



FICSA

Federation of International
Civil Servants' Associations

2023

2024

CONTENTS

FICSA MAGAZINE 2023

1. Article from the CERN Staff Association
2. Serve Yourself
3. Article from the ICAO President on the ICSC session in Montreal
4. Staff Representation in the context of Post-Covid 19 pandemic
5. Continuing the discussion on the future of work - Anticipating new HR challenges ahead of 2030

Newsletters from FICSA Legal Advisors

6. L'obligation des organisations internationales de respecter les promesses faites aux agents
7. What are discretionary powers?
8. In the spotlight: Reporting sexual harassment in the workplace

Miscellaneous

9. Article AMFIE
10. UNFCU publishes 2021 impact report

FICSA MEMBERS



European
Southern
Observatory

www.eso.org



Organization for Security and
Co-operation in Europe







Report on the 76th FICSA Council Perspective from the CERN Staff Association

A delegation from the CERN Staff Association participated in the Council of the Federation of International Civil Servants' Associations (FICSA1), which was held from 6 to 10 February 2023 in Valencia, Spain, on the premises of the United Nations Information and Communication Technology Facility (UNICTF).

Participation in the Council always provides an opportunity for enhancing exchange of experiences and ideas, but it also helps to realize the progress made by some organizations on certain issues. This year 105 delegates attended the Council after several years of remote meetings. It was very useful to have the possibility to restart the discussions and exchanges in person.

What is FICSA?

The Federation of International Civil Servants' Association (FICSA) was established in 1952 and currently brings together 90 staff associations or unions of international or intergovernmental organizations.

A distinction is made between members (30), who come from the United Nations Common System, and associate members (18), who are outside the Common System. FICSA also has 18 staff associations from other organizations as consultative members, and more than 23 local federations, which gather United Nations local staff associations with observer status. Some of these staff associations are small organizations of a few dozen members.

Rapport sur le 76ème Conseil de la FICSA par la délégation de l'association du personnel du CERN

Une délégation de l'Association du personnel du CERN a participé au Conseil de la Fédération des associations des fonctionnaires internationaux (FICSA1), qui s'est tenu du 6 au 10 février 2023 à Valence, en Espagne, dans les locaux du Fonds des Nations Unies pour les technologies de l'information et de la communication (UNICTF). La participation au Conseil est toujours l'occasion d'échanges d'expériences et d'idées très enrichissants, mais elle permet aussi de se rendre compte des progrès réalisés par certaines organisations sur des dossiers précis. Cette année, 105 délégués ont participé au Conseil après plusieurs années de réunions en distanciel. Il était très utile d'avoir la possibilité de relancer les discussions et les échanges en présentiel.

Qu'est-ce que la FICSA ?

La Fédération des associations des fonctionnaires internationaux (FICSA) a été créée en 1952 et regroupe actuellement plus de 90 associations ou syndicats de personnel d'organisations internationales ou intergouvernementales.

On distingue les membres (30), issus du régime commun des Nations unies, et les membres associés (18), qui ne font pas partie du régime commun.

La FICSA compte également 18 associations du personnel d'autres organisations en tant que membres consultatifs, et plus de 23 fédérations locales, qui regroupent des associations locales de personnel des Nations unies ayant le statut d'observateur. Certaines de ces associations de

Others come from large agencies, such as the International Atomic Energy Agency (IAEA), which counts approximately an equal number of civil servants as CERN.

The CERN Staff Association is an associate member of FICSA as CERN is not part of the United Nations Common System. We participate in the FICSA Council and its deliberations, with limited voting rights. Overall, CERN is one of the most active members of FICSA; and our voice is heard!

What are the objectives and actions of FICSA?

To defend staff rights;

To ensure that the conditions of service of the staff in the Common System are maintained at a level, which ensures the recruitment and retention of highly, qualified staff;

To contribute to a positive image of the international public service.

FICSA's annual work program and ongoing programs include the following activities:

Inform all staff members of problems affecting their conditions of employment;

Organize training, seminars, and working groups on specific issues related to conditions of employment;

Advise members of FICSA-affiliated associations or unions on staff-administration relations;

Produce documents of the Federation's position on the technical aspects of the employment conditions;

Coordinate strike movements;

Support and assist in appeal procedures (internal appeal procedures, administrative tribunals), in the case of non-compliance with employment conditions;

Develop strategies to prevent violation of rights;

Advocate for the positions of staff members with representatives of Member States.

personnel appartiennent à de petites organisations de quelques dizaines de membres. D'autres proviennent de grandes agences, comme l'Agence internationale de l'énergie atomique (AIEA), qui compte à peu près autant de fonctionnaires que le CERN.

L'Association du personnel du CERN est un membre associé de la FICSA, car le CERN ne fait pas partie du régime commun des Nations unies. Nous participons au Conseil de la FICSA et à ses délibérations, avec un droit de vote limité. Dans l'ensemble, le CERN est l'un des membres les plus actifs de la FICSA, et notre voix est entendue !

Quels sont les objectifs et les actions de la FICSA ?

Défendre les droits du personnel ,

Veiller à ce que les conditions d'emploi du personnel du régime commun soient maintenues à un niveau permettant de recruter et de conserver un personnel hautement qualifié, Contribuer à donner une image positive de la fonction publique internationale ,

Le programme de travail annuel de la FICSA et les programmes en cours comprennent les activités suivantes :

Informers tous les membres du personnel des problèmes affectant leurs conditions d'emploi , Organiser des formations, des séminaires et des groupes de travail

Informers tous les membres du personnel des problèmes affectant leurs conditions d'emploi , Organiser des formations, des séminaires et des groupes de travail sur des questions spécifiques liées aux conditions d'emploi ;

Conseiller les membres des associations ou syndicats affiliés à la FICSA sur les relations entre le personnel et l'administration ;

Produire des documents sur la position de la

The Council process

Traditionally, the weekend preceding the FICSA Council is dedicated to a few preparatory meetings, but it is also the occasion for one or two training sessions for delegates attending the Council.

This year, the first preparatory meeting on Sunday was for the newcomers to try to understand better how FICSA is running and what are the expectations from the delegates. The training was comprehensive and interesting.

A second very interesting presentation was on the United Nations Joint Staff Pension Fund (UNJSPF), conducted by Svend Booth, a former staff Representative from the Food and Agriculture Organisation (FAO), and also a FICSA Expert, who has participated for several years in the pension fund discussions.

On Monday morning, the Council was opened in plenary session with administrative items, followed by welcome speeches by the Chief of Administration of the UNICTF, the President of the UNICTF Staff Association, and finally, the President of the International Civil Service Commission (ICSC2) who is responsible for establishing and reviewing the employment conditions for staff throughout the United Nations Common System.

From Monday afternoon to Thursday evening, the work was split across each of the specialized Standing Committees and ad-hoc Committees set up during the Council.

On Friday, during the Plenary session, each Committee presented their recommendations for approval which will be the FICSA work plan for 2023.

Fédération sur les aspects techniques des conditions d'emploi ;
Coordonner les mouvements de grève ;
Soutenir et assister les procédures de recours (procédures de recours internes, tribunaux administratifs), en cas de non-respect des conditions d'emploi ;
Développer des stratégies pour prévenir la violation des droits ;
Défendre les positions des membres du personnel auprès des représentants des États membres.

Le processus du Conseil

Traditionnellement, le week-end précédant le Conseil de la FICSA est consacré à quelques réunions préparatoires, mais c'est aussi l'occasion d'une ou deux sessions de formation pour les délégués qui assistent au Conseil.

Cette année, la première réunion préparatoire du dimanche était destinée aux nouveaux venus afin qu'ils essaient de mieux comprendre le fonctionnement de la FICSA et les attentes des délégués. La formation était complète et intéressante.

Une deuxième présentation très pertinente dont le sujet était sur la Caisse commune des pensions du personnel des Nations unies (CCPPNU) animée par Svend Booth, un ancien représentant du personnel de l'Organisation pour l'alimentation et l'agriculture (FAO) et un formateur de la FICSA, qui a participé pendant plusieurs années aux discussions sur le fond de pensions.

Le lundi matin, le Conseil a débuté en session plénière par des points administratifs, suivis des discours de bienvenue du chef de l'administration de l'UNICTF, de la Présidente de l'Association du personnel de l'UNICTF, et enfin du Président de la Commission de la fonction publique

Topics covered

In addition to the discussions by the ICSC on the methodology and operational rules for salary adjustments and mainly ex-post adjustments, (topics again closely followed by FICSA this year), other topics were addressed:

The increased use of non-staff contracts and its impact on the United Nations system

The FICSA Council is concerned about the increasing proportion of «non-staff» personnel and its impact on the employment and working conditions of the staff. It was noted that there was no clear and unified definition of the concept of «non-staff» personnel and their rights and benefits, if any. Like at CERN, the use of short-term staff is becoming more significant, and our colleagues fear a loss of knowledge and increased difficulties in ensuring the sustainability of the key tasks entrusted to their organizations.

The best practices in the process of jurisdictional transition from the ILOAT to that of the UN Appeals Tribunal (UNAT)

Several staff associations have expressed great concern about the intention to move from ILOAT to UNAT. The FICSA Executive Committee with the support of the Standing Committee on Legal Questions decided to support and help staff associations as necessary in negotiations to implement this change.

Two organizations have recently withdrawn from the jurisdiction of the ILOAT (WMO, UPU), having expressed different reasons but linked to recent judgments against them. In 2022 another organisation, ICAO wishes to move from ILOAT to UNDT and UNAT for the same reason hoping to have more favourable judgements.

internationale (CFPI2), qui est responsable de l'établissement et de l'examen des conditions d'emploi du personnel dans l'ensemble du régime commun des Nations unies.

A partir du lundi après-midi jusqu'au jeudi soir, le travail a été réparti entre chacun des comités permanents spécialisés et des comités ad hoc créés pendant le Conseil.

La réunion du Conseil a repris vendredi en séance plénière avec une présentation des travaux et des conclusions de chaque comité et des objectifs proposés pour le programme de travail 2023 de la Fédération.

Thèmes abordés

Outre les discussions de la CFPI sur la méthodologie et les règles opérationnelles pour les ajustements salariaux et principalement les ajustements ex poste, (sujets suivis de près par la FICSA cette année encore), d'autres sujets ont été abordés :

Le recours accru aux contrats d'agents contractuels et son impact sur le système des Nations unies

Le Conseil de la FICSA est préoccupé par la proportion croissante de personnel «non fonctionnaire» et son impact sur l'emploi et les conditions de travail du personnel. Il a été noté qu'il n'existait pas de définition claire et unifiée du concept de personnel «non-fonctionnaire» et de ses droits et avantages, le cas échéant. Comme au CERN, le recours à du personnel à court terme devient de plus en plus important, et nos collègues craignent une perte de connaissances et des difficultés accrues pour assurer la durabilité des tâches essentielles confiées à leurs organisations.

UN disability Inclusion Strategy and United nations Mental Health and Well-being Strategy

The Social Security Committee had also discussed how FICSA and its members could best support the implementation of both strategies.

FICSA: why does the CERN Staff Association participate?

Although CERN is not part of the United Nations Common System, the CERN Staff Association has a strong interest in being part of FICSA and participating in the work of the Federation.

Indeed, the various participating staff associations can thus share their experiences and ideas, exchange with experienced colleagues on specific topics, and jointly prepare answers on common subjects (for example, strongly oppose the proposal to reform the ILOAT Status).

This privileged moment also allows us to realize that while we have occasionally more favorable or advanced conditions than in other organizations, we are generally less well off. We can therefore draw inspiration from the best conditions offered elsewhere, but also realize that the work to be done remains immense and that we must never take the financial and working conditions for granted.

Beyond these aspects, being together gives tremendous energy and renewed motivation, but also a comfort to share with other staff delegates the same desire to serve our Organisations, being convinced that this also requires respect and consideration of the interests of staff members.

De meilleures pratiques dans le processus de transition juridictionnelle du TAOIT vers celui du Tribunal d'appel des Nations Unies (TANU)

Plusieurs associations du personnel ont exprimé de vives inquiétudes quant à l'intention de passer du TAOIT à l'UNAT. Le Comité exécutif de la FICSA, avec le soutien du Comité permanent sur les questions juridiques, a décidé de soutenir et d'aider les associations du personnel, le cas échéant, dans les négociations visant à mettre en œuvre ce changement.

Deux organisations se sont récemment retirées de la juridiction du TAOIT (l'OMM et l'UPU), pour des raisons différentes mais apparemment liées à des jugements récents rendus à leur encontre. En 2022, une autre organisation, l'OACI, souhaitait passer du TAOIT au UNDT et au TANU pour les mêmes raisons, en espérant obtenir des jugements plus favorables.

Stratégie des Nations Unies pour l'inclusion des personnes handicapées et Stratégie des Nations Unies pour la santé mentale et le bien-être

Le comité pour la Sécurité sociale a également discuté de la manière dont la FICSA et ses membres pourraient soutenir au mieux la mise en œuvre de ces deux stratégies.

Pourquoi l'Association du personnel du CERN participe-t-elle au conseil de la FICSA ?

Bien que le CERN ne fasse pas partie du régime commun des Nations Unies, l'Association du personnel du CERN a tout intérêt à faire partie de la FICSA et à collaborer aux travaux de la Fédération.

En effet, les différentes associations du personnel participantes peuvent ainsi partager leurs expériences et leurs idées, échanger avec des collègues expérimentés sur des sujets spécifiques, préparer conjointement des

It is essential to show support and solidarity in particularly difficult situations where some of our colleagues face openly conflictual relations with their Administration or Management.

2 - <https://icsc.un.org/>

1 - <http://ficsa.org/>

réponses sur des sujets communs (par exemple, s'opposer fermement à la proposition de réforme du statut du TAOIT).

Ce moment privilégié nous permet également de réaliser que si nous bénéficions parfois de conditions plus favorables ou plus avancées que dans d'autres organisations, nous sommes généralement moins bien lotis. Nous pouvons donc nous inspirer des meilleures conditions offertes ailleurs, mais aussi réaliser que le travail à accomplir reste immense et que nous ne devons jamais considérer les conditions financières et de travail comme acquises.

Au-delà de ces aspects, le fait d'être ensemble donne une formidable énergie et une motivation renouvelée, mais aussi le sentiment de partager avec d'autres délégués du personnel le même désir de servir nos organisations, en étant convaincus que cela passe aussi par le respect et la prise en compte des intérêts des membres du personnel.

Il est essentiel de faire preuve de soutien et de solidarité dans les situations particulièrement difficiles où certains de nos collègues sont confrontés à des relations ouvertement conflictuelles avec leur administration ou leur direction.

1 - <http://ficsa.org/>

2 - <https://icsc.un.org/>

“Serve yourself”

By Andrew Brown, FICSA

Vice-Chair of the Standing Committee on

Social Security/Occupational Health and Safety , ICAO Montreal

Ask the average person on any street in any town anywhere for their definition of a civil servant, there is every reason to believe the reply will be the same. For most, civil servants are government workers at the municipal, provincial/state and federal levels. However, as employees of the United Nations system, we are well aware of a fourth category, the “international civil servants” (ICS). Whatever the category, the work of civil servants is to some extent much the same, and it is right there in the name. The *raison d’être* of the civil servants is to serve others.

However, unlike the civil servant serving those within their respective state, ICS reap the rewards and face the challenges of serving the world. In doing so, there are aspects of an ICS’s work that other civil servants cannot match. For example, one of the biggest rewards is the opportunity to interact with folk from all corners of the world and to do so with the common goal of making a positive difference to the lives of others. A goal of this kind is also a major sense of pride for most, if not all, ICS.

On the other-hand, there is the fact the duty station of an ICS could quite literally be anywhere in the world. Therefore, in order to develop a global perspective and ensure they are able to do their work in a manner befitting the mandate of the United Nations, most ICS accept mobility as part of their service. As there is no need to explain what this entails, suffice it to mention that this in itself is a challenge not faced by the vast majority of “domestic” civil servants. For many ICS, mobility could be a duty station that is not only a great distance from family and friends for extended periods of time, but could be in a location which quite literally puts the individual in

harm’s way, like a region experiencing civil unrest caused by a natural disaster or in a war zone. Such is the life and, possibly, the life-long career for many ICS.

In addition to the aforementioned group of ICS, there are many who begin and end their careers in the same location in an agency or organization of the UN system. No less engaged and no less proud to serve the world, this group of ICS may not have some of the concerns faced by their “mobility” colleagues, but they do share many. As do all civil servants the world over. These concerns include but are not limited to a living wage for a day’s work, support for their overall well-being, which implies access to health insurance and mental health services for themselves and their dependents, a pension that will allow them to enjoy a good quality of life after separating from service and, of course, after service health insurance (ASHI).

As an ICS in the latter category, having served in the same organization for over 40 years, I have had the luxury of having the world come to me. The countless opportunities to interact with folk from all over the world, working in concert to make a positive difference has given me a great sense of pride. It has also allowed me to experience firsthand how the ever-changing world, both in terms of politics and in terms of economics, can affect the working conditions in one UN organization. This does not mean the working conditions at other UN agencies and organizations have become any better or any worse, but it does allow one to have a particular perspective.

One thing I have come to appreciate after many years of service is the need for staff representation. Soon after entering into service (in 1982), I became a member of the [ICAO] Staff Association to support the cause. Despite not having much interest in doing more than that and providing some assistance for one related activity or another, it was a variety of circumstances over recent years that prompted me for the first time to run for a seat on the Association's Executive Committee (ExCom). In the five plus years since, my presence on the ExCom has increasingly shed light on this need for staff representation. Add to this an interest and an active role in the good work of the Federated International Civil Servants Associations (FICSA), I have come to realize the struggle to maintain and, when possible, improve the working conditions of ICS is not limited to one agency or organization. The collaborative efforts of ICS representatives worldwide have this as a common goal, in addition to working in concert to make a positive difference. After all, due to the international nature of the work environment that limits contributions one can make to one's own government services, many of the benefits afforded "domestic" civil servants are not available to ICS.

With the end of a career comes a shift in priorities but the need to receive some of the benefits

afforded ICS for their long service does not change. On the contrary, and in many respects, the need becomes greater with age. For this reason, but only after some well-earned downtime, it is my intention to join the Executive Committee of the Canadian Association of Former International Civil Servants (CAFICS) to continue the service to others. Granted, the work may not be as romantic as that of an active ICS but there is little doubt providing a service to former ICS and those nearing that next chapter of their lives will surely bring with it the same sense of pride. Especially if such service allows for continued interaction with colleagues in FICSA and, of course, the Federation of Associations of Former International Civil Servants (FAFICS), then what more could one ask.

Well, actually, there is one question that could be asked of all ICS, if there is no need within you to serve others as a staff representative, then why not do so for the one closest to you? Serve yourself.

In the kitchen: a staff rep's first ICSC Session

By Helena Debussy, President, ICAO Staff Association (Montreal)

If you have ever picked up a novel, opened it on a random page and started reading, you know the feeling: all these characters, who are they and what are they doing, and why? Reading is laborious, you struggle to work out connections. Slow. Painful. Hopeless. But after pushing through for a while, it all starts to make sense and you can't put the book down. Welcome to your first high-level session as a new staff representative. The initial confusion of not knowing who anyone is or what it is that they are there for gradually gives way and the distinct roles of each participant start to emerge.

As I sat as a FICSA observer at the meetings of the International Civil Service Commission's 96th Session held in my home organization in Montreal, watching FICSA's officers Tanya Quinn



Maguire and Véronique Allain in action

along with representatives from the other UN federations, I marveled at their fluency and expertise in matters that quite a few of us in the UN

community know only superficially or not at all: comprehensive review of the compensation package, study of best practices in hardship classification methodology, review of mobility incentive level, conditions of service of security officers, global staff survey on conditions of

service, modification of operational rules governing the adjustment of post adjustment multipliers (!!) for inflation and exchange rate fluctuations.

I was humbled, inspired and energized by their intimate understanding of each issue and question and their tenacity and determination to speak up for all of us, to defend every inch of ground. I was awed by their professionalism and commitment and warmed by their spirit of camaraderie, all federations working together because there truly is strength in numbers.

During those meetings, the thought also crossed my mind that the ICSC operates in much the same way as any UN organization or specialized agency, with a group of commissioners taking on the role of a Council that lays down the overarching policies, staff representatives who are consulted to ensure that those policies reflect the interests of all stakeholders, and technical Secretariat staff doing the groundwork study, planning and implementation under the direction of a chairperson.

How fascinating to be there, watching commissioners from different world regions and diverse cultural backgrounds discuss the purpose and rationale of our entitlements and benefits, how amazing to sit in the kitchen where the ingredients of their views and opinions are confronted and combined. Have we ever stopped to consider, for instance, what is the policy interest behind States establishing a child allowance for working parents, and whether international organizations such as the UN, which do not have the same goals as a State, should do the same? It all made sense when I heard that discussion, but I had never really stopped to think about it. It was enlightening and, at a very deep level, reassuring to find out that cost curbing, while a very weighty factor, is not necessarily the one and only consideration in policy formulation, and that staff wellbeing and the need to attract and retain top talent are not just fashionable catchy phrases but a pressing concern.

From my perspective as recently elected president of our Staff Association that is part of FICSA, this experience turbocharged my education and gave me a clearer understanding of how the different pieces of this big machine are organized and interact, how one feeds into another and how no piece can do its work without the others. It is true that we stand on the shoulders of giants, but it is



also true that, while one individual is the face of the Federation in these high-level interactions, she is not alone but relies on the contributions (be it research, direction, subject-matter expertise,

guidance, support, etc.) of many.

As the ICSC Session was drawing to an end, a town hall was organized for staff from all the Montreal-based UN organizations. After the

introductory words of ICAO's Secretary General, Mr. Juan Carlos Salazar, Tanya took the podium and gave us a masterclass on the importance of belonging to a federation, but before getting there she devoted a moment to underscore that being a staff representative is a high-risk sport: after touching down at Montreal's International Airport, there was an emergency due to a fire that broke out right next to her plane while she was still aboard, and halfway through the ICSC Session the ICAO building was evacuated by the police on account of a suspect package found in the back of the building. And yet she didn't miss a beat: go Tanya go!

We wrapped up an amazing two weeks of hard work with well deserved fun on the ICAO building terrace, where our Staff Association threw a smashing Summer Sizzler Party – pink flamingoes, Hawaiian shirts and colorful wreaths setting the tone for the evening.



STAFF REPRESENTATION IN THE CONTEXT OF THE POST-COVID 19 PANDEMIC

By Véronique Allain, Staff Representative at the Secretariat of the Convention on Biological Diversity (SCBD in Montreal) and FICSA Executive Committee Member for Compensation Issues

Once upon a time, in March 2020, something extraordinary happened: a strange virus, COVID-19, started emerging everywhere on the planet Earth, and Bang! The whole world was hit badly: schools, universities, daycare centers, offices, country borders, airports, bars, restaurants, etc., all tightly closed up! This was unprecedented and called for serious reflections about our overall way of operating, living, working, and thinking! Who would have thought so?



Even the Easter Bunny was wearing a mask !
Canada's innovative way of encouraging social distancing !



And for us, United Nations (UN) Staff Members, as much as this was a very destabilizing moment, we collectively never gave up and we continued to deliver our work, from our home/cottage/ hotel room/ container in the field / a corner of the dining-room table, etc. The UN Common System did not close down and there were business-contingency plans in place for all of us to continue delivering our work and mandate for the United Nations outside of our usual offices. This came at a cost: although not many jobs were lost in the UN (white collar jobs statistically were maintained and kept), staff had to work remotely while juggling with kids not being able to attend their school classes in person and being desperate at home, with aging parents needing special care in these unstable moments, being isolated from the family nucleus in the home country, not being able to leave the house and being kept in quarantine or lock-down conditions, etc.

Bon, si j'ai bien compris, tant qu'on ne l'a pas attrapé on n'est pas immunisé, et tant qu'on n'est pas immunisé on est confiné, et on est confiné pour ne pas l'attraper ..



This was certainly difficult, but surprisingly enough, this new way of working and living created some opportunities for deeply revisiting the concepts of our jobs and our lives. Human relationships and interactions have changed in such a way that we may admit that, out of all of this, there is something positive that has emerged! Many of us have had to realize how blessed we are to work for the UN and enjoy very decent conditions of life and work.

But, despite all, more than before, staff representatives in the larger UN family have had to realize that their role was much more important than before the pandemic and this is a good outcome! Slowly into the first few months of the COVID-19 pandemic in 2020, many colleagues reached out to their staff representatives who did an amazing job at supporting, counseling, listening, and advising their members who were showing different signs of despair. The critical situation was such that staff representatives had to show resilience, charisma, humility, and respect while being in listening mode and accepting that major changes would be in the making in the aftermath of the pandemic. The staff representatives had to develop different communication skills to alert upper management of issues and burning topics that needed to be discussed even if the conversations had to be

tough at times. Considerable overall changes have slowly crept in, and no one can possibly ignore them consciously or unconsciously. Regarding staff welfare, the recent buzzwords in many UN agencies across the world and many non-UN entities are “hybrid mode of working”, “telecommuting”, and “remote working”. Evidence has shown, to the surprise of many skeptical people, that the hybrid mode of working combining working from home and the office has proven that this flexibility allows for a perfect set-up for employees’ continued good performance and delivery and obvious general well-being. Many recent studies show that remote working will keep on growing because employees and staff like it, technology is helping tremendously to improve working conditions and there is no loss in productivity. There seems to be a better sense of belonging and loyalty on the part of staff and employees if allowed to work in a hybrid set-up. Major cities in the world, among them the 8 UN Headquarters duty stations (H duty stations, Paris, Rome, London, New York, Montreal, Madrid, Vienna, Geneva), have had to experience a painful shift in the traffic patterns and commuting routes to the point that the time spent in public transports or private cars, compared to prior the pandemic, has increased significantly making the commuting to work a particularly serious impediment to an effective presence in the office.



Without mentioning the increased impacts on the overall ecology and environment surrounding us; this should make us ponder over the possible state of non-return in which our planet was before the pandemic. It is certainly difficult to confirm the relationship between healthy ecosystems and infectious diseases, but it is clear that the loss and degradation of land, species, animals, and biodiversity in general undermines the overall health of our planet. Because the COVID-19 pandemic shook many of us in our core beliefs, questioning our ways of life, our patterns of consumption and production, it would be a shame to ignore the importance of nature in contributing to the well-being and general good health of the UN community of employees.

The unique group of UN Staff Representatives should be encouraged to embrace the full scope and meaning of health. As defined in the World Health Organization's Constitution, "health is a

state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity". Remaining healthy is about taking care, of and reconnecting with our bodies, our minds, and the environment in which we live. Let us convince our Executive Heads and Managers that, in adopting a different approach to the return to the office and hybrid working modalities, we all collectively need to create spaces in our daily schedules for healthy and environmentally-friendly practices, for embracing transformative changes, and for adopting sustainable consumption and production patterns.

As staff representatives, we may accept that there is a lot to be learned from this particular situation, and we will gain a lot in convincing others that these recent changes prove to be necessary and that they need to be encouraged.

La lucha continua siempre!

Continuing the discussion on the future of work

Anticipating new HR challenges ahead of 2030

By Steven-Geoffrey Eales, FICSA Executive Committee Member and President of the UNIDO Staff Association, Vienna

Human Resources still plays a central role in the organizational structure of UN organizations. Responsibilities are not merely limited to administrative tasks, HR functions also include ensuring compliance with the legal framework, talent, and skills management, as well as leadership to some extent. There is a strategic component that HR leaders need to embrace more and more to secure organizational relevance and success. By being forward thinking and progressive, Staff Unions and Associations can significantly contribute to this component thus securing their own relevance, provide reassurance to members in uncertain times, and play a crucial part in attaining the organizations' goals.

Uncertainty, pressure to innovate, political instability, austerity, and dealing with an ever-changing funding landscape is no longer a challenge reserved for senior leadership. HR is now a vital function to absorb some of the impact that rapid changes are having on the employment relationship. Remote and flexible working ambitions, digitization, values and norms, and our general idea of how we work, all require radical rethinking. Both HR and Unions/Associations will have to take a close look at the employment relationship to stay ahead of the change curve. Apart from keeping up with all legacy roles, keeping up with the new modern times will additionally mean becoming champions of change

and reliable sources for sound advice. Both HR and staff representatives are vital stakeholders in finding those fresh, new ideas and determining the mood and readiness for change. Organizations have had a lot of opportunities to test resilience in the last few years. Business continuity was the flavor of day for leadership while Staff Representatives had the chance to demonstrate value keeping communities together, supporting mental and physical health initiatives, and providing that added layer of communication and social cohesion. So, what comes next? Employee experience is the next big challenge to tackle. The workplace of tomorrow will be determined by the most sought-after talent. Reliable, innovative, progressive, and versatile staff will determine the future of the UN system and its overall relevance in the future. Attracting such staff and managing their expectations will require new approaches to talent management and retention, the use of new technologies, and smart investments in training, flexibility, and productivity measures. What priorities can we as Staff Representatives set ourselves to keep up?

1. Understanding Employee Experience

One fundamental change in employee expectations is control. While old employment models saw employees adapt to existing cultures and structures, we know now that true creativity and innovation emanates from confident

individuals in charge of their own career.

'Business as usual' is no longer a solid foundation for productivity. Targets and results have become ever-changing variables. For staff to confidently adapt to this environment they need to be in full control of their career possibilities, learning and skill development, and work-life balance.

Let's face it, some job families require long term commitment and reliability. Thus, a solid personnel structure with a strong sense of community will always be necessary to some extent. It is important for both HR leaders and staff representatives to understand how to sustain long-term workforce planning and employee retention strategies. Internal surveys clearly indicate that the trend to look for external opportunities is drastically rising. This is because internal career opportunities are no longer compelling. Internal moves can only achieve so much and often create more problems than they solve.

Employees are required to take on new tasks requiring new skills, while other skills become obsolete. Such a reorientation and/or adaptation raises expectations that employers can seldom meet.

So, what we face is a degradation of the "work experience". Traditional HR frameworks determining predefined career paths, rigid job descriptions, and linking goals to roles is simply not viable anymore. Inability to meet expectations can only lead to frustration and conflict.

What we need to consider is how to develop a system in which jobs, roles, and careers are flexible, and where growth, seniority, and opportunity move with the needs of both the organization and the staff member. This requires a high level of flexibility from the staff member in suiting the needs of the organization, but also a high degree of respect and duty of care toward the staff member by the organization, ensuring work-life balance, happiness, and job security.

2. Persistent Change Management

Innovations in new working methods have been plentiful these past couple of years. Flexible working arrangements, hybrid work, multiple new contractual relationships, the list goes on. Is an end to this innovation in sight or is this perpetual change the new normal? Most of us have become accustomed to the new mechanics and are ready to embrace a more flexible and collaborative future. However, we need to make sure that our performance measurement systems and expectations of productivity, brand, and culture are also up to par with this future. While HR departments can be expected to develop new ways of ensuring compliance, the Staff Unions and Associations will have a strong role to play in keeping community and spirit alive. They will also be one of the few avenues to avoid a mismatch in expectations. With the long-term targets of organizations remaining uncertain and ever moving, it looks like an era of persistent change is among us, and we need to be ready.

It will thus be important that both HR and staff representative bodies become centers of excellence for sound personnel advice. Both have valuable contributions to make on opposite sides of the spectrum. Innovation does not necessarily mean reinventing the wheel. The FICSA model has proven successful for over 70 years. While the federation may see many changes coming its way administratively and operationally, its ability to foster cooperation and provide structured, strategic and equitable advice from a broad and diverse constituency remains unmatched, and more relevant than ever.

The future will require us to work with even more constituencies, working under a variety of contractual realities. Expectations, grievances, and communities will expand into entirely new dimensions. Understanding which tools are necessary to effectively govern this new

environment and the ability to identify opportunities during this perpetual change will ultimately separate the relevant from the obsolete.

3. Reskilling and upskilling, onwards and upwards
Right alongside the employee experience sits empowerment. Neither HR departments nor staff representatives can sit idly by, expecting personnel to transform, adapt to change, and bring innovation. Embracing the new “way of work” (“The new normal”, for lack of a better definition) means providing new tools and the right training to use them. Fostering an environment of proactive learning, curiosity, and leadership through repositories that are equally available to all will be the only way of identifying what new methods are good for the organization, for teams, and the individuals. Rapid digitization has led to a plethora of new tools becoming available, such that no centralized authority alone can make the right choice for the organization. Change will mean an incredible amount of collaborative fine-tuning. Empowering employees and demanding new responsibilities, whilst also managing expectations will be an incredibly difficult task. By working together, HR departments and Staff Unions/Associations can manage different aspects of the change process, ultimately strengthening the organization. A strengthened organization can place strategic efforts into finding new revenue streams and ensuring long term viability of jobs and development resources. With that, they can convey a message of optimism which in return will only scale up empowerment and the self-determination of staff.

Finding the right talent for the job is becoming more and more difficult. While filling vital gaps used to be a problem at the senior management level, it has now become a reality across all job classes and levels. An ambition of remapping skills internally and creating talent from within

would be futile with HR leaders and Staff Representatives being unable to empower.

4. Accepting that the hybrid working culture is here to stay. But there is more!.

Not only work has changed in recent years. The traditional class/seminar room has also disappeared. Scheduling training during regular hours across a broad section of staff is a challenge all HR leaders and staff representatives are familiar with. Continuous and life-long learning across an equitable cross-section of staff must fit into this new reality. Learning strategies must therefore include ways and means for personnel to learn whenever they can, and wherever they can. Areas of focus will become more diverse but while HR can capitalize on training aimed at improving results, Staff Unions/Associations can contribute by addressing questions of culture and collaboration. All these efforts will culminate in developing a collective digital mindset. While the thought of that may seem daunting, there is constant transition into new mindsets. Think about the transitions to an enterprise, leadership, results orientation mindset. On reflection, these changes seem quite natural, and the new digital future will be no different.

5. Can we champion any of these changes?

The short answer is yes. Many of the upcoming challenges and changes require digitization. Traditionally we turn to the IT department to be the custodians of required tools and solutions. Over time, we will see these functions decentralized and relevant departments being champions and experts on their own platforms. Talent platforms in HR or Financial instruments in Finance departments are classic examples of this. So, what are the takeaways, what will we have to look out for?

1. Identifying trends and opportunities: We can never push the breaks. Despite often being our

go-to instinct, the interruptions caused can damage an organization so rapidly and with such long-lasting effect that the opposite of what we intend is likely to occur, namely the loss of talent. Strategic offices will monitor trends for business needs, and Staff Representatives need to do the same to avoid the misapplication of such (just think of outsourcing and/or the misuse of precarious contracts).

2. Automation and process optimization: These are scary things to say around staff and usually invoke feelings of fear and uncertainty. Both HR leaders and staff representatives need to rebrand these approaches in a smart way. The reality is, most of us are overworked, often carrying tasks that are traditionally foreseen for more than one regular post. We do need to introduce better work-life balance, and we absolutely need to comply with our duty of care. Therefore, introducing agility, responsiveness, and more efficient, automated tasks should only alleviate burdens, and never replace headcount. No level of automation will likely ever be enough to bring workload back down to 100%. Human capital is needed, but it can only be pushed so far.

\

3. Rigid compliance measures and an adapted approach: any change requires rules. Any change requires a strategy. HR and Staff Representatives know the human beings behind your organizations. Change can't happen if there is no solid legal framework in place to safeguard rights and no sound approach to ease personnel into a new culture.

4. Knowing limits: Overwhelming staff leads to immediate failure. Change needs to be a well-planned journey. Stakeholders need to be able to communicate. Conflict needs to be managed. Things that are not broken don't need fixing. Success can't be achieved alone. 2023 will certainly be remembered as a year of new ideas. It is important that we will later be able to look back and say that this was the year in charge of our future.

L'OBLIGATION DES ORGANISATIONS INTERNATIONALES DE RESPECTER LES PROMESSES FAITES AUX AGENTS

par Giovanni M Palmieri, Conseil en droit la fonction publique internationale

Résumé

Il ressort de la jurisprudence du TAOIT que les organisations internationales ont l'obligation de respecter les promesses qu'elles ont faites à leurs agents. Pour être prise en compte par le Tribunal, toute promesse doit satisfaire un certain nombre de conditions. Première condition : la promesse doit consister en l'assurance de faire ou de ne pas faire, ou de tolérer un acte. Deuxième condition : la promesse doit émaner d'une personne compétente ou censée être compétente pour la faire. Troisième condition : le non-respect de la promesse doit être préjudiciable à la personne qui s'en prévaut. Cette condition comprend deux éléments : le bénéficiaire s'est effectivement prévalu de la promesse et le non-respect de celle-ci lui a causé un préjudice du fait qu'il s'en soit prévalu. La quatrième et dernière condition est que l'état de droit ne doit pas avoir changé entre la date de la promesse et le moment où elle doit être honorée. Sur chacune de ces conditions, il existe une jurisprudence importante du TAOIT, de laquelle ressortent notamment la charge pour les requérants de fournir la preuve de chacune de leurs allégations et pour les organisations l'obligation de traiter ces questions avec bonne foi et diligence.

Jurisprudence pertinente

« En vertu du principe de la bonne foi, le bénéficiaire d'une promesse a le droit d'en exiger

le respect. Ainsi, un fonctionnaire international peut obliger l'organisation dont il est l'agent à exécuter les promesses qu'elle lui a faites» (jugement °782, Gieser, 1986). Ainsi, le TAOIT établit le droit de tout fonctionnaire d'exiger le respect d'une promesse que lui a faite une organisation internationale. Le fondement de ce droit et de l'obligation respective de l'Organisation résident dans le principe de la bonne foi, à savoir de la loyauté réciproque qui doit lier l'Organisation à ses fonctionnaires. Cependant l'exercice de ce droit est assorti d'une série de conditions qu'il convient de préciser. Elles sont énoncées dans le jugement précité et ont été complétées par une jurisprudence postérieure pour ce qui est du préjudice (voir notamment jugement n°3619 (2016)).

La première condition consiste en l'assurance de faire ou, de ne pas faire ou de tolérer un acte. Bien évidemment, l'agent qui a l'intention de se prévaloir d'une promesse doit être en mesure de prouver l'existence de la promesse à savoir sa matérialité. La preuve est aisée lorsqu'il y a une trace écrite de cette promesse. Ainsi le TAOIT dans son jugement n°1481 (Annabi, 1996) considère que la production d'un télex suffisait à établir l'existence d'une « promesse effective de changer dans les délais indiqués la nature du contrat dont devait bénéficier le requérant ». En revanche, lorsqu'il n'y a pas de trace écrite d'une

promesse et que le requérant n'a aucune possibilité d'en autrement prouver l'existence, le Tribunal rejette la prétention du requérant. Par exemple dans le jugement n°1044, Colagrossi (1990), le Tribunal parvient à la conclusion « qu'il n'y avait aucun élément de preuve qui suggérerait que de telles assurances ont été données à la requérante ». Bien entendu, il ne suffit pas que le requérant produise des prétendues preuves écrites. Encore faut-il que ces écrits laissent clairement transparaître l'existence d'une promesse. Dans plusieurs jugements, le Tribunal a conclu que les écrits produits ne laissaient pas transparaître l'existence d'un engagement ferme de la part de l'organisation (v. jugements n°956, Gianoli, 1989 et n°1040, Douglas, 1990). Par ailleurs, le Tribunal exige que l'Organisation fasse également preuve de diligence et au minimum, lorsqu'elle est confrontée à un agent qui se prévaut d'une promesse orale qu'elle y oppose un démenti (v. jugement n°1781, Schmidtkunz, 1998).

La deuxième condition est que la promesse doit émaner d'une personne compétente ou censée être compétente pour la faire. Par exemple dans son jugement n°2158, B c. EUROCONTROL(2002), le requérant faisait valoir une déclaration de l'ancien Directeur de l'Institut de la Navigation Aérienne à Luxembourg concernant le renouvellement de son contrat. Le Tribunal a considéré à cet égard que « même si des promesses avaient été faites, le requérant n'était pas parvenu à prouver qu'elles émanaient bien de l'autorité compétente, la politique d'emploi à Eurocontrol relevant des attributions exclusives du Directeur général ». S'agissant de cette condition également, les organisations ont un devoir de diligence.

Le TAOIT se penche avec soin sur les allégations des organisations mises en cause visant à affirmer l'incompétence du fonctionnaire dont émane la promesse. Tel est le cas par exemple

dans le jugement n°1278, Rogatko (1993). L'OMS prétendait que le Chef de l'unité n'était pas compétent pour établir l'attestation dont se prévalait le requérant. La réponse du Tribunal à cette objection ne laisse pas d'espace au doute : « L'argument de l'Organisation selon lequel le Chef de l'unité n'était pas compétent pour établir l'attestation du 17 décembre 1991 est sans pertinence. La question de savoir si ce fonctionnaire n'aurait pas dû l'établir est une affaire entre lui et l'Organisation. Ce qui importe ici, c'est la preuve qu'elle contient de ce qu'était la situation lorsque le requérant a pris ses fonctions au Centre ». Le Tribunal conclut ainsi que l'Organisation avait l'obligation de tenir la promesse faite au requérant ou d'indemniser le requérant pour le préjudice subi.

La troisième condition consiste en l'existence d'un préjudice : il faut que la violation de la promesse soit préjudiciable à la personne qui s'en prévaut. Cette condition comprend deux éléments : il faut, d'une part, que le bénéficiaire de la promesse se soit effectivement prévalu de cette promesse et, d'autre part, que le non-respect de la promesse lui ait causé un préjudice du fait qu'il s'en soit prévalu, en gardant à l'esprit la jurisprudence du Tribunal selon laquelle « le simple fait de ne pas honorer la promesse n'est pas constitutif, en soi, d'un préjudice... » (jugement n°3619, 2016, §17).

La quatrième condition est que l'état de droit n'ait pas changé entre la date à laquelle la promesse a été faite et la date à laquelle l'agent concerné a s'en prévaloir. En d'autres termes, la promesse doit être conforme à l'état de droit et non pas y contrevenir.

Commentaires

En matière de promesses des organisations, il existe une jurisprudence abondante du TAOIT, qui témoigne en soi de l'importance que les agents accordent à juste titre aux assurances qu'ils

estiment avoir reçu à un moment ou à un autre de leur carrière. L'obligation pour les organisations de respecter leurs promesses concerne toute sorte de contenus. S'il est vrai que les affaires pertinentes ont trait, dans la presque totalité des cas, à des promesses concernant la carrière des requérants -qu'il s'agisse de promotion, reclassement ou renouvellement de contrat – il n'en demeure pas moins que les principes édictés par le Tribunal sont susceptibles de s'appliquer à tout autre aspect des relations du fonctionnaire avec l'Organisation qui l'emploie.

Les conditions édictées par le TAOIT, au nombre de quatre, sont plutôt strictes et, de surcroît, sont cumulatives. C'est pourquoi le fonctionnaire qui cherche à se prévaloir d'une promesse devant le Tribunal doit être prêt à affronter un véritable « parcours du combattant ». Dans ces affaires, comme dans beaucoup d'autres, il est essentiel que le fonctionnaire soit prêt à apporter au Tribunal toutes les preuves qui s'imposent. L'Organisation, quant à elle, doit faire preuve de bonne foi et de diligence.

La jurisprudence du TAOIT en la matière est la plus complète dans le panorama des juridictions administratives internationales (comme par exemple celle du Tribunal Administratif de la Banque Mondiale). Elle a notamment inspiré les jurisprudences des autres juridictions. Il convient de souligner que selon le TAOIT, le fonctionnaire qui reçoit une promesse a un véritable droit subjectif à ce que la promesse soit honorée et non pas un simple « espoir légitime » (ou

« attente légitime ») comme c'est le cas dans certains droits nationaux (par exemple britannique et canadien) et nonobstant les opinions avancées parfois par la doctrine. La terminologie employée par le Tribunal ne laisse pas d'espace au doute : depuis le jugement dans l'affaire Gieser précitée le Tribunal se réfère au « droit » de l'agent à qui la promesse a été faite. Parallèlement,

l'Organisation a une « obligation légale d'honorer la promesse » (v. jugement n°3619, 2016)

Le droit au respect d'une promesse ne saurait donc être confondu avec l'espoir légitime. Ce dernier selon le TAOIT peut dériver, entre autres, du simple fait d'être titulaire d'un contrat (jugement n°17, Duberg, 1955) et permet à l'agent tout simplement d'escompter que son contrat soit « normalement renouvelé » (jugement n°2660, 2007), alors que l'obligation de l'Organisation est « d'examiner s'il est ou non dans son intérêt de ; combler cet espoir et de prendre sa décision en conséquence »(ibidem). Le droit dont il s'agit ne s'assimile non plus à un droit acquis, qui est un droit « subjectif » particulièrement « résistant » en ce qu'il survit à tout changement, même radical, du cadre législatif.

Le droit à ce que l'Organisation s'acquitte de son obligation (le respect de sa promesse) peut être exigé à la condition que l'état de droit n'ait pas changé et sous cet aspect également revêt les caractéristiques propres aux droits subjectifs.

Disclaimer

These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice, and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organization may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.

THE OBLIGATION OF INTERNATIONAL ORGANIZATIONS TO RESPECT PROMISES MADE TO A STAFF MEMBER

By Giovanni Palmieri, legal advisor

SUMMARY

It is clear from the ILOAT case law that international organizations should honor the promises they have made to their staff. To be taken into account by the Tribunal, any promise must satisfy several conditions.

First condition: the promise must consist of an assurance to do or not to do, or to tolerate an act. The second condition is that the promise must be made by a person who is or is supposed to be competent to make it. Third condition: the breach of the promise must be detrimental to the person who relies on it. This condition includes two elements: the beneficiary has availed himself of the promise and the non-fulfillment of it has caused him prejudice by the fact that he has availed himself of it. The fourth and final condition is that the rule of law must not have changed between the date of the promise and the time when it must be honored. On each of these conditions, there is an important case law of the ILOAT, from which emerges, in particular, the burden for the claimants to provide proof of evidence of each of their allegations and for the organizations the obligation to deal with these questions in good faith and diligence.

RELEVANT CASE LAW

Under the principle of good faith, the beneficiary of a promise has the right to demand its fulfillment. Thus, an international civil servant can oblige the organization of which he is the staff to

carry out the promises it has made to him" (judgment °782, Gieser, 1986). Thus, the ILOAT establishes the right of any civil servant to demand the fulfillment of a promise made to him by an international organization. The basis of this right and the respective obligation of the Organization lies in the principle of good faith, namely, the mutual loyalty which must bind the organization to its staff. However, the exercise of this right is subject to a series of conditions which must be specified. They are set out in the aforementioned judgment and have been supplemented by subsequent case law about prejudice (see in particular judgment No. 3619 (2016)).

The first condition consists of the assurance of doing or not doing or tolerating an act. The staff who intends to rely on a promise must be able to prove the existence of the promise, i.e. its materiality. The proof is easy when there is a written record of this promise. Thus, the ILOAT in its judgment No. 1481 (Annabi, 1996) considered that the production of a telex was sufficient to establish the existence of an "effective promise to change the nature of the contract from which the claimant was to benefit within the time limits indicated". On the other hand, where there is no written record of a promise and the applicant has no possibility of proving its existence otherwise, the tribunal rejects the applicant's claim. For example, in judgment no. 1044, Colagrossi (1990), the Court concluded: "that there was no

evidence to suggest that such assurances were given to the applicant". Of course, it is not enough for the applicant to produce alleged written evidence. It must also be clear from these writings that a promise was made. In several judgments, the Court concluded that the documents produced did not show the existence of a firm commitment on the part of the organization (see judgments no. 956, Gianoli, 1989 and no. 1040, Douglas, 1990). Furthermore, the Tribunal requires that the organization also exercise due diligence and, at the very least, when confronted with an employee who takes advantage of an oral promise, deny it (see Judgment No. 1781, Schmidkunz, 1998).

The second condition is that the promise must come from a person who is competent or deemed to be competent to make it. For example, in judgment no. 2158, B v. EUROCONTROL (2002), the applicant relied on a statement by the former Director of the Institut de la Navigation Aérienne in Luxembourg concerning the renewal of his contract. The Tribunal considered in this respect that "even if promises had been made, the applicant had not succeeded in proving that they emanated from the competent authority, since the employment policy at Eurocontrol fell within the exclusive remit of the Director General". Concerning this condition as well, organizations have a duty of care.

The ILOAT carefully considers allegations by organizations in question aimed at asserting the incompetence of the staff from whom the promise emanates. This is the case, for example, in Judgment No. 1278, Rogatko (1993). WHO claimed that the Head of Unit was not competent to draw up the certificate on which the complainant relied. The Tribunal's response to this objection leaves no room for doubt: "The

Organization's argument that the Head of the Unit was not competent to draw up the certificate of 17 December 1991 is irrelevant. Whether he should not have drawn up the certificate is a matter between him and the Organization. What matters here is the evidence it contains what the situation was when the applicant took up his duties at the Centre. The Tribunal thus concludes that the organization had an obligation to keep the promise made to the complainant or to compensate the complainant for the damage suffered.

The third condition consists of the existence of prejudice: the breach of the promise must be detrimental to the person who relies on it. This condition comprises two elements: on the one hand, the beneficiary of the promise must have availed himself of the promise and, on the other hand, the breach of the promise must have caused him harm by having availed himself of it, bearing in mind the Tribunal's case law according to which "the mere fact of not honoring the promise does not constitute, in itself, harm..." (Judgment No. 3619, 2016, §17).

The fourth condition is that the rule of law has not changed between the date on which the promise was made and the date on which the employee concerned took advantage of it. In other words, the promise must be following the rule of law and not in breach of it.

COMMENTS

There is a large body of the ILOAT case law on the subject of organizational promises, which in itself reflects the importance that officers rightly attach to the assurances they feel they have received at some point in their careers. The obligation for organizations to keep their promises

applies to all kinds of content. While it is true that the relevant cases relate, in almost all cases, to promises concerning the career of the applicants' career - whether promotion, reclassification, or contract renewal - the fact remains that the principles laid down by the Tribunal are likely to apply to any other aspect of the staff member's relationship with the employing organization.

The four conditions laid down by ILOAT are rather strict and cumulative. This is why the civil servant who seeks to rely on a promise before the Tribunal must be prepared to face a real "obstacle course". In these cases, as in many others, the staff member must be prepared to provide the Tribunal with all the necessary evidence. The organization, for its part, must show good faith and diligence.

The ILOAT's jurisprudence in this area is the most comprehensive in the panorama of international administrative jurisdictions (such as that of the World Bank Administrative Tribunal). It has notably inspired the case law of other jurisdictions. It should be emphasized that according to the ILOAT, the official who receives a promise has a genuine subjective right to have the promise honored and not a mere "legitimate hope" (or "legitimate expectation") as is the case in certain national laws (for example British and Canadian) and notwithstanding the opinions sometimes put forward by the doctrine. The terminology used by the Tribunal leaves no room for doubt: since the judgment in the above-

mentioned Gieser case, the Tribunal refers to the "right" of the agent to whom the promise was made. At the same time, the organization has a "legal obligation to honor the promise" (see judgment no. 3619, 2016).

The right to the fulfillment of a promise cannot, therefore, be confused with the legitimate expectation. The latter, according to the ILOAT, can derive, among other things, from the mere fact of holding a contract (Judgement No. 17, Duberg, 1955) and allows the agent quite simply to expect that his contract will be "normally renewed" (Judgement No. 2660, 2007), whereas the organization's obligation is "to consider whether or not it is in its interest to fulfill this hope and to take its decision accordingly" (*ibidem*). The right in question is not assimilated to an acquired right, which is a "subjective" right that is particularly "resistant" in that it survives any change, even a radical one, in the legislative framework.

The right to have the organization fulfill its obligation (the fulfillment of its promise) can be demanded on condition that the rule of law has not changed and in this aspect also has the characteristics of subjective rights.

Disclaimer

These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice, and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organization may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.

What are discretionary powers? Are there limits?

By Neil Fishman, Attorney at Law (www.stafflawyer.com)

Mr. Fishman helps employees claim their rights, by advising them and providing legal representation in disputes and appeals with their employer. He also advises staff associations of international organizations on a range of topics, as well as by serving as an investigator or mediator. Prior to starting a private practice, Mr. Fishman provided legal advice within the United Nations system, with an expertise in employment law, for nearly a decade. He served as a staff member in numerous international organizations, including the World Trade Organization, Special Tribunal for Lebanon and as part of the legal secretariat of the WHO Global Board of Appeal. This article provides general information and is not legal advice.

Introduction

In the employment law of international organizations, discretionary power (or discretionary authority) refers to an organization's power to make a choice among a range of acceptable possibilities.¹ In simpler words, this refers to an organization's "freedom to act" when taking decisions about its staff.²

Discretionary Powers are Wide-Ranging

The caselaw of the ILO Administrative Tribunal (and UN Appeals Tribunal) recognizes that organizations have discretionary authority over a wide range of decisions.

This authority covers topics such as suspensions and disciplining of staff, extensions beyond the age of retirement, carrying on outside activities, the non-renewal of fixed-term contracts, the opening of investigations for misconduct, the transfer of staff to other positions, changes to

salary structures and grading systems, the classification of positions, decisions on restructuring, promotion and selection exercises and the waiver of deadlines to lodge internal appeals.

Discretionary Power is not Absolute

However, the existence of a "discretionary power" does not mean that an organization has absolute power to act in its own interest. On the contrary, an organization's freedom to act is subject to constraints.

The five Limits on Discretionary Powers

Limitation #1: An Organization's Rules

The first and most important constraint on discretionary power are the organization's own rules. Because an organization is empowered to establish its own rules, it is obliged to follow these rules. In interpreting this limitation, a Tribunal will examine a decision to determine whether the organization correctly applied its own procedures and whether a decision was in "regular form". A Tribunal can overturn a discretionary decision when the organization has not followed its own rules, but this breach must be shown to have caused injury to the staff member concerned. For example, in Judgment 4156, the ILOAT acknowledged that WIPO was obliged to remove and rectify a staff member's performance appraisal because of irregularities in procedure (mainly, the complainant's supervisor failure to engage in continuous dialogue, which was central to the evaluation procedure). By failing to do so, the decision was unlawful.

Limitation #2: A Decision Must Be Based on Correct Facts

A decision must also be based on correct facts. This means that a decision based on erroneous information will be deemed if this error played an important role in the decision-making process. For example, where a decision-maker refuses to appoint a staff member to a position because he or she considers that the selection panel did not unanimously recommend the candidate, an error of fact exists committed if the selection panel did in fact make a unanimous recommendation in favor of the candidate.³ However, for reasons of fairness, if the incorrect information on which a decision was based was due instead to the errors or negligence of the staff member who challenged the decision, a Tribunal may be hesitant to overturn the discretionary decision.

Limitation #3: A Decision Must Consider Essential Facts

In addition to the requirement that a decision must be based on correct facts, a decision-maker must also properly consider the “essential facts”. In other words, if a decision-maker ignores important facts that clearly should have been considered when the decision was made, a Tribunal may find that the decision is unlawful. For instance, in Judgment 4062 (cons. 7), the ILOAT found that the UNESCO Director-General overlooked essential facts when deciding not to renew a staff member’s contract for unsatisfactory service. In that case, the decision-maker overlooked the extraordinary pressure on the section in which the employee worked, the serious lack of communication between the employee and her supervisor, and the employee’s long and satisfactory work performance. Ultimately, the devil is in the details. A Tribunal will have to determine whether a fact is indeed essential.

Limitation #4: An Organization Cannot Reach a Clearly False Conclusion

A decision will also be found unlawful if it was based on a clearly mistaken conclusion. When considering this limitation, one must view the decision through the lens of an organization’s “freedom to act”. When taking discretionary decisions, a mere claim that an organization’s specialist committee or expert made an incorrect assessment will not be enough for a Tribunal to overturn the decision. Tribunals consider that organizations are entitled to deference when they employ experts to advise on topics such as reassignment, classification or grading of positions.

Such decisions involve the exercise of value judgments, and a judge will not redo the work of the specialist and conduct its own assessment. However, if a Tribunal considers that a decision-maker’s conclusion is “totally implausible or involved an obvious mathematical error”,⁵ it will be found unlawful.

This is a very high standard. However, the ILOAT found in one case that qualifying an incident as serious misconduct warranting summary dismissal could in some circumstances amount to a clearly mistaken conclusion to draw from the facts.⁶ In that case, a staff member was summarily dismissed for serious misconduct for having accused a supervisor of being a “fascist” and “a Nazi” in the organization’s office, after he halted a publication on which she worked. Given several factors, including the staff member’s immediate apology to the individual concerned, the Tribunal found that the disciplinary measure was so disproportionate to the unacceptable behavior that it amounted to a mistake of law.

Limitation #5: Decisions Cannot Be Based on a Misuse of Authority

A discretionary decision may also be deemed unlawful if it involved a misuse (or abuse) of authority. This means that the decision was extraneous (or not related) to an organization's interests. However, a misuse of authority may not be presumed. A staff member must substantiate the accusation with evidence and not speculation (or conjecture). For example, if in a selection process a candidate alleges that he was not selected due to the selection panel's bias against him, he must present evidence supporting this claim.

As a recent example, in Judgment 4072, cons. 14, the ILOAT found that the Global Fund had abused its authority by threatening to place a staff member on a performance improvement plan because it considered that he did not meet the requirements of his new position after a restructuring. The Tribunal noted that the organization had unlawfully sought to use a tool designed to correct identified underperformance to address his potential future underperformance in a new role.

Internal Appeal Bodies May Conduct a Broader Review of Decisions

It should be noted that while a Tribunal will apply the above five principles when conducting a "limited review" of a discretionary decision, an organization's internal appeal body may conduct a broader review. In Judgment 3184, cons 15, 48.

The ILOAT noted that internal appeal bodies are an organization's primary trier of fact, and "an important safeguard of staff rights and social

harmony in an international organization". In cases concerning decision on misconduct, an appeal body is required to "weigh the evidence", and not merely examine whether there were procedural flaws in the process.⁸ For that reason, internal appeal bodies are empowered to fully examine the circumstances of an appeal and make recommendations to address illegality and unfairness. Ultimately, internal appeal boards only make recommendations, which may (or may not) be accepted by an organization's executive head. In this regard, during a May 2023 meeting between ILOAT judges and legal practitioners, ILOAT President, Judge Michael Moore, expressed concern that some internal appeal bodies had misinterpreted their role by conducting only a "limited review" of a decision, as if they themselves were discharging the role of a tribunal. The ILOAT therefore has signaled that internal appeal boards should feel empowered to fully discharge their mandates.

Seek Legal Advice When Challenging an Organization's Discretionary Authority

While the discussion above should help an employee understand the potentially confusing concept of discretionary powers, staff members who wish to challenge a discretionary decision should consult an attorney with experience in international civil service law. Legal advice can help a staff member determine the strongest arguments in their favor, ensure that sufficient evidence is presented and ultimately assert their rights.

Disclaimer

These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organization may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.

In the Spotlight: Reporting Sexual Harassment in the Workplace

By Lucija Baumann, Legal Consultant at Modulaw

Harassment of any type is antithetical to the principles of the United Nations (UN), and sexual harassment in particular undermines its credibility and degrades its staff. Five years after the UN Secretary-General established the Chief Executives Board for the Coordination Task Force on Addressing Sexual Harassment (Task Force), addressing and effectively investigating sexual misconduct within the UN system remains a persistent challenge.

The Task Force is now in its third phase and has launched a number of initiatives which promote a more victim centred approach in addressing sexual harassment. This article provides an overview of the progress made in the last five years by the UN and the Task Force. It also assesses potential areas where further work is necessary to make reporting for victims more transparent and enhance coordination between different UN agencies.

What is the UN definition of sexual harassment?

As set out in the UN Secretary-General's Bulletin on Addressing discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2019/8), the key features of sexual harassment are:

- Unwelcome conduct of a sexual nature that takes place in the workplace or in connection with work;
- it can occur as a pattern of conduct or be a single incident;

- the conduct may be of a verbal, nonverbal or physical nature, including written and electronic communications; and

- it may occur between persons of the same or different genders and individuals of any gender can be either the targets or the perpetrators.

How do you lodge a complaint?

There is a comprehensive reporting system for sexual harassment in the UN. Reports can be made through various channels, including designated focal points within each UN entity, specialised units such as the Conduct and Discipline Teams, or through the UN's confidential helpline. This reporting system aims to provide a safe and supportive environment for victims to seek justice and hold perpetrators accountable. Reports may be submitted anonymously, information provided will be treated confidentially and will only be disclosed to those who have a legitimate need to know.

Generally, each UN agency will have its own reporting mechanism which can be found on the entity-specific Intranet. If there is uncertainty as to which entity the alleged perpetrator belongs to, staff can report incidents through the UN Office of Internal Oversight Services (OIOS) which offers a confidential helpline called Speak Up. The 24-hour resource offers UN personnel the opportunity to speak confidentially with impartial and trained individuals, who can provide information on protection, support and reporting mechanisms. Once a report has been made, the investigation team will start by making a prima facie

assessment of the allegations to establish whether an investigation is warranted. If it is, the team will initiate the fact-finding process based on the agency's investigation manual. All staff members are required to cooperate fully with investigations. Based on the evidence gathered during the investigation, the team will put together a confidential report which should include their findings and whether they consider the allegations have been substantiated. The report might also include recommendations for potential disciplinary action.

The ClearCheck Screening Database

In order to increase transparency and prevent perpetrators from switching to a different UN agency after being found guilty of committing sexual misconduct, the UN developed the screening tool, ClearCheck. ClearCheck is a highly secure and confidential centralised database. It permits UN agencies to share information on UN personnel against whom allegations related to sexual harassment have been established as well as those who were the subject of a pending investigation and/or disciplinary process and resigned before the investigation was completed. Importantly, the platform records individuals who had any type of contractual relationship with the UN whether on a long- or short-term contractual basis with the aim to prevent re-employing them within the UN system.

Launch of the UN Knowledge Hub on Addressing Sexual Harassment

Most recently, the Task Force launched a new UN System-wide Knowledge Hub on Addressing Sexual Harassment. The Knowledge Hub serves as repository of resources from across the UN system on addressing sexual harassment and

currently has 34 participating entities. It is intended to help enhance coordination between UN agencies and facilitate easier access to key documents for internal and external audiences, and is available to all UN personnel, Member States and civil society. The Hub offers a complete list of resources which includes the UN Code of Conduct to prevent sexual harassment, the UN Manual on Investigation of Sexual Harassment Complaints as well as resources available to individuals affected by sexual harassment.

More work remains to be done

While efforts continue to be made by the UN, the investigation of sexual harassment incidents remains a challenge for the organisation and there is a need for substantial reforms to ensure a safer and more inclusive working environment for all staff members. Some of the key areas for improvement include:

Lack of accountability: Holding perpetrators accountable for their actions remains too often wishful thinking for victims. They are still faced with instances where individuals accused of sexual harassment face minimal consequences, are transferred to other UN missions without proper investigation or disciplinary action, or resign before investigations conclude so that their cases are closed.

Inadequate reporting mechanisms: While a lot of effort has been made to improve the UN's reporting mechanisms for sexual harassment, they still follow complex and bureaucratic processes. The average time for an incident to be investigated is 12 months from reporting. This leaves victims in a limbo for a significant time and often forcing them to face the perpetrator on a daily basis.

Slow response and lack of transparency: The investigation process has been criticised for its slow response in addressing sexual harassment allegations. Delays in investigations and lack of transparency in sharing information about the progress of cases have raised concerns about the UN's commitment to addressing the issue.

Power imbalances and culture of impunity: The hierarchical structure of the UN coupled with power imbalances has been identified as a contributing factor to the prevalence of sexual harassment. It is essential that managers and executives do not foster a culture of impunity where individuals in positions of power are protected and shielded from accountability.

Insufficient prevention and awareness programs: There is a need for comprehensive and mandatory training programs for all staff members, including senior officials, to raise awareness about sexual harassment, its impact, and the importance of reporting incidents.

Lack of diversity and gender parity: Lack of gender parity and diversity further contributes to an environment where sexual harassment is more likely to occur. Therefore, increasing the representation of women in leadership positions and decision-making roles is crucial to addressing the issue effectively.

It is important to acknowledge the improvements made by the UN and to recognise that investigating sexual harassment within the UN is highly complex due to its size, global reach and its limited resources. The introduction of a dedicated hotline for reporting sexual harassment, the creation of special units to deal with such complaints as well as the introduction of more checks and balances in the hiring process of UN personnel are all welcome steps in the right direction. However, concerns remain about the lack of transparency and accountability in addressing sexual harassment cases as well as a lack of consistency in the conduct of investigation across UN entities.

Importantly, UN staff should be regularly updated on policies and reporting mechanisms and encouraged to report serious conduct without fear of retaliation. Modulaw stands ready to support staff if they require assistance with filing complaints or during investigation and disciplinary processes.

For similar updates, subscribe to Modulaw's monthly blog or follow Modulaw on LinkedIn.

Disclaimer

These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.

Les investissements responsables au cœur de l'actualité



Les investissements ESG, un acronyme pour **Environnement, Social et Gouvernance**, sont devenus un sujet central dans le monde de la finance et de l'investissement au cours de la dernière décennie. Cette approche d'investissement cherche à intégrer des critères environnementaux, sociaux et de gouvernance dans le processus de sélection des investissements. Dans cet article, nous explorerons l'historique des investissements ESG, les motivations qui sous-tendent cette approche, les risques associés à ces investissements.

Historique des Investissements ESG

Les investissements ESG ont des racines qui remontent aux années 1960 et 1970, lorsque les premières préoccupations environnementales ont commencé à émerger. Cependant, ce n'est que dans les années 2000 que cette approche a vraiment gagné en popularité. Plusieurs facteurs ont contribué à cette montée en puissance :

Les crises environnementales et sociales : Des événements tels que le déversement de pétrole de l'Exxon Valdez en 1989 et les scandales financiers à grande échelle ont attiré l'attention sur la nécessité de prendre en compte les impacts environnementaux et sociaux des entreprises.

La sensibilisation croissante : Les consommateurs et les investisseurs ont commencé à se soucier davantage des questions liées à l'environnement et à la responsabilité sociale des entreprises.

La réglementation : Les gouvernements ont commencé à introduire des réglementations pour

encourager la divulgation d'informations ESG et intégrer ces critères dans les décisions d'investissement.

La performance financière : Des études ont montré que les entreprises adoptant des pratiques ESG solides peuvent être plus stables et résistantes aux crises, ce qui peut se traduire par une meilleure performance financière à long terme.

Le Rôle du 1er Fond Obligataire Luxembourgeois dédié aux Investissements ESG

En 2021, le Luxembourg a marqué un jalon significatif en devenant le pays hôte du tout premier fond obligataire dédié aux investissements ESG. Ce fond a été créé pour répondre à la demande croissante des investisseurs souhaitant intégrer des critères ESG dans leurs portefeuilles de titres à revenu fixe. Il reflète l'engagement croissant de l'industrie financière et du Luxembourg à promouvoir des investissements durables.

Les investisseurs sont **motivés** par diverses raisons pour adopter une approche ESG :

Responsabilité sociale et éthique : Beaucoup d'investisseurs veulent aligner leurs investissements avec leurs valeurs personnelles en soutenant des entreprises qui ont un impact positif sur la société et l'environnement.

Gestion des risques : Les critères ESG aident à évaluer les risques potentiels liés aux pratiques environnementales et sociales d'une entreprise, ce qui participe à protéger les investisseurs contre les pertes financières.

Opportunités de croissance : Les investisseurs anticipent également des opportunités de croissance dans les secteurs liés aux énergies propres, à la technologie durable et à d'autres industries ESG.

Exigences réglementaires : Les réglementations et les lois de plus en plus strictes incitent les investisseurs à prendre en compte les facteurs ESG pour se conformer à la législation en vigueur.

Malgré les avantages potentiels, les investissements ESG ne sont pas **sans risques** :

Performance inférieure : Certains investisseurs craignent que l'intégration des critères ESG ne limite leur capacité à obtenir des rendements financiers optimaux.

Manque de normes claires : Il n'existe pas de normes mondiales uniformes pour les investissements ESG, ce qui peut rendre difficile la comparaison des entreprises et des fonds.

Greenwashing : Il existe un risque de « greenwashing », où certaines entreprises peuvent exagérer leurs initiatives ESG pour attirer les investisseurs sans réellement respecter ces normes.

Volatilité sectorielle : Les secteurs ESG peuvent être volatils et dépendants de réglementations gouvernementales, ce qui peut entraîner des fluctuations inattendues.

En conclusion, les investissements ESG ont évolué au fil du temps pour devenir une approche d'investissement incontournable. Ils sont motivés par des préoccupations environnementales, sociales et éthiques, mais il convient de bien s'informer avant d'investir. Le premier fond obligataire luxembourgeois dédié aux investissements ESG illustre l'importance croissante de cette approche dans le paysage

financier mondial, en offrant aux investisseurs une option solide pour aligner leurs valeurs avec leurs investissements.

L'AMFIE intègre progressivement des actifs ESG dans ses solutions. Par exemple, lors d'un investissement dans le Plan d'Épargne Prévoyance, un sociétaire peut sélectionner un des 6 fonds ESG proposés et les panacher.



Maël Guillou
Relationship Manager
AMFIE

2022 Impact Report



UNFCU's 2022 Impact Report Highlights Strong Progress on Advancing UN Sustainable Development Goals

Maintains Climate Neutrality for the 7th Consecutive Year

United Nations Federal Credit Union (UNFCU) released its 2022 Impact Report (PDF), detailing the Credit Union's corporate social responsibility (CSR) initiatives. UNFCU's positive impact advanced 14 of the 17 UN Sustainable Development Goals (SDGs).

Key achievements in support of the UN SDGs:

100% climate neutral since 2016

Updated investment policies to prohibit investments in tobacco, firearms, and fossil fuel industries

Expansion of United in Sustainability (UIS) Network to 100 credit unions

132% increase in the number of accounts across all green products

12 years' active membership in the UN Global Compact

5 strategic initiatives completed by Diversity,

Equity, Inclusion, and Belonging (DEIB) programs
UNFCU Foundation empowered more than 13,300 women and youth in marginalized communities

"At this midway point for collective global action on achieving the UN SDGs, we are committed to

prioritizing positive change in the communities we serve,” said Yma Gordon, Vice President of Corporate Social Responsibility and Impact at UNFCU, and Executive Director of the UNFCU Foundation. “Our CSR is guided by the UN SDGs and is a reflection of and commitment to our members' work globally.”

Last year, for example, UNFCU expanded the UIS Network it founded for credit unions and their associations beyond North America. UNFCU's staff also conducted more than 6,000 volunteer hours working on internal and external sustainability initiatives.

“From shaping allyship and supplier diversity programs to regularly convening our industry on environmental, social, and governance (ESG), 2022 was a year of action,” said Prasad Surapaneni, Co-Executive Sponsor of UNFCU's CSR Program. “With this momentum, we aim to contribute even more to advancing the UN SDGs.”

Philanthropy is one of three focus areas for UNFCU's CSR. The UNFCU Foundation, an accredited New York-based nonprofit corporation, invested \$1 million in poverty alleviation for women and youth, and humanitarian relief efforts. Against the backdrop of socio-economic and geopolitical uncertainty, UNFCU Foundation supported critical access to education, health

care, and jobs training.

UNFCU developed its 2022 Impact Report with reference to the Global Reporting Initiative (GRI). In close collaboration with Greenhouse Gas Accounting specialists, the Credit Union tracked emissions using the Greenhouse Gas Protocol standard.

About United Nations Federal Credit Union (UNFCU)

UNFCU is the member-owned credit union of the United Nations community, dedicated to providing financial peace of mind. UNFCU was founded in 1947 and serves more than 200,000 members across the globe. In 2015, it established the UNFCU Foundation, which has a mission to sustain the path out of poverty through healthcare and education for women and youth.

You can learn more in the UNFCU 2022 Impact Report (PDF).

For media questions, contact:

Elisabeth Philippe, UNFCU, +1 34758686586776,
mobile: +1 347-510-4036,
or ephilippe@unfcu.com