au Comité exécutif dans le cadre de sa mission. Les commissions qui sont actuellement en place traitent notamment des questions d'égalité professionnelle hommes-femmes, de recrutement et carrière, de protection

médicale et sociale, de rémunérations, indemnités et pensions, du temps de travail et du réaménagement du site de l'OCDE.

SECRETARIAT

L'Association dispose d'un secrétariat, composé de deux juristes et de deux assistants, qui coordonne l'ensemble de ses activités et l'assiste au quotidien dans l'exercice de sa mission. Chargés de mettre en œuvre l'ensemble des décisions prises par les élus, le secrétaire exécutif et son adjointe reçoivent par ailleurs le personnel qui souhaite obtenir des informations, des conseils et de l'aide concernant sa situation professionnelle, examinent chaque consultation de l'Administration concernant une modification statutaire, réalisent des études juridiques sur les dossiers qui intéressent le personnel, aident à la préparation de mémoires devant les organes de recours de l'OCDE et rédigent le rapport d'activité de l'Association.

CHAPITRE II

ELECTIONS DES REPRESENTANTS DU PERSONNEL

Un projet de réforme du règlement électoral de l'Association sera très prochainement soumis pour approbation au personnel de l'OCDE. Il a en effet été jugé utile de simplifier le déroulement des élections et de moderniser les structures de l'Association afin de la rendre encore plus efficace.

MANDAT

Actuellement, les quarante quatre représentants du personnel sont élus pour deux ans par les membres de l'Association et le renouvellement de l'Assemblée se fait par alternance chaque année : la moitié des représentants est élue par unités électorales et l'autre moitié est élue l'année suivante par collèges de grades.

Le projet de réforme envisage la suppression des découpages électoraux, la mise en place d'élections biennales et la réduction du nombre de représentants à trente et un.

CANDIDATS

Les candidats peuvent se présenter à titre individuel ou être affiliés à une organisation syndicale et professionnelle.

MODE DE SCRUTIN

Les élections se déroulent au scrutin majoritaire à un tour. Dans le cas particulier des élections par collèges de grades, le scrutin proportionnel est utilisé pour pourvoir le tiers restant des sièges, entre les listes des organisations syndicales et professionnelles, en suivant la règle du plus fort reste.

Le projet de réforme du règlement électoral prévoit d'une part, le scrutin majoritaire à un tour pour pourvoir les deux tiers des sièges, tout en réservant l'un des postes à un agent de grade C, et d'autre part, le scrutin proportionnel, en suivant la règle du plus fort reste, pour pourvoir le tiers restant des sièges.

CHAPITRE III
ADHÉSION À L'ASSOCIATION DU PERSONNEL

VOLONTARIAT

L'adhésion à l'Association du personnel n'est pas automatique, mais volontaire. Actuellement, sur une population de près de 2 300 membres du personnel, toutes catégories confondues, près de 1 300 sont membres de l'Association (soit environ 56 % du personnel).

**CONDITIONS REQUISES
POUR DEVENIR MEMBRE**

Toute personne employée pour plus d'un mois et rémunérée par l'Organisation, peut, quel que soit son statut (agent permanent, agent de projet, auxiliaire, consultant ou même stagiaire), devenir membre de l'Association.

**MONTANT DE LA COTISATION
ET MODE DE PRÉLÈVEMENT**

La cotisation à l'Association s'élève à 0,3 % du traitement de base mensuel des adhérents et est prélevée à la source.

Il est important de noter que la totalité des cotisations des membres de l'Association est utilisée pour financer les salaires des quatre agents de son secrétariat.

CHAPITRE IV
**FACILITÉS ACCORDÉES
À L'ASSOCIATION DU PERSONNEL**

Conformément aux règles statutaires applicables, l'Organisation doit octroyer à l'Association du personnel un certain nombre de facilités lui permettant d'exercer son activité.

MOYENS EN PERSONNEL

L'Organisation ne finance aucun poste du secrétariat, mais prend en charge les salaires des membres du Bureau détachés auprès de l'Association, à savoir : le président à plein temps et les deux vice-présidents à mi-temps. Elle finance également le salaire du délégué hygiène, sécurité et conditions de travail détaché à mi-temps auprès de l'Association du personnel. Au total, l'Organisation prend donc en charge deux postes et demi.

MOYENS MATÉRIELS

Outre les moyens en personnel, l'OCDE met à la disposition de l'Association les moyens matériels nécessaires à son bon fonctionnement, à savoir :

- Sept bureaux et une salle de réunion
- Équipements informatiques et bureautiques du Bureau, du délégué hygiène, sécurité et conditions de travail et du secrétariat (ordinateurs, photocopieuse, imprimante, téléphones, fax, scanner, fournitures de bureau, etc.)
- Site Intranet propre à l'Association

REMBOURSEMENT DE FRAIS DIVERS

Enfin, l'Organisation a accepté de rembourser à l'Association, à sa demande, un certain nombre de frais liés à son activité, à savoir :

- Frais de missions engagés par un représentant de l'Association aux réunions de la Coordination
- Frais de documentation (maximum 2 286,73 € par an)
- Communications téléphoniques
- Allocations familiales pour les quatre agents du secrétariat
- Remboursement de la taxe sur la valeur ajoutée (TVA) sur les achats de biens et services

CHAPITRE V

COMPÉTENCES DE L'ASSOCIATION DU PERSONNEL

PARTICIPATION AU FONCTIONNEMENT DES ORGANES ADMINISTRATIFS ET DES INSTANCES DE RECOURS

L'Association coopère au fonctionnement des organes dont le mandat touche aux intérêts du personnel, notamment en assurant la représentation du personnel devant ou au sein de ces organes.

Elle désigne en effet des représentants au sein des organes mixtes suivants :

- sous-comité hygiène, sécurité et conditions de travail ;
- conseil de surveillance OMESYS chargé de donner des avis au Secrétaire général en matière de protection médicale et sociale ;
- commission informatique et vie privée chargée de veiller à la protection de la vie privée et des libertés individuelles ;
- comités consultatifs pour le personnel chargés de veiller au respect des procédures de recrutement, de promotion et de licenciement ;
- groupe sur la classification chargé de donner son avis lorsqu'un agent juge la classification de son poste inadéquate ;
- comité consultatif mixte (CCM) chargé de donner son avis, à la demande d'un agent, sur un litige d'ordre individuel.

Par ailleurs, l'Association fait des propositions au Secrétaire général pour la nomination du président du CCM et de son suppléant (personnalités extérieures à l'Organisation) ; elle est en outre consultée par le Secrétaire général sur le choix des médiateurs de l'OCDE et des juges du Tribunal administratif.

De plus, lorsqu'elle considère que le cas est d'intérêt général, l'Association du personnel peut, par l'intermédiaire de ses propres juristes, défendre les intérêts d'un membre du personnel devant le CCM, et, par l'intermédiaire d'avocats extérieurs dont elle prend en charge les honoraires, soutenir le recours d'un membre du personnel devant le Tribunal administratif.

L'Association du personnel peut, de plus, exercer, en tant que telle, un recours devant le Tribunal administratif de l'Organisation contre tout acte dont elle est destinataire ou qui porte directement atteinte aux droits que lui confère le statut du personnel.

Dans le cas particulier d'une procédure disciplinaire dirigée à l'encontre d'un agent, l'Association du personnel n'intervient, conformément au statut du personnel, qu'au cas où l'agent concerné a demandé, dans le délai imparti, que son cas soit examiné par le CCM : l'Association y désigne en effet des représentants et participe par ce biais à la recommandation qui sera formulée au Secrétaire général et qui vise 1) soit à appliquer la sanction disciplinaire proposée, 2) soit à ne pas donner suite à la sanction envisagée, 3) soit à suspendre la procédure si une enquête plus poussée est nécessaire. En tout état de cause, l'Association peut être amenée à défendre les intérêts d'un agent qui fait l'objet d'une procédure disciplinaire, en tentant de régler le litige à l'amiable avec l'Administration ou en soutenant son recours devant le CCM et/ou le Tribunal administratif.

Enfin, s'agissant de la procédure à engager en cas d'invalidité, le statut du personnel ne prévoit pas l'intervention de l'Association du personnel. Il appartient en effet à une commission médicale et d'invalidité, composée de médecins¹, de statuer sur le cas de l'agent concerné quant à l'octroi d'une pension, voire d'un capital, d'invalidité. Le Secrétaire général rend alors sa décision, en conformité avec les conclusions de la commission.

INSTANCE DE CONCERTATION

L'Association du personnel doit être consultée par l'Administration en temps utile sur tout projet de statut, de règlement ou d'instruction et sur toute autre projet de mesure de caractère général et obligatoire modifiant les conditions d'emploi du personnel. L'Association dispose d'un délai de trente jours pour rendre son avis ; toutefois, il peut être décidé, d'un commun accord, de raccourcir ou de prolonger exceptionnellement ce délai.

Lorsque l'Association l'estime nécessaire, elle organise une ou plusieurs réunions de travail avec le Chef de la Gestion des ressources humaines, d'autres représentants de l'Administration et éventuellement des Directions concernées, avant de rendre son avis officiel. A cette occasion, l'Association obtient généralement toutes les clarifications souhaitées sur le projet qui lui est soumis et formule un certain nombre de recommandations, de propositions d'amendements ou de réserves dans le souci de défendre au mieux les intérêts du personnel.

Par ailleurs, un Comité consultatif mixte sur les relations avec le personnel (CCMRP) a été institué pour favoriser la collaboration entre l'Organisation et son personnel et fournir un cadre normal aux consultations entre le Secrétaire général et l'Association du personnel. Toute question relevant de la compétence de l'Association y est examinée périodiquement. Celle-ci donne son avis au Secrétaire général à ce sujet et lui soumet, le cas échéant, les projets qu'elle a elle-même conçus pour améliorer les conditions d'emploi du personnel. C'est ainsi que l'Association a récemment obtenu l'accord de principe du Secrétaire général sur le projet qu'elle avait élaboré relatif à l'indemnisation des agents de maintenance victimes de l'amiante.

Enfin, lorsqu'elle le juge utile, l'Association recueille les observations et suggestions du personnel. Elle a procédé ainsi en 2001, en adressant à l'ensemble du personnel un questionnaire complet visant à connaître ses souhaits en matière d'aménagement du temps de travail. Tout récemment, elle a par ailleurs fait circuler

¹ Le premier médecin est désigné par l'Organisation, le deuxième par l'agent intéressé et le troisième est désigné d'un commun accord par les deux premiers.

une pétition qui a été signée par 1491 membres du personnel souhaitant, à travers ce geste, manifester leur mécontentement au sujet des négociations en cours concernant la nouvelle méthode salariale. Un tel appui de la part du personnel lui-même ne peut qu'accroître la représentativité de l'Association et la légitimité de ses revendications.

FORCE DE PROPOSITION

S'il est vrai que l'Association du personnel rend un avis purement consultatif sur les différents dossiers qui lui sont présentés, il n'en reste pas moins qu'elle convainc souvent, à cette occasion, l'Administration du bien-fondé de sa position. Pour ne citer qu'un exemple, c'est grâce à l'Association du personnel que le projet initial de l'Administration de supprimer l'indemnité de logement pour les nouveaux entrants n'a pas vu le jour et a été remplacé par un système plus équitable et respectueux des droits acquis des agents.

Par ailleurs, l'Association n'hésite pas à soumettre à l'Administration des projets visant à améliorer les conditions d'emploi du personnel, en dehors même du cadre d'une consultation statutaire. Elle joue en effet de plus en plus le rôle de force de proposition et suit, pour ce faire, de très près l'actualité sociale dans les organisations internationales et dans les pays Membres, le pays hôte en particulier. Outre le projet d'indemnisation des victimes de l'amiante, elle a récemment présenté au Secrétaire général une série de propositions d'aménagement du temps de travail ayant pour but de réaliser un meilleur équilibre entre la vie professionnelle et la vie privée du personnel. Elle a par ailleurs été à l'origine de la nouvelle politique de lutte contre le harcèlement moral, actuellement en cours d'approbation par le Conseil de l'Organisation.

RELATIONS AVEC LES PAYS MEMBRES

Le Conseil de l'OCDE a approuvé en 1984 la proposition de tenir chaque année, dans le cadre des dispositions statutaires relatives à la représentation du personnel, un colloque informel réunissant les membres du Conseil, les représentants de l'Association du personnel et les représentants du Secrétaire général. En pratique, cependant, le colloque ne se réunit pas aussi fréquemment.

Par ailleurs, le statut du personnel de l'OCDE prévoit la possibilité pour l'Association du personnel de soumettre au Conseil, par l'intermédiaire du Secrétaire général, des communications écrites sur toutes questions relevant de son mandat ; elle dispose également de la faculté de demander au Secrétaire général de proposer au Conseil d'entendre une communication orale sur les mêmes questions.

En outre, l'Association peut être invitée à présenter au Comité exécutif, instance composée de représentants de pays Membres chargée d'examiner les questions qui concernent le personnel, ses vues sur toute question relevant de son mandat, et à en débattre avec lui. Tout récemment, l'Association a même été conviée, pour la première fois, à assister à l'ensemble des travaux du Comité exécutif sur une série de propositions de modifications statutaires². L'Association a pu, à cette occasion, exprimer sa position sur l'ensemble des dossiers traités, répondre aux questions que lui ont adressées certaines délégations et démontrer ainsi le sérieux de son travail de contrôle des textes qui lui sont soumis.

Enfin, lorsque la situation l'impose, l'Association prend l'attache de certaines délégations de pays Membres et rencontre leurs représentants sur une base individuelle pour défendre le point de vue du personnel. Elle a eu l'occasion d'entreprendre récemment de telles démarches au sujet du dossier épineux de la nouvelle méthode d'ajustement salarial.

² Droits et obligations des agents, recrutement, agents de projet et congés payés exceptionnels.

CONCLUSION

L'Association du personnel de l'OCDE est l'un des rares organes représentatifs du personnel d'organisation internationale à disposer de moyens et de droits aussi importants pour exercer sa mission. Sa spécificité réside dans un certain équilibre entre le rôle institutionnel, consacré par le statut, et l'indépendance garantie par son autonomie financière.

Mais l'Association, c'est avant tout les membres qui la composent et qui assurent sa représentativité. Or, la tendance actuelle fait apparaître une diminution du nombre d'adhérents. Cette situation peut notamment s'expliquer par le départ de nombreux collègues à la suite de la crise budgétaire qu'a connue l'OCDE ces dernières années et par le nombre croissant de personnels temporaires, moins concernés que les agents permanents par la mission de l'Association du personnel.

Aussi, l'Association doit-elle être vigilante et s'attacher à maintenir un niveau satisfaisant d'adhérents. Ce n'est qu'à ce prix que l'Association du personnel continuera de contribuer efficacement au maintien d'un dialogue social constructif au sein de l'Organisation

Session A – Modus Operandi of Staff Associations and Their Rights

International Organisations Staff Associations in the Netherlands

Philippe De Heering (EPO, The Hague)

What is IOSA-NL?

Organisation representing staff members of the IOs in the Netherlands
Thus representing
Both expatriate and Dutch staff
Not the institutions nor their management

MEMBERS

Representing some 75-80% of expatriates in the NL

CORE:

EPO
NC3A
ESA-ESTEC
EUROPOL
ICTY

OBSERVERS:

OPCW
EUROCONTROL
ICJ
ISNAR

OBJECTIVES

Information collection/distribution
Dialogue partner vs. Dutch authorities (Residence, registration, school, taxes, voting, working, spouses, cars, pensions...)
Dialogue partner vs. our administrations
Identifying/achieving common needs

MODUS OPERANDI

Regular meeting of nominated staff representatives
Distribution list
Interim secretary
Unanimous decisions of core members
Core / observers
Web site <http://iosa-nl.org> (in construction)

ACHIEVEMENTS

Exists since 1.5 years
Recognised by our administrations
Counterpart to similar organisation of management
Accepted by Dutch authorities
Useful info exchanges on taxes, banks, seat agreements, working conditions, medical problems....

Session A – Modus Operandi of Staff Associations and Their Rights

Staff Representation at CERN

Jean-Pol Matheys (CERN – European Organization for Nuclear Research)

See the presentation's slides in the following pages

Staff Representation at CERN

CSAIO3 – September 28th-29th 2002

The CERN Staff Association

- CERN & CERN Staff Association in brief
- Structure and functioning of the Association
 - organs, elections, means for action, ...
- Management & Member States Relations
 - “concertation”, TREF, ...
- What works for us

CERN in brief

- European laboratory for particle physics
- 20 European Member States
- Only one duty station: Geneva
- Two Host States: Switzerland & France

- 2600 Staff (200 Fellows, 5800 Users)
- Annual budget: 1250 MCHF / 825 MEUR

- One staff category (no GS/P/D nor A/B/C/L split)

Staff Association in brief

- Sole Staff representative body

- Membership is not automatic
 - 66% of Staff are members
 - members are found in all hierarchical levels
 - retirees are also members

- Social and cultural roles too

- Members can be mobilized if needed



Organs

- **Annual General Meeting** (1 afternoon / year)
 - defines policy guidelines
 - approves activity reports, accounts, budget
- **Staff Council** (1 afternoon / month)
 - defines policy, controls implementation
 - proposes policy guidelines & budget to AGM
- **Executive Committee** (1 afternoon / week)
 - implements policy
 - proposes policy to Staff Council
 - interacts with Administration, Member States, ...

Elections

Membership (over 1800 – 66% of staff)

annual elections (for half the seats – by electoral college)

Staff Council (66 seats – 2/3 filled)

annual election (for all seats – by list-ticket)

Executive Committee (min 9 members)

Means for action

(1)

- Time for Staff representation
 - Global allocation for Staff Council Delegates
 - Detachment for President 100%
 - Vice Presidents 2 x 50%

- Secretariat
 - 3 full-time persons
 - paid out of the Administration's budget

Means for action

(2)

- Annual budget: ~ 375 kCHF ~ 250 kEUR
 - 40% social and cultural activities
 - 30% Staff defence activities
 - 15% external relations
 - 15% operations

- Contribution rate: 0.15% to become 0.18%

- Infrastructure provided by Administration
 - offices, network access, electricity, ...

Relations with Management (1)

- Key word: “*Concertation*”
 - is striving to find agreement
i.e. Management and Staff representatives discuss at great length in search of an agreement, but if they fail to converge, then the Management decides (arbitration by the Director General)
 - is more than *consultation*
i.e. Management only has to inform the Staff representatives and has no obligation to take into account their reaction
 - is less than *negotiation*
i.e. Management and Staff representatives have to converge, to both agree before anything can be done
 - is only as good as each side’s commitment to make it work (worked correctly at CERN for the last 10 years)

Relations with Management (2)

- Standing Concertation Committee (SCC)
 - 5 members each side
 - monthly half-day meetings (more if needed)
 - strives to arrive at consensus

- SCC sub-groups
 - address specific topics
 - variable representation on each side
 - meet as needed (weekly ... each semester)

Relations with Management (3)

- Management board (DG/Directors/Division Leaders)
 - discuss overall policy & operations
 - three staff representatives as observers
 - monthly meetings

- Divisional management meetings
 - discuss divisional operations, policy execution
 - one staff representative as observer
 - weekly meetings

Joint organs

(1)

- Pension fund governing board (meets monthly)
 - Member States & Administration (2 & 3)
 - Staff Association & directly elected (1 & 4)
 - Pensioners participate as observers
 - Oversees Fund management
 - Proposes policy to CERN Council (via TREF)

- Health insurance board (meets 6 times a year)
 - Administration & Staff Association (4 & 4)
 - Oversees external manager
 - Proposes policy to SCC

Joint organs

(2)

- Disciplinary, appeal, invalidity boards
 - 1 each side + president from agreed upon list
 - meet whenever needed

- Safety, training, research boards

Relations with Member States (1)

- TREF (Tri-partite Employment Conditions Forum)
 - Tri-partite
 - ◆ Member States (1 Delegate each)
 - ◆ Staff Association (3 Delegates)
 - ◆ Administration (3 Delegates)
 - Allows in-depth, open, non-committal, and frank discussions (~ 6 full-day meetings per year)
 - Takes no decisions, but its recommendations are followed by FC and Council
 - $\frac{3}{4}$ of Member States attend all meetings

Relations with Member States (2)

- Cocktails
 - Delegations meet Staff of their nationality
 - All but 1-2 Member States always attend
 - Informal, in-depth discussions (2 evenings per year)
 - Better mutual understanding

- Bi-lateral discussions
 - Whenever needed

Communication

- Weekly Bulletin - Staff Association pages
 - Editorial
 - Information
 - Cultural activities
- Web site (world-wide accessible)
- Direct relations with the press
 - press releases, press conferences
 - press, radio & TV interviews
 - as impact grows so does risk !

Social & cultural activities

- Kindergarten (120 children, 22 staff, 600 kCHF)
- X-mas party for children
- Sustainable development projects fund

- Evening conferences
- Exhibitions

- Clubs (over 45 clubs, hundreds of members)

What works for us

(1)

- Executive Committee cohesion
 - team formed by candidate(s) to presidency
 - team elected as such

- Regular interaction with the Staff
 - general staff meetings (2 to 4 a year + AGM)
 - divisional meetings (1 to 2 cycles a year)
 - as often as needed

What works for us

(2)

- “*Concertation*” with Management
 - more than consultation, less than negotiation

- Direct interaction with Member States
 - TREF
 - cocktails
 - bi-lateral meetings

That's all folks !

For more information

- Visit our Web site: association.cern.ch
- Contact us: staff.association@cern.ch

Session A – Modus Operandi of Staff Associations and Their Rights

Modus Operandi of Staff Associations and their Rights

C. Cumani (ESO – European Southern Observatory)

See the presentation's slides in the following pages

CSAIO3

London, 26/27 September 2002

Section
“Modus Operandi of Staff Associations and their rights”

ESO - European Southern Observatory

The Staff Association

ESO Staff Association established in
ESO Rules&Regulation.

Statute to be approved by the Director
General before taking effect.

- The ESO Staff Association is not a
trade union

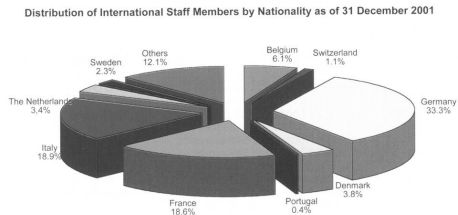
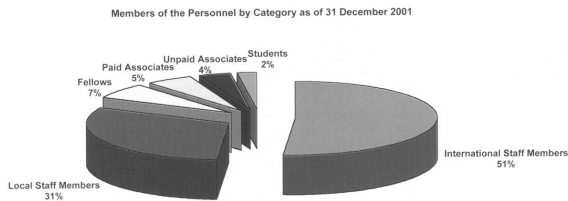
Who is a member of the Staff Association?

Different categories of Members of Personnel: International/Local Staff Members (SM), Fellows, Paid Associates, Unpaid Associates, Students

International SM are automatically members of the Staff Association

The choice is about being - or not - a contributing member (monthly contribution of 0.25% of basic salary)

Members of the Personnel by Category (December 2001)



Staff Association elects its representatives every 2 years.

Representatives work on a voluntary basis (up to 10% of their working time).

ESO contributes an office and limited reimbursement of operational costs.

ESO is located at different sites:

Headquarters in Garching (Germany)

In Chile:

Administration (Santiago, La Serena, Antofagasta)

Observatories (La Silla and Paranal)

- ISCE: International Staff Committee Europe
- ISCC: International Staff Committee Chile
each with 4 representatives

Interactions with Administration is through several Boards: **Standing Advisory Committee** (gives recommendations to DG on personnel matters, including contents and application of Rules&Regulations), **Joint Advisory Appeals Board** (for internal appeals), **Joint Advisory Disciplinary Board**, **Joint Advisory Rehabilitation Board**, **Safety Committee**

The Staff Association has **two observers at the Finance Committee** (no observers in the ESO Council)

A **Tripartite Working Group** was established in 2000 “where matters related to employment conditions and remuneration could be informally examined by representatives of Member States, of ESO Management and of the Staff Association”: 5 members nominated by Council, 3 by the Director General and 3 by the Staff Association

In addition: **regular meetings** with Head of Personnel, Head of Administration, Director General

Appeal procedures:

- Discussion with Head of Personnel
- Internal appeal (Joint Advisory Appeals Board)
- ILO Administrative Tribunal

Problems:

- Appeals are individual
- Legal costs (fees coverage)
- Time (many iterations)
- Governing bodies tend to apply only what is explicitly required by the judgements of ILOAT

Salary cases:

- 1995: Judgments 1419^[1], 1420^[1]
- 1999: Judgments 1821^[2], 1908^[2]
- 2000: Judgments 1995^[2], 1996^[3], 1997^[4]
- 2002: Judgments 2133^[2], 2134^[3], 2135^[4], 2136^[5]

(all available at: <http://www.ilo.org/public/english/tribunal/fulltext/<number>.htm>)

[1] Salary adjustment 1993

[2] Salary adjustment 1996

[3] Salary adjustment 1997

[4] Salary adjustment 1998

[5] Salary adjustment 1999

A useful example - The "core" 1821 judgment

The principles governing the limits on the discretion of international organisations to set adjustments in staff pay [...] may be concisely stated as follows:

- (a) An international organisation is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff provided that it meets all other principles of international civil service law.
- (b) The chosen methodology must ensure that the results are "stable, foreseeable and clearly understood".
- (c) Where the methodology refers to an external standard but grants discretion to the governing body to depart from that standard, the organisation has a duty to state proper reasons for such departure.
- (d) While the necessity of saving money may be one valid factor to be considered in adjusting salaries provided the method adopted is objective, stable and foreseeable, the mere desire to save money at the staff's expense is not by itself a valid reason for departing from an established standard of reference.

[...] Even if it were possible to dignify the process adopted by the ESO by calling it a methodology for salary adjustment, it obviously fails to produce results that are stable, foreseeable and clearly understood.


[...] ESO has failed to demonstrate that the decision was not simply arbitrary.

Session A – Modus Operandi of Staff Associations and Their Rights

Association of Professional Staff – Modus Operandi

Christian Lovendal, FAO/WFP-APS

See the presentation's slides in the following pages

The logo for the Association of Professional Staff (APS) is written in a large, stylized, black cursive font.

Association of Professional Staff
FAO/WFP, Rome

The background of the slide is a faded, grayscale image of the Colosseum in Rome, showing its iconic tiered arches and structure.

*Association of Professional Staff,
FAO/WFP*

Modus Operandi

The logo for the Association of Professional Staff (APS) is written in a large, stylized, black cursive font.

Association of Professional Staff
FAO/WFP, Rome

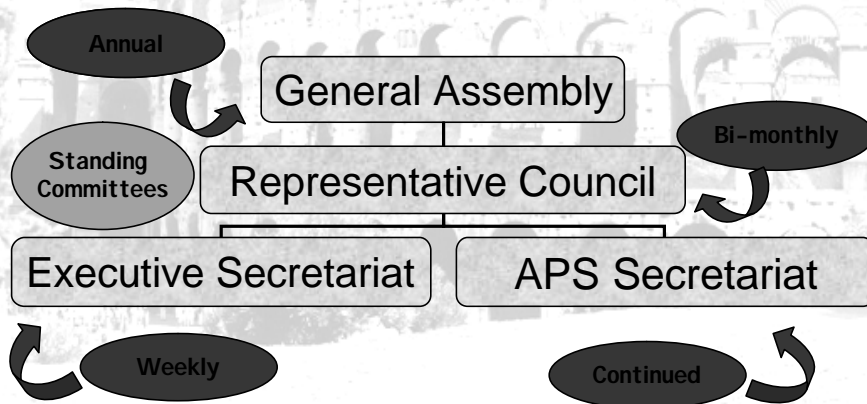
Membership

- Voluntary membership
- 0.4 percent of net base salary
- Roughly 50% of all professionals are members



Association of Professional Staff
FAO/WFP, Rome

APS structure - and meeting frequency



Association of Professional Staff
FAO/WFP, Rome

Election process

- Representative Council: Direct elections in each Department plus WFP. Numbers of seats based on membership numbers. 32 members in total.
- Executive Secretariat: All 8 members appointed by the Representative Council



Association of Professional Staff
FAO/WFP, Rome

Roles

General Assembly:

Approves annual workplan and budget and sets out major policy changes.

Representative Council:

Conducts on-going discussions of policies. Provides mandate for major negotiations.

Executive Secretariat:

Day to day management, implementation of decisions, counseling, moving and shaking, **Trying to keep up.**



Association of Professional Staff
FAO/WFP, Rome

Standing Committees

Assist APS in monitoring and advising on specific technical issues within their mandates.

SC I	Terms of Employment
SC II	Career Development
SC IV	Working Conditions
SC V	Legal Matters
SC VI	WFP

- Plus 40 odd hot-issues ad hoc groups



Association of Professional Staff
FAO/WFP, Rome

Negotiating with the Administration

Recognition agreement (1976) Article 2.2

- The Organization (FAO) confirms the right of the Association (APS) to consult, be consulted and, where appropriate, negotiate terms and conditions of employment and on any other matter which it is agreed directly affects the general welfare of the membership of the Association. Where final decision rests not with the Director-General, but with the Governing Bodies, or where matters under consideration form part of the common system, the purpose of the process shall be to arrive at an agreed position wherever possible" .*



Association of Professional Staff
FAO/WFP, Rome

Negotiating with the Administration

- APS participation in Committees
- Comments on draft Administrative circulars
- APS meetings with Management
- Bulletins



Association of Professional Staff
FAO/WFP, Rome

Negotiating with the Administration

- Basic premise: UN Common System
- Discussions with administration, Formal channel is ADG of Administration and Finance.
- Seeking joint position with other FAO/WFP staff associations (UGSS, FSA)



Association of Professional Staff
FAO/WFP, Rome

Support from FAO/WFP

- Currently no financial support. Previously, 10,000 USD in annual support.
- Furnished office, electricity etc.



Association of Professional Staff
FAO/WFP, Rome

APS' role in appeal procedures

- Individual counseling
- Support to reconciliation
- APS member in Appeals Committee, which acts on individual appeals by staff against adverse disciplinary actions or administrative decisions (it also includes Member State representatives)
- Assisting in shaping procedures



Association of Professional Staff
FAO/WFP, Rome

Addressing Member States

- Formally: Staff Associations address the FAO/WFP Conference/Council on a rotating basis
- Informally: Contacts, meetings, receptions etc.



Association of Professional Staff
FAO/WFP, Rome

On the APS plate right now

- New FAO harassment policy
- Reforms to the UN employment system (broad banding, performance related payment et al)
- Quality of banking services
- Changes in the cost of medical insurances
- FAO staff image



Association of Professional Staff
FAO/WFP, Rome

Key long term challenges

- Changes in staff structure (changes in age structure, more use of consultants) – maintaining membership
- Keeping up with CNN – maintaining interest in longer term issues
- Press for continued dialogue
- Personal benefits – catering for the “me-generation”
- Spanning across two different UN organisations

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Session B - Medical Cover

Medical Cover at EBRD

Steven Crowther, EBRD

Medical Cover Suppliers :

- Insured by : “Assurances Generales de France”
- Administered by : “van Breda” (brokers and administrators - based in Antwerp, Belgium)

Medical Cover Principles :

- **Private Scheme**
 - UK - still has National Health Service
 - Resident Offices - generally outside state scheme
- **24 hour / worldwide**
 - Coverage worldwide
 - Select treatment worldwide
- **All regular and fixed term contract staff³**

Medical Cover Costs :

- Employee - free / automatic
- Spouse / children 80% of premium paid by EBRD, thus 20% cost to employee :
 - Spouse £13 p.m.(UK) £8 p.m. (ROs)
 - Child £7 p.m.(UK) £4 p.m. (ROs)
- 80% / 20% treatment costs :
 - Staff pay 20%, but only up to a limit⁴, matched to seniority / income, then 100%.
- Work related accidents = 100% reimbursement
- Bank cost = c£2.1m p.a.

Medical Cover General Benefits :

- Direct billing by hospitals to van Breda
- Treatment worldwide - emergency or selected
- 24 hour Medivac - emergency evacuation
 - life threatening
 - no suitable treatment available
- Retirees / Leavers - have limited and more costly cover than employees (currently few retirees)

Medical Cover Specific Benefits (selected examples only):

- Max £1m per person in any one year
- Surgeons / anaesthetists fees
- Accommodation (inc parental for in-patient children)
- Radiotherapy / Chemotherapy / Tomography
- Intensive care
- General physicians costs
- Drugs / dressings
- Out patient
- Eye tests
- Dental - up to £750 (in-patient = surgery)

Other Elements :

Staff generally happy - a few concerns about capped dental cover, occasional slow reimbursement to ROs.

Claims processing - most expensive costs can be billed direct to hospital - requires ID card given to all staff

Lesser costs - claimed via a confidential envelope service (two weeks turnaround)

³ Holding at minimum a 3 months contract of 8 hours per week

⁴ Highest professional staff limit is £2,250 p.a.

Session B - Medical Cover

Medical Cover in FAO/ WFP

Margaret Eldon, FAO/WFP

No text provided

Session B - Medical Cover

Medical Cover in EMBL

Frieda Glockner, EMBL

No text provided

Session B - Medical Cover

CERN Health Insurance Scheme And Its Board

Michel Goossens, CERN

See the presentation's slides in the following pages

CERN's Health Insurance Scheme and its Board

***Michel Goossens
EBRD, London
27 September 2002***

CHIS: Main Features

- Legal Framework
- Nature of the CHIS and Basic Principles
- Benefits, Health costs and Contributions
- The CHIS Board
- Long-term care

Legal Framework

Host State agreement with Switzerland:

"The Organization is exempt from all compulsory contributions to general social insurance funds [...] *it being understood that the Organization will [...] insure with Swiss social insurance funds those of its agents who are not insured of equivalent social protection by the Organization itself.*"

- CERN has no obligations vis-à-vis the French Social Security
- CHIS framework is part of Staff Rules
- Explicit pensioners' rights were introduced in 1971 (FC resolution)

Nature of the CHIS

CERN has to protect its staff against the financial consequences of illness, accident and maternity

Use a National Scheme

or

Set-up its own Scheme

Private Insurer

or

Specific CERN Fund

External Administrator

or

In-house accounting

(UNIQA)

Basic Principles

It is obligatory – All Staff must participate

It is a mutual scheme – Contributions are based on Salaries only
Independent of Age of beneficiaries, and of
Number of beneficiaries in the household

⇒ High Salaries subsidize for Lower Salaries
⇒ Singles subsidize for large Families
⇒ Younger subsidize for the Elder

} ¹ **Insurance**

Pensioners can remain affiliated – 99% stay in the Scheme

Main Benefits

Most benefits are based on the Swiss LAMal Scheme:

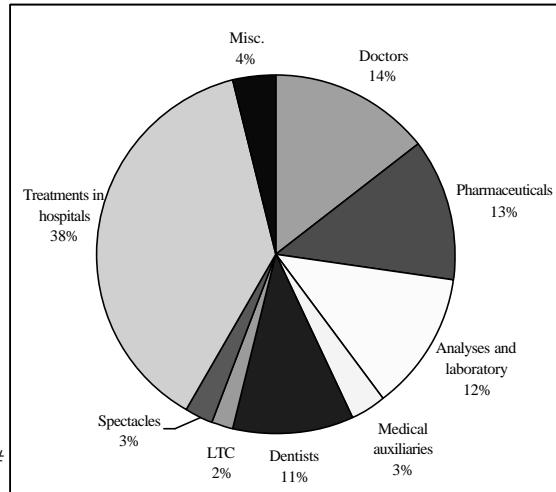
- o Doctor fees, Pharmaceuticals, Analysis and laboratory work:
90% reimbursement with a yearly deductible of 100 CHF
- o Treatments in hospitals (in-patients):
100% in a public ward (4-beds or more)
90% in a 3-beds, 2-beds or private room
- o Dental treatments:
90% up to 2'736 CHF/year, need for prior price estimate
checked by UNIQA if treatment > 800 CHF.
- o Medical auxiliaries:
90% up to 2'796 CHF/year, extended for Long Term Dependency
- o Spectacles:
90% for lenses subject to a modification of the dioptré
90% for frame up to 216 CHF per period of 3 years

Distribution of health costs

Statistics in 2001:
11'299 members
42.8 MCHF reimbursed
→ 3'866 CHF/member

Average health cost:
in Geneva = 4'270 CHF
(Helsana – Basic LAMal benefits)

in France = ~3'235 CHF
(DRESS- "Etudes et résultats" #
187 – Sep 2002)



The contributions

Contributions are paid by the Staff or the Pensioners:

→ 4.02% of (last) basic salaries

and by the Organisation:

→ 6.35% of (last) basic salaries

40/60 sharing of contributions

+ Direct participations (10% and deductibles)

→ 50/50 sharing of health care costs

The CHIS Board

The Board is a joint body with representatives from the Management and from the insured persons (active staff and retirees).

- Responsible for proposals for the adaptation of the policy of the Scheme;
- Keep up-to-date with rules and practices of health insurance in other International Organisations and Member States;
- Review the services expected from the Administrator of the Scheme;
- Inform members of the Scheme about its work and all aspects of viability of the Scheme (➔ CHIS Bulletin).

- Control of cost increase:

Year	1996	1997	1998	1999	2000	2001	96-2001
CHI S	2.2%	3.9%	1.9%	8.5%	1.3%	1.3%	20.4%
Swiss Ins.	11.7%	4.7%	2.8%	3.8%	5.5%	9.7%	44.4%

Long-Term Care

Definition

Long-term care benefits provide a financial support to persons in need of assistance over an extended period of time resulting from chronic illnesses or disabilities, entailing impairment of their ability to function independently in their daily lives.

Based on FAFICS (*Federation of Association of Former International Civil Servants*) classification for activities of daily life (ADL):

- to move around inside the house;
- to wash, to do one's hair;
- to go to the toilet;
- time and space orientation.
- to get dressed or undressed;
- to eat and drink;
- coherence and ability to communicate;

Long-Term Care

Population

- Any member of the CHIS Normal Health Insurance Cover may claim long-term care benefits subject to the certification of dependency by a medico-social board.
- People of all ages may need long-term care, however, it is expected that older people will be the primary beneficiaries of long-term care.

Preparation of proposal

- Problem was realized early (1991 study)
- The Staff Association has been the driving force since the very beginning in looking for an optimal solution
- Proposal CHISB end 1997
- Informal discussions in 1998
- Presentation to Delegations in TREF in 1999
- Different modes of financing studied
- Included in CHIS in 5 Yearly Review (special funding provisions)

Long-Term Care / Benefits

Services arising from the need for long-term care may be divided into three areas:

- *medical services* by existing provisions;
- *paramedical services* (physiotherapist, ergonomist, etc.) by increasing the ceiling of reimbursement;
- *home care* (includes non-medical services provided at home, accommodation costs in a residential or nursing home) by specific allowance (independent of where care is given)

Long-term care benefits

<i>Level of dependency</i>	weak dependency (40%)	medium dependency (60%)	full dependency (100%)
<i>Medical</i>	No change	No change	No change
<i>Paramedical</i>	1000 CHF/month	1500 CHF/month	2500 CHF/month
<i>Home care</i>	34 CHF/day	51 CHF/day	85 CHF/day

Subject to the certification of dependency by a medico-social board

Long-Term Care financing

The Long-term care is based on **capitalisation** inside the framework of CHIS.

Two additional measures for contributions:

- Rate for all members increased from **3.42%** to **4.02%** of basic salary;
- Level pensioners based on last basic salary instead of pension (**17%** increase);

Thus total rate for all members of CHIS is **10.37%** of basic salary (instead of **9.77%** previously).

Conclusion

- CHIS is a *fully mutual* scheme:
Pay according to means, use according to needs.
- "Users" and Organization pay 50%:
cost-awareness and responsible behaviour.
- Scheme managed by CHISB and administered (only) by UNIQA.
- Improvements are introduced gradually.
- Agreements negotiated with health providers.

History

- 1954-1970: 1st health insurance contract (caisse-maladie suisse)
- WG of FC studied question of health and accident insurance and decided to set up call for tender
- 1971-1995: Agreement with Austria (J. Van Breda)
- Agreement amended 12 times
- Service contract (not risk insurer, guarantees cash flow)
- 1996-2002: Austria/Uniqa only scheme manager

History (important dates)

- 1954: First health and accident insurance scheme introduced for active staff
- 1971: FC decides that pensioners can remain in CHIS
- 1986: CC confirms this in resolution
- 1993: CERN pays directly for pensioners (at same rate as for active personnel)
- 1996: Gainfully employed spouse pays contribution
- 2001: Introduction of long-term care

Projections for 2003

o Contributions:

- Staff = 31.9 MCHF - 1.8 MCHF for LTC
- Pensioner = 24.5 MCHF - 4.3 MCHF for LTC
- Other = 0.3 MCHF

→ + 50.6 MCHF

o Reimbursements:

- Total 2001 = 42.8 MCHF
- +3.5% per year (average over 5 years) → - 46.0 ± 1 MCHF

- o Cost of the administrator (UNI QA) → - 2.1 MCHF
+ 2.5 ± 1 MCHF

Session B - Medical Cover

Medical Cover at the ECB

Marc Van De Velde, ECB

See the presentation's slides in the following pages

E^SCB
**Staff Committee of the European
Central Bank**

CSAIO3, London 26/27 September 2002
Medical Insurance

E^SCB
**Staff Committee of the European
Central Bank**

Staff Committee vision.

We want to constructively contribute, shaping the
ECB into a world class organisation, characterised
by professionalism and continuous improvement.

Keep staff highly motivated, and recognised as the
main asset of the institution.

Establish an ECB corporate culture, built on staff
participation and mutual respect.

ESCB

Staff Committee of the European Central Bank

- General information
- Broad lines of financing
- Who is covered
- Percentages of cover
- Reimbursement / claims processing - staff satisfaction
- Long-term care
- Reintegration into national health scheme
- Medical cover for retirees

ESCB

Staff Committee of the European Central Bank

General information (I) Headquarters Agreement

Article 15

Non-applicability of German labour and social welfare law

Pursuant to Article 36 of the ESCB Statute, the conditions of employment of the members of the Executive Board and the employees of the ECB shall not be subject to either the substantive or the procedural labour and social welfare law of the Federal Republic of Germany.

Article 16

Eligibility to join statutory health insurance scheme

Members of the Executive Board and employees whose participation in the statutory health insurance scheme has ceased upon their taking up employment with the ECB or by their having been employed by the EMI, shall be eligible to join the statutory health insurance scheme, in application mutatis mutandis of Section 9, paragraph 1 (No. 5) of Vol. 5 of the code of social law, if they again take up employment within two months of the termination of their employment with the ECB. The health insurance scheme shall be notified of their joining within three months of their taking up employment.

E^SCB

Staff Committee of the European Central Bank

General information (II) Conditions of Employment Mandate of the Staff Committee

- 45. A Staff Committee whose members are elected by secret ballot shall represent the general interests of all members of staff in relation to contracts of employment; staff regulations and remuneration; employment, working, health and safety conditions in the ECB; social security cover; and pension schemes.

E^SCB

Staff Committee of the European Central Bank

General information (III)

- A comprehensive medical benefits and dental plan has been agreed with "Les Assurances Générales" de France SA (Paris).
- There is no waiting period and no prior medical examination for the member of staff and those insured with him/her.
- The contract is administered by the broker J. Van Breda & Co. International (Antwerp), who handles all claims.
- World-wide validity, effective from date of appointment

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Staff Committee of the European Central Bank

Broad lines of financing

- The monthly premium for the period 01.10.00 – 30.09.02 amounts to 4.496% of the basic salary.
- 0.128% for reimbursement of expenses due to accidents at work and occupational diseases shall be fully borne by the ECB.
- On the remaining 4.368%, the ECB shall bear two-third of this premium. The one-third staff contribution to the premium amounts to 1.456% of the basic salary.
- The premium is deducted from the monthly salary payment.

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Staff Committee of the European Central Bank

Who is covered

- Provide staff, dependant spouse*, recognised partner, dependant children with coverage against medical and dental expenses
- Short-term staff have the option to be insured through Van Breda or not - proof of sufficient medical cover must be submitted
- A person entitled to reimbursement of expenses under another health insurance scheme shall in the first instance claim for benefit under the other insurance. If reimbursement under the other insurance is lower than the reimbursement which would normally be paid under the ECB's plan, the ECB insurer shall pay the difference.

*Dependant spouse = annual earning less than EUR 44,581.00

*Dependent child = the legitimate, natural or adopted child of a member of staff or of his/her spouse or recognised partner; a child in the custody of a member of staff for whom the member of staff has lodged an application of adoption with the competent national authority; or

a child of the ex-spouse or ex-recognised partner of a member of staff but not of the member of staff, who resides in the member of staff's household.

In addition, the child must actually be being maintained by the member of staff, where "actually being maintained" means that the child does not have a personal gross annual income in excess of EUR 9,073 and is not on military or alternative service.

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Percentages of cover

- 85% of most expenditure on ambulant treatment*
- 85% of expenditure for medical prescriptions
- 80% of dental care
- The ceiling for dental care is EUR 7,670.00 per person per consecutive periods of 24 months, the first period starting at the inception date of each members individual coverage.
- 100% of expenditure for hospitalisation and serious illnesses. Some preventive care is also covered (annual check-up, cancer tests, half-yearly dental check-up, vaccinations).
- Medical expenses in respect of treatment due to an accident at work or an occupational disease shall, in principle, be reimbursed at the rate of 100%, without maximum ceiling.
- If, during a calendar year, expenses not reimbursed by way of basic cover exceed EUR 1,000.00, an additional reimbursement shall be effected. The non-reimbursed portion of the expenses which is in excess of the threshold of EUR 1,000.00 shall be reimbursed at 100%.

* Ambulant treatment requiring the use of an operating room (e.g. laser surgery), qualifies for 100% reimbursement.

ESCB

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Reimbursement / claims processing

All claims for reimbursement are administered by J. Van Breda & Co. International, our broker, who is situated in Antwerp (Belgium).

After the claim form has been completed, the required bills (original documents) are attached, it can be send through the ECB mail system to Van Breda (a stamp is not necessary).

Address Labels are available for this purpose as well.

Staff satisfaction

High degree of satisfaction

Good cover of medical needs

Excellent price/quality comparison (German statutory health scheme 20% contribution for less cover)

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Staff Committee of the European Central Bank

Long-term care

- Not covered under the Medical Insurance
- Subject of a separate contract to be tendered out in the near future

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Reintegration into national health scheme

- Cover normally ceases on the date on which employment with the ECB ends or, in respect of the member of staff's spouse, recognised partner or children, on the date on which they are no longer considered as dependent.
- Continuation or conversion of cover may be arranged according to the following rules:
- Cover may be continued for a maximum period of six months (or longer in the case of former members of staff in receipt of unemployment benefits), starting on the day following the date on which the insured person would normally cease to be covered under the ECB's medical and dental plan. The premium shall be calculated on the basis of the last full basic monthly salary. Where a member of staff is entitled to the unemployment benefit of the ECB the premium will be shared equally by the ECB and the member of staff concerned.

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Staff Committee of the European Central Bank

Medical cover for retirees

- A former Member who is in receipt of a pension on retirement immediately following active Service or a Dependant who is in receipt of a pension following the death of such a former Member shall have access to the medical and dental insurance of the ECB. The participation of such persons shall be governed by the same terms and conditions in force for members of staff. For the calculation of the premium, however, "salary" shall be substituted by "pension", as determined below.
- In the case of former Members, the basis of the premium shall be the pension to which they were entitled on retirement, before any part of the pension was converted to a lump sum, and shall be subject to increases in line with that pension.

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PREPARATION FOR THE NEXT CONFERENCE

The 4th Conference will be held at EIB, in Frankfurt, in October 2003. All those who participated in the 3rd Conference certainly look forward to it, and to the continuation of this series of conferences.

SESSION C - EXTERNAL SYSTEMS OF JUSTICE

The Fundamental Limitations of ILOAT

David Dror, ILO

See the presentation's slides in the following pages

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

The Fundamental Limitation

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

Two Families of Issues:

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

Problem 1: Natural Justice Denied

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

Nemo iudex Not Applied

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

Audi Alteram Partem Not Applied

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

Problem 2: Equal Treatment Denied

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

Problem 3: Class Action Denied

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

Problem 4: Ineffective Remedy

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

Problem 5: Due Process Denied

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

Problem 6: Appeal / Review Denied

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

Problem 7: Collective Agreements Ignored

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

Problem 8: Taboo Topics

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

Separation of powers?

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



Solution: Abolish or Amend

- Abolish immunity from jurisdiction?
Last recourse option; Might be considered only for severe cases (e.g. criminal offenses) which the ILO cannot handle internally. In such cases, Swiss national courts might be an alternative, but making this change is complex
- Correct the flaws in the internal system of justice!
The internal system, notably the ILOAT, will continue to prevail, for which purpose it must guarantee the rule of law without delay

Remedy the System: Why Now?

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

State of Play Until Now

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

Statement to the ILO GB, 3/2002

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

Agreement with ILO

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

Next Moves on Agreed Points

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

Next Steps on Other Points

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

What You Can Do

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

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SESSION C - EXTERNAL SYSTEMS OF JUSTICE

Legal Security In International Organisations

Phil Bocking, EPO

SUEPO Central Secretary
Central Staff Committee Secretary
Problems with Legal Security
The Legal State and
Human Rights
•What role do Human Rights Play?
EPO – Theory
EPO – Theory
EPO – Practice
EPO – German Law
BVerfG – Admissibility

Legal Basis
•B Verf G Decisions (re Art 24 GG)
–Maastricht
–EPO 04.04.2001

•Must Show That BASIC rights are not Generally Guaranteed

BVerfG Admissibility 2
German Law v ATILO

General Guarantee
ATILO Study (SUEPO/SUILO)
BVerfG Admissibility 3
Another Approach

Article 6.1 ECHR
„...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...“

Summary
•There are serious problems.
Legal Security in
International Organisations
Phil Bocking
SUEPO Central Secretary
Central Staff Committee Secretary

SESSION C - EXTERNAL SYSTEMS OF JUSTICE

The EC Courts

Fabrice Andreone, EC

LES PROCÉDURES JURIDICTIONNELLES GARANTISSANT LES DROITS DES AGENTS COMMUNAUTAIRES

Le système juridictionnel communautaire garantissant les droits des agents communautaires

Le principe. - L'article 236 TCE précise que *"la Cour de justice est compétente pour statuer sur tout litige entre la Communauté et ses agents dans les limites et conditions déterminées au Statut ou résultant du régime applicable à ces derniers"*. Ainsi, les litiges qui naissent entre la Communauté européenne et leurs agents, fonctionnaires ou non, relèvent de la compétence de la Cour de justice. Toutefois, il est à noter, pour l'ensemble du contentieux de la fonction publique communautaire, que l'attribution de compétence en première instance, en la matière, a été effectuée au profit du Tribunal de première instance par la décision (*CECA, CEE, EURATOM*) n° 88/591 du Conseil, du 24 octobre 1988 (*J.O.C.E., n° L 319 du 25 novembre 1988*). Cette attribution est le fruit d'une longue évolution qui remonte au début des années 70.

Le double degré juridictionnel. - Suggéré par la Cour elle-même, l'article 168 A TCEE, notamment, introduit par l'Acte unique européen renouvelait les conditions de la diversification de la juridiction communautaire. En effet, il habilitait le Conseil statuant à l'unanimité sur demande de la Cour et après consultation de la Commission et du Parlement européen, à *"adjoindre à la Cour de justice une juridiction chargée de connaître en première instance, sous réserve d'un pourvoi porté devant la Cour de justice, limité aux questions de droit, dans les conditions fixées par le statut, de certaines catégories de recours"*. Le Tribunal de première instance, d'abord créé sur cette base par la décision du Conseil du 24 octobre 1988, est désormais institué par le traité lui-même (*art. 225; ex art. 168 A issu du TUE*). Il était temps, car la charge de travail de la Cour était devenue peu compatible avec les exigences d'une bonne administration de la justice. La technique retenue de "l'adjonction" à la Cour de justice préserve intégralement le principe de l'unité de la juridiction communautaire. En effet, non seulement le nouveau tribunal fait partie intégrante de la Cour de justice sur le plan institutionnel, mais surtout, fonctionnellement, il ne se trouve pas juge en dernier ressort de questions de droit, le pourvoi devant la Cour étant ouvert de telle manière que l'unité du droit communautaire, en général, et celui de la fonction publique en particulier, n'est pas remise en cause. Les choses sont donc simples, le Tribunal est compétent en première instance, alors que la Cour n'intervient, éventuellement, que par le biais d'un pourvoi en cassation selon les règles classiques de cette procédure.

Les principes généraux du droit de la fonction publique communautaire

Une place fondamentale. - Mis à part les aspects institutionnels qui sont décrits succinctement ci-après, il est à souligner que, pour ce qui concerne la jurisprudence communautaire, le juge a fait preuve, dans cette matière comme dans d'autres, d'œuvre créatrice.

Même s'il n'utilise pas le biais jurisprudentiel pour s'assurer "un pouvoir normatif", le juge communautaire a été bien souvent au-delà tant de la lettre du Statut que de son esprit. S'il a, dans l'ensemble, repris les modalités interprétatives que préconise l'article 31 de la Convention de Vienne sur le droit des traités, et selon lesquelles l'interprétation doit se faire d'après *"le sens ordinaire à attribuer aux termes du traité, dans leur contexte et à la lumière de son objet et de son but"*, le juge communautaire a rapidement montré que pour lui le *"contexte général"* (méthode systématique), ainsi que *"l'objet et le but"* (méthode téléologique) prenaient le pas sur l'interprétation littérale, en l'occurrence, du Statut.

La référence aux principes généraux du droit. - Il reste que dans le contrôle de l'application et du respect du droit de la fonction publique, le juge communautaire dispose d'une large autonomie. Ainsi, l'importance singulière des principes généraux du droit est à souligner dans la jurisprudence relative au droit de la fonction publique si l'on en juge le nombre d'arrêts d'annulation prononcés sur la base de leur violation (confiance légitime, devoir de sollicitude, proportionnalité,

sécurité juridique, *patere legem quam ipse fecisti*, retrait et non rétroactivité des actes administratifs, respects des droits de la défense, égalité de traitement, bonne administration, saine gestion, bonne foi, droits acquis, etc.).

Les principes généraux du droit, si souvent invoqués, rayonnent véritablement dans le droit de la fonction publique où, bien plus, ils peuvent préfigurer leur consécration dans le contentieux général. Les arrêts rendus le 7 juin 1972 (C.J.C.E., 7 juin 1972, *Bertoni c./Parlement*, aff. 20/71, Rec., p. 345 et *Baudouin c./Commission*, aff. 32/71, Rec., p. 363) et ceux du 20 février 1975 (C.J.C.E., *Airola c./Commission*, aff. 21/74, Rec., p. 221 et *Van den Broeck c./Commission*, aff. 37/74, Rec., p. 235) n'ont-ils pas annoncé "la conception exigeante de l'égalité entre les sexes qui sera consacrée dans l'affaire *Defrenne* en tant que droit fondamental de la personne" (cf. *Dubouis (L.)*, "L'évolution de la fonction publique communautaire concorde-t-elle avec celle des Communautés européennes ?" in: "Mélanges offerts à Pierre-Henri Teitgen", *Etudes du droit des Communautés européennes*, Editions A. Pedone, Paris, 1984, p. 127-p. 143) ?

L'origine des principes du droit de la fonction publique. - Sans se lancer dans une présentation exhaustive des principes du droit de la fonction publique, il est toutefois possible de les identifier à travers trois catégories: tout d'abord, les principes qui possèdent des traditions constitutionnelles ou administratives communes des Etats membres comme ceux d'égalité, de légalité, de proportionnalité, de respect des droits acquis, d'équité, de continuité du service public et de respect des libertés syndicales ainsi que du droit de grève; ensuite, les principes "fonctionnels" qui ont été dégagés par le juge afin de répondre à certaines exigences juridiques comme ceux de confiance légitime, de sécurité juridique, de bonne administration, de saine gestion, de l'effet utile du droit communautaire, du devoir de sollicitude et de bonne foi; enfin, les principes qui sont inspirés par la Convention européenne des droits de l'homme à laquelle le juge communautaire se réfère depuis très longtemps, comme ceux du droit à un recours juridictionnel, droit à un procès équitable, respect des droits de la défense et de pénalisation appropriée.

Le principe de l'égalité de traitement et de non-discrimination. - Au total, c'est bien les principes de l'égalité de traitement et de non-discrimination qui se trouvent être les plus utilisés tant par les justiciables que par les juges eux-mêmes. Ainsi, il y a violation du principe d'égalité de traitement énoncé à l'article 5, § 3 du Statut, lorsque deux catégories de personnes, dont les situations fonctionnelles et juridiques ne présentant pas de différence essentielle, se voient appliquer un traitement différent, par exemple, lors de leur recrutement (T.P.I., 7 février 1991, *Tagaras c./Cour de justice*, aff. T-18/89 et T-24/89, Rec., p. II-53). Il en va de même lorsque des situations différentes sont traitées de manière identique. Par contre un fonctionnaire ne saurait, en invoquant le principe de l'égalité de traitement, se prévaloir d'une pratique contraire aux dispositions du Statut, nul ne pouvant invoquer à son profit une illégalité commise en faveur d'autrui (T.P.I., 14 mai 1991, *Zoder c./Parlement*, aff. T-30/90, Rec., p. II-207). Enfin, le principe de l'égalité de traitement entre femmes et hommes en matière d'emploi et, corrélativement, l'absence de toute discrimination, directe ou indirecte, fondée sur le sexe, fait partie intégrante des droits fondamentaux dont la Cour et le Tribunal assurent le respect en vertu de l'article 220 TCE (*ex art. 164*). Ainsi, dans le cadre du Statut, les exigences qu'impose la nécessité d'assurer l'égalité de traitement entre les travailleurs féminins et masculins ne sont nullement limitées à celles découlant de l'article 141 TCE (*ex art. 119*) ou même des directives communautaires adoptées dans ce domaine. Aussi, une employée enceinte ne saurait être licenciée en raison de son état, sous peine de violer ledit principe d'égalité, cela ne signifiant pas pour autant qu'elle ne pourrait être licenciée pour des motifs qui sont sans rapport avec sa grossesse (T.P.I., 28 janvier 1992, *Speybrouck c./Parlement*, aff. T-45/90, Rec., p. II-33).

Les parties à l'instance dans le contentieux de la fonction publique européenne

L'autonomie du contentieux. - L'autonomie du contentieux de la fonction publique communautaire par rapport aux contentieux classiques de l'annulation et de la réparation a été clairement affirmée, notamment dans un arrêt du 22 octobre 1975 (*Meyer-Burckhardt c./Commission*, aff. 9/75, Rec. 1975, p. 1171) où la Cour a établi précisément l'inapplicabilité aux recours intentés par les fonctionnaires des conditions de recevabilité posés par les articles 235 et 288 TCE (respectivement *ex art. 178 et 215*). La Cour a fondé cette autonomie par le biais du renvoi au Statut que l'article 236 TCE (*ex art. 174*) opère, en l'occurrence à ses articles 90 et 91. La Cour en a déduit qu'"un litige entre un fonctionnaire et l'Institution dont il dépend ou dépendait, et visant à la réparation d'un dommage, se meut, lorsqu'il trouve son origine dans le lien d'emploi qui unit l'intéressé à l'Institution, dans le cadre de l'article 179 du Traité et des articles 90 et 91 du Statut, et se trouve, en ce qui concerne, notamment, sa recevabilité en dehors du champ d'application tant des articles 178 et 215 du Traité que de l'article 43 du Statut de la Cour". Cette solution est également retenue dans le cadre de l'article 152 CECA (T.P.I., 25 septembre 1991, *Nijmann c./Commission*, aff. T-36/89, Rec., p. II-699).

Un cadre limitatif. - Le cadre est donc bien clair et particulièrement limitatif car seuls les fonctionnaires ou autres agents (ou anciens) peuvent être parties à l'instance contre leur institution (ou ancienne) de rattachement. Seule exception, les agents locaux qui doivent, quant à eux s'adresser, en cas de litige, "à la juridiction compétente en vertu de la législation en vigueur au lieu où l'agent exerce ses fonctions" (art. 81, § 1 du RAA). Dans ce cadre assez réduit, quelques extensions permettent à d'autres requérants d'être parties à une instance relative au contentieux de la fonction publique communautaire, selon les procédures et délais requis par les articles 90 et 91 du Statut: candidats à un concours externe, fonctionnaires stagiaires non encore titularisés, ayants droits en cas de décès du fonctionnaire ou de l'agent, voire même les personnes qui revendiquent la qualité de fonctionnaire ou d'agent.

Dans leur rédaction actuelle, les articles 90 et 91 du Statut sont interprétés et appliqués, exclusivement, en vue de la solution de litiges individuels. Aussi, à côté de l'individu, l'autre partie à l'instance ne peut être que l'institution de rattachement contre laquelle est dirigée le recours, même si la procédure pré-contentieuse se trouve orientée à l'encontre de l'Autorité investie du pouvoir de nomination (AIPN), dont chaque institution dispose conformément à l'article 2 du Statut. Hormis les parties proprement dites, le dernier acteur "juridictionnel" est l'avocat dont la présence est obligatoire dans la phase contentieuse et facultative dans le stade du pré-contentieux. En effet, le ministère d'avocat est impératif pour la représentation du requérant, alors que l'institution a la possibilité d'être seulement représentée par l'un de ses membres, appartenant, généralement, au service juridique de l'institution concernée. Dans la pratique les avocats interviennent bien souvent des deux côtés en raison de la technicité du droit et du contentieux de la fonction publique communautaire.

La restriction pour les Comités du personnel et les syndicats. - Enfin, si les Comités du personnel des institutions, ne bénéficiant pas de personnalité juridique, se sont vu dénier le droit d'introduire tout recours, les syndicats sont à peine mieux traités puisqu'ils ne disposent, alternativement, que de trois voies procédurales: soit ils interviennent en soutien des conclusions d'un fonctionnaire ou d'une institution, soit ils introduisent un recours en annulation au titre de l'article 230, al. 2 TCE (*ex art. 173, al. 2*), dont la recevabilité n'est cependant pas aisée à établir soit, enfin, ils introduisent un recours en responsabilité extra-contractuelle au titre des articles 235 et 288 TCE (respectivement *ex art. 178 et 215*), dont la recevabilité ne sera pas également facile à établir.

Comme nous l'avons déjà évoqué, en effet, alors qu'en vertu de l'adage selon lequel "*nul ne plaide par procureur*", les organisations syndicales ne sont jamais recevables à contester, aux lieux et place du fonctionnaire, une mesure individuelle, elles sont, en revanche, recevables à contester les actes de portée générale, dès lors du moins qu'elles établissent que cette mesure affecte les intérêts matériels et moraux de leurs mandants (*art. 230, 235 et 288 TCE, respectivement ex art. 173, 178 et 215; C.J.C.E., 8 octobre 1974, Union Syndicale e.a. c./Conseil, aff. 175/73, Rec. 1974, p. 917 et 8 octobre 1974, Syndicat général du personnel des organismes européens c./Commission, aff. 18/74, Rec. 1974, p. 933*). Toutefois, dans le contentieux de la fonction publique communautaire, la distinction entre mesure individuelle et mesure de portée générale n'a que peu d'intérêt du point de vue de l'appréciation de la qualité pour agir des organisations syndicales, ces dernières ne disposant que d'un accès très limité au prétoire luxembourgeois.

La procédure dans le contentieux du droit de la fonction publique communautaire

- Saisine du groupe inter-service : article 90 & article 91

- Composition du groupe interservice

- Conclusions du groupe interservice et décision de l'AIPN

- Saisine du TPI

- Saisine de la CJCE

SESSION C - EXTERNAL SYSTEMS OF JUSTICE

The UNAT System

May Hansen, FICSA

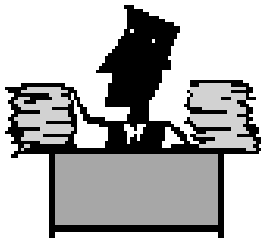
See the presentation's slides in the following pages

UN Justice System



- Internal structure (advisory) e.g. Staff Association, Ombudsperson or similar function, Committee/Board for review of appeals
- Administrative Tribunal (ILOAT or UNAT)

Lengthy Procedure



- “Easier” for the Administration than for staff
- High proportion of recommendations rejected by Admin.
- Lengthy legal process - both in UNAT and ILOAT

What is UNAT?

- Independent organ to review alleged non adherence to terms of employment/UNJSPF rules
- Established by UNGA resolution 1949
- 7 members appointed by UNGA
- Covers most UN plus IMO, ICAO, staff of Registry at Int'l Court of J.

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- Differences in internal recourse procedures among organizations in the UN system
- Need to enhance informal conciliation, mediation and negotiation
- Consider establishing higher instance for UN system as a whole - with competence in a limited number of clearly-defined cases?
- Internal administration of justice should provide staff and administration with recourse options equivalent to "outside"
- Consider harmonization? - of statutes and working procedures of ILOAT and UNAT (selection procedures, competencies and jurisdictions, case laws etc)

SESSION C - EXTERNAL SYSTEMS OF JUSTICE

Nominations to Co-Ordinated Organisations' Tribunals

Marie-Christine Delcamp, OECD

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The Committee of Staff Representatives (CSR) of the Co-ordinated Organisations examined, early in 2002, the procedures for appointing members of the administrative tribunals and appeals boards⁵ in their various organisations.

The CSR is fortunate to bring together representatives from the staff associations and committees of the six Co-ordinated Organisations, making it a particularly apt body for addressing subjects of equal and simultaneous concern to the six. Of those subjects, the functioning of the administrative tribunals is particularly noteworthy due to the fact that within the Organisations, concerns have emerged about the structure, organisation and functioning of those tribunals. One clear example is the absence of an appellate authority, which in today's world is less and less justifiable. The CSR is focusing on one aspect that it finds particularly urgent and sensitive: the appointment of tribunal members.

In recent years the staff associations of the Co-ordinated Organisations have repeatedly expressed their discontent with the judgments passed down by international organisations' administrative tribunals. They criticise those decisions as reflecting what they view as excessive complicity between the administration and the tribunal, and complain that staff members' views are not taken into account sufficiently.

Consequently, the CSR has given thought to the procedure for choosing tribunal members and determining who should be responsible for doing so, after having considered a number of findings about the terms of employment of international staff and the control tribunal members have over those terms.

- I -

FINDINGS

TERMS OF EMPLOYMENT

The employment relationship is established either by entering into a contract (private sector) or by adhering to a set of regulations (public sector).

What characterizes the private-sector employment relationship is the synallagmatic nature of the contract, whereas in the public sector, the contract is unilateral, and civil servants are protected by the existence of a set of regulations. However, in both cases – although in varying ways depending on the legal system in question – an external authority, generally the legislative body, determines the legal framework that ensures a balanced basis for the employment relationship.

International organisations, on the other hand, do not all follow the same logic. In some organisations a staff member signs a contract that strongly resembles a standard-form contract, and in others the administration sends him a letter of appointment that he must sign. In either of the two situations, the recruited staff member has almost no latitude for negotiation; he has to comply with a set of regulations of which he has obviously negotiated no part and which is likely to be modified many times over the course of his career. Furthermore, recent years have witnessed changes in the terms of employment of the international civil service and an erosion of the guarantee of stability, from which we deduce that:

- the principle of job security, which used to be the foundation of a career in the international civil service, no longer exists. Today it has been replaced by greater professional mobility.
- definite-duration contracts have essentially become the rule.
- the introduction of new management practices is upsetting the balance of the employment relationship.

⁵ Translator's note: for convenience, the term "administrative tribunal" or "tribunal" is used from this point on to refer to appeals boards as well.

- the principles of staff members' vested rights, good faith and legitimate trust, which preserve the legal certainty of the employment relationship, are not always respected.

These findings leave two choices:

- either action to promote a return to better protection of staff members by the regulations, especially if they are bound only by a definite-duration contract;
- or empower the tribunal members with greater control than they currently exercise.

Let us explore the avenues afforded by the second option.

TRIBUNAL MEMBERS' CONTROL

The control now exercised by the members of the administrative tribunals of international organisations consists, as is the case for national administrations, in verifying initially that the regulations of the organisation in question have in fact been applied, where appropriate in the light of the general principles of law as recognized or expressed by their national jurisdictions of origin. However, they do not always draw on the major principles of international civil service law.

This control is similar to what is known as *contrôle minimum* (minimum control) in French administrative law. It poses no real problem in the case of appeals alleging lack of jurisdiction or formal irregularities.

Ruling on the improper use of authority or a legal infringement may be a completely different matter.

In both of those cases, the tribunal member normally has a greater measure of control. In a case of alleged improper use of authority, it is the underlying intentions of the accused that will be examined; in a case of alleged legal infringement, it is up to the tribunal member to verify whether the factual situation requires that the decision be taken. Thus there is a shift from discretionary power to limited jurisdiction. This enables the tribunal member to apply the proportionality rule, which leads him to assess the legality of a measure and balance its usefulness with its financial and social cost.

Members of the Co-ordinated Organisations' administrative tribunals do not, unfortunately, exercise proportionality control that could be qualified as *maximum*. Moreover, the statutes of the various administrative tribunals are not very specific about the extent of the tribunal members' control. In fact, international administrative tribunals have specialized jurisdiction, and can only rule on the basis of the statutes. They verify the material existence of the facts but do not rule on their legal classification. Furthermore, they acknowledge that the administration has a discretionary power.

Thus the OECD Appeals Board, in its 1989 decision in the Chambers case, said that in regard to dismissals the Secretary General has broad discretion, and that the Board censures the Secretary General's decisions only if they emanate from a body not competent to take them, are formally or procedurally flawed, are based on errors of fact or law, fail to take account of essential facts, represent an abuse of power or, lastly, draw manifestly erroneous conclusions from the case.

This means that these tribunals allow the international organisations broad scope for setting the policy that they intend to adopt. In addition, they do not always consider that they have the required technical expertise to make an informed judgment. Finally, they are unable to give orders to the administration because of the "principle of the separation of powers". Note in passing that, regrettably, this principle is not really observed in international organisations since, in fact, the administration exercises both the legislative power and the executive power. Moreover, it is the administration that nominates the tribunal members responsible for sanctioning its acts or those of the Secretary General, should that prove necessary.

The problem is clearly of considerable magnitude and calls into question the principles at the very foundation of the international organisations. Although the problem certainly exceeds the scope of this report, the report does at least underscore a point that tends to be overlooked and is worth raising for renewed consideration by the international organisations themselves.

For our part, we are aware that there is not necessarily a relationship between the extent of a tribunal's control and the way in which tribunal members are appointed. We will therefore limit ourselves to examining whether, as an interim solution as it were, an improvement could pragmatically be made by a change in the method of recruiting the relevant tribunals' members, who, with the exception of the Chairman of the Council of Europe administrative tribunal, are at present freely chosen by the Member states, often in conjunction with the administrations.

- II -

THE MODE OF APPOINTMENT OF TRIBUNAL MEMBERS

Although the members of administrative tribunals must obviously be competent, independent and impartial in order to fulfil their jurisdictional duty satisfactorily, those qualities are not sufficient.

Many members of the French *Conseil d'Etat* are chairmen or members of the administrative tribunals of international organisations and fully satisfy those criteria.

However, we do not always find the decisions handed down by the tribunal members to be satisfactory.

This is due firstly, as we have seen, to the nature of the control they exercise. The effect of their recruitment and professional training must also be considered. It is no affront to *Conseil d'Etat* members – who are drawn from the very administration whose acts they are called upon to judge and who are likely to be convened for litigation cases and administrative problems in turn – to consider that they are particularly sensitive to the need for administrative action in the face of staff rights.

Moreover, we have observed a trend in certain organisations to use continuity as an excuse to re-appoint the same tribunal members systematically when their three-year appointment ends. This practice makes it impossible to appoint tribunal members from the continuously renewed pool of law experts, who would be likely to take a fresh look at international civil service law.

Under these conditions, we need to examine the various avenues for securing the appointment of tribunal members who better reflect current requirements. There are four possibilities:

1. Recourse to an external institution that would name the tribunal members.
2. Nomination of high-level law experts by the organisation and the staff association.
3. Creation of a joint board responsible for developing a list to be proposed to the Council.
4. Development of a typology of the bodies from which it would be desirable to appoint tribunal members.

With the exception of the first case, in which the responsibility would purely and simply be delegated to an outside body, the appointment of tribunal members would remain the prerogative of the council of each organisation; only the way in which candidates are presented would differ from current practice (free choice by the nations in conjunction with the administration).

Proposal 1: **Recourse to an external institution that would name the tribunal members**

This is taken directly from the case of the Council of Europe, where the tribunal president is appointed by the European Court of Human Rights⁶. This would involve applying to an independent institution, the International Court of Justice, which is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council. These judges must possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognized competence in international law.

⁶ It should be noted that the staff committee of the Council of Europe is proposing that the two other judges be appointed by the Parliamentary Assembly (which already elects the judges of the European Court of Human Rights, the Secretary General and the Deputy Secretary General).

Advantage of this proposal:

The guarantees of these law experts' impartiality and legal qualifications, which are often cited in the statutes of administrative tribunals, would be beyond question.

Disadvantage of this proposal:

Given the difference in composition of each of the Co-ordinated Organisations, on the one hand, and of the International Court of Justice on the other, this approach might appear politically unacceptable to the States insofar as the choice would be made by people from non-Member states.

Proposal 2: Nomination of high-level law experts from lists presented by the organisation and the staff association respectively

At the Council of Europe prior to 1965 and at the OEEC prior to 1956, the organisation and the staff association gave the Secretary General their proposals for qualified people, who did not have to be legal experts. The current proposal would aim to have the staff association and the organisation each choose a candidate with unquestionable legal expertise; once so chosen, the two appointees would propose a third.

Advantage of this proposal:

It places the parties to the proceedings, the Secretary General and the staff, in a symmetrical situation. It also ensures the tribunal members' independence. The impartiality of the tribunal is secured by the way in which the third tribunal member is appointed.

Disadvantage of this proposal:

Given the way in which two of the three tribunal members are appointed, the guarantees of impartiality would likely be disputed by the Member states. Furthermore, the Member states, which jealously guard their powers, might consider themselves to have been deprived of their prerogative.

Proposal 3: Creation of a joint board responsible for developing a list to propose to the Council

This involves creating a joint board composed of an equal number of administration and staff committee representatives, chosen totally independently within the institutions concerned and based on the procedure of their choosing. The first chairman of the board could be elected internally at the meeting to establish the board; subsequently the board could be chaired in alternation. The board could be responsible for preparing a list of candidates for appointment as tribunal members, accompanied by all the supporting documents for those choices; it goes without saying that the candidates should offer every guarantee of independence and expertise, i.e. they must be professionally qualified law experts. Finally, the nominations must be the product of a board consensus. The prepared list must then be submitted to the council of the organisation, which is the body that would be given the final choice.

Advantage of this proposal:

It appears to offer guarantees of expertise and independence. Since consensus must be reached within the joint board, it should also guarantee impartiality.

Disadvantage of this proposal:

The procedure would be relatively complicated and difficult to implement.

Proposal 4: Development by a joint board of a typology of the bodies from which it would be desirable to appoint tribunal members

The fourth proposal aims to ensure that the Secretary General and the staff association agree on the type of professional profile that the tribunal members should have. As an example, in France, judges in administrative and ordinary courts have somewhat different training, are faced with solving legal problems of different natures, and have an approach to employment relationships that differs according to whether they are involved in the public sector or the private sector. Thus the choice of profile makes a difference.

Each Co-ordinated Organisation could create a joint board responsible for proposing to the council of the organisation a typology of the bodies from which it would be desirable to appoint tribunal members. It should be noted that the typology of those bodies must be sufficiently specific (universities, supreme court, etc.), and care should be taken with its wording to avoid discrimination between the various judicial systems. Obviously these proposals must necessarily be the subject of a consensus.

Furthermore, the nomination procedures of each of the bodies considered could be applied to the case at hand.

Advantage of this proposal:

It offers the advantage of responding indisputably to the three-part criterion of expertise, independence and impartiality.

The proposal is also attractive because it enables the international organisation to determine the required profile in advance and thus the organisation cannot be accused of bias, since the choice of the categories of persons is the result of a consensus between the organisation and the association, and the choice of the person is made by the body to which he belongs.

- III -

CONCLUSION

While we find all four proposed solutions acceptable, Proposal 4 would appear to be the most effective. It fulfils the three-part criterion set by the CSR – expertise, independence and impartiality – and makes it possible to specify candidates’ prior training and career path and to avoid accusations of bias in the appointment, since the tribunal members will be selected in accordance with procedures external to the international organisations. Furthermore, to improve the situation with regard to the re-appointment of tribunal members, the CSR proposes limiting their appointment to two three-year terms.

Now it is up to each staff association or committee to initiate discussions in each organisation in accordance with the procedures normally in place. Through this the CSR hopes to promote a symmetrical development of litigation procedures in the six organisations.