

**TIPS AND INFORMATION NEWSLETTER
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The Right to Freedom of Association: Forming a Staff Union

Separate and apart from thorny issues of recognition by the Administration, if a group of staff members are considering forming a staff union (for example, representing General Service staff only) in the organization, a view points from the outset should be observed regarding proper formation. The ILO Administrative Tribunal has explained in Judgment No. 2672 that a “staff association or union is, in essence, a voluntary association of employees and/or others in a relationship pursuant to which they perform services by way of personal exertion, who have agreed together to act collectively through that association or union to protect and promote their industrial interests” and for “the creation of a staff association or union representing international civil servants, there must, at the very least, be some means of identifying the agreement voluntarily to associate for the purpose of protecting and promoting the industrial interests of members, the terms of that agreement and the means by which it may be varied, both in relation to individual employees and the purposes or objects of the association . . . there must be an agreement as to the persons by or through whom the association acts, the means by which those persons are selected or elected, the matters in respect of which they have authority to act and the powers that they have in relation to those matters. In the absence of agreement as to each of those matters, the agreement to associate would, in accordance with general principles of law, be void for uncertainty.”

From the foregoing, it is of paramount importance that the agreement establishing the union/association should be drawn up with rather important detail, and should at least cover the following points: 1) who can be a member; 2) statement of objective or purpose; 3) executive organs, powers and scope of authority; 4) election of officers; and 4) means of amendment of the agreement. In Judgment No. 2672, the Tribunal found that the Director General of WIPO did not violate freedom of association in denying facilities to a new staff association: the “staff members of WIPO who wished to form a new staff association had not adopted rules, whether by charter, statute or other means, at the time of the decision which was the subject of the internal appeal” and therefore “there was then no new staff association or union that WIPO could recognise or otherwise deal with”.

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In early May 2009, the ILO planned to hold a one-day meeting to discuss possible reform of the ILO Administrative Tribunal. Given the reform of the United Nations internal justice system scheduled to commence with effect on 1 July 2009, including the abolishment of the Joint Appeals Board system and replacement with the new UN Dispute Tribunal (for the first level appeal), and the abolishment of the UN Administrative Tribunal and its replacement with the new UN Appeals Tribunal (the second and final level appeal), it is not surprising to learn that there may be new impetus for the ILOAT to consider reforming some of its own procedures – such reforms were discussed and aborted in 2003. Indeed, one of the Judges on the ILOAT (Hon. Mary Gaudron) was a member of the Redesign Panel that had recommended abolishing entirely the UN justice system because it did not meet minimum standards of due process found in human rights conventions and establishing a new system. The ILOAT is often with good reason criticized for its failure to hold hearings and to seriously address the inequality of arms (access to documents and legal assistance) in the current system.

As a corollary, it is expected that the Administrations of international organizations that are not subject to the UN justice reform (e.g. the specialized agencies such as UNIDO, IAEA, WHO and FAO among others) will resist any attempts at reform despite the indictment of the system by the Redesign Panel. Although the Joint Appeals Board system was abolished by the UN General Assembly, other less drastic reforms could be implemented to address the problems in the system (access to documents, witnesses, ensuring independence, and delays, for example).