

Research on the Operational System of the United Nations Dispute Tribunal and Appeals Tribunal

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Abstract: *In order to address the situation where United Nations staff are unable to seek judicial remedies for rights violations in the workplace, the United Nations has established a new internal justice system dedicated to creating a fair and just work environment for staff. The Dispute Tribunal and the Appeals Tribunal, as two-level courts within the internal judicial system, provide formal judicial remedies for employees. However, with the increase in the number and types of cases, the court has exposed defects in its operation, such as narrow jurisdiction, unclear legal application, and insufficient judges to meet the needs of the case. Looking ahead to the future of the court, it is necessary to appropriately relax its jurisdiction, clarify the application of laws, increase the number of part-time judges, further improve the court's operating mechanism, and provide timely and effective judicial remedies for all employees.*

Keywords: *United Nations Dispute Tribunal; United Nations Appeals Tribunal; Jurisdiction; Application of Law*

1. Background of the emergence of the United Nations Dispute Tribunal and the Appeals Tribunal

1.1 Response to international human rights protection

The preamble and Article 1, paragraph 3 of the Charter of the United Nations clearly state that "promoting and encouraging respect for all humanity and human rights and fundamental freedoms" is one of the purposes of the United Nations. The expression 'all humanity' indicates that the protection of human rights should not only include individuals under national jurisdiction, but also individuals under international jurisdiction. As a promoter of human rights protection and the most influential international organization, the United Nations has more reason to promote the realization of "universal respect and protection of human rights" within its internal organizations. For United Nations staff, their work rights, welfare guarantees, and access to relief all fall within the scope of human rights protection. The emergence of dispute courts and appellate courts has provided effective remedies for staff seeking human rights protection.

1.2 Response to the contradiction between jurisdictional immunity enjoyed by staff and domestic remedies

Staff members within the United Nations system are bound by the Organization's Staff Regulations and Administrative Notices, and must comply with the laws of the country in which they work. At the same time, Article 104 of the Charter of the United Nations states that "the Organization shall enjoy the legal capacity necessary for the execution of its purposes and the achievement of its purposes within the territory of each Member State Article 105 of the Charter of the United Nations: "1. The Organization shall enjoy the privileges and immunities necessary for the achievement of its purposes within the territory of each Member State. 2. Representatives of Members of the United Nations and employees of the Organization shall also enjoy the privileges and immunities necessary for their independent exercise of the functions of the Organization." and Article 5 of the Convention on the Privileges and Immunities of the United Nations United Nations personnel shall be granted immunity from litigation arising from their official remarks and actions. This results in staff being unable to seek judicial relief from the courts of their home country and workplace when facing violations of their work rights.

Therefore, it is necessary for the United Nations to provide an effective remedy for its staff when their rights are violated. As early as a few decades ago, international organizations resolved the "Modeno

case" through judicial methods, which was the first employee case resolved by international organizations themselves through judicial methods. A new approach was provided for international organizations to establish permanent judicial institutions - the establishment of permanent judicial institutions. In 1949, with the approval of the United Nations General Assembly, the United Nations Administrative Tribunal was established. Subsequently, through the reform of the internal justice system, the currently operating two tiered courts - the United Nations Dispute Tribunal and the Appeals Tribunal - were established. The emergence of dispute courts and appellate courts has responded to the need for United Nations staff members to seek relief in their home and local courts when facing rights violations in the workplace due to their jurisdictional immunity[4-7].

2. The operational difficulties of the United Nations Dispute Tribunal and the Appeals Tribunal

After the reform of the internal justice system, the number of cases accepted and disposed of by the United Nations Dispute Tribunal and Appeals Tribunal has significantly increased. In the first year after the reform alone, the number of cases received has exceeded 8 times the number before the reform, and has maintained an upward trend in the following years. The final judgment of the court not only provides judicial relief for the parties involved in the case, but also provides important contributions to the resolution of internal disputes within the organization and the protection of the work rights of staff members. However, with the expansion of the functions of the United Nations, the number and causes of internal disputes have increased, and the current operation of the Dispute Tribunal and the Appeals Tribunal cannot meet the requirements[1-3].

2.1 *The jurisdiction is too narrow to cover all staff members*

Firstly, the United Nations Dispute Tribunal and the Appeals Tribunal, as part of the internal judicial organs of the United Nations, are themselves special judicial institutions with limited jurisdiction rather than general jurisdiction. Courts with general jurisdiction are not limited by the types of cases and can hear various types of cases. Courts with "limited jurisdiction" can only hear limited categories of cases and usually have a high degree of specialization. The Dispute Tribunal and the Appeals Tribunal, through their "limited jurisdiction", specialize in handling cases involving staff and internal disputes within the organization.

Secondly, the jurisdiction of the Dispute Tribunal and the Appeals Tribunal comes from internal legislation within the organization, expressed in the form of court regulations. In terms of jurisdiction over matters, Article 2 of the United Nations Dispute Tribunal Statute provides specific provisions for the matters under the jurisdiction of the Dispute Tribunal. The Tribunal accepts appeals related to employment disputes and dissatisfaction with administrative decisions. However, with the diversification of forms of harm to employee interests, many cases of harm to employee rights cannot receive judicial relief because they do not comply with the jurisdiction stipulated in the Tribunal Statute. The court can only refuse to accept such cases on the grounds that they do not meet the "limited jurisdiction". In terms of jurisdiction over individuals, Article 3 of the statute of the United Nations Dispute Tribunal stipulates that any staff member of the United Nations (including former staff members and any person claiming to be a competent or deceased staff member at the time) may apply to the Tribunal. However, in practice, the definition of "staff" directly affects whether United Nations personnel are eligible to apply for relief as parties to the court. In the Mindua case, the parties involved were selected by the General Assembly as judges of the International Criminal Court and the International Tribunal for the Former Yugoslavia. After completing their work, they applied to the Dispute Tribunal for compensation due to not receiving their salaries. The dispute court refused to accept the case as not within the personal jurisdiction of the court. The explanation given by the court is that the parties, as former ad litem judges of the International Tribunal for the Former Yugoslavia, are elected by the General Assembly and do not meet the requirement of Article 101 (1) of the Charter of the United Nations that "staff" should be appointed by the Secretary-General and a letter of appointment should be issued by or on behalf of the Secretary-General. Therefore, the Dispute Tribunal refuses to accept the case on the grounds that it does not comply with the "staff" referred to in Article 3 of the United Nations Dispute Tribunal. Similarly, in the Elhabil case, the Dispute Tribunal refused to accept Elhabil as a staff member of the United Nations Relief and Works Agency for the Near East on the grounds that the appointment letter signed by the Secretary General or an official acting on his behalf did not comply with the "staff member" provisions of Article 3 of the Dispute Tribunal's Statute. At the same time, the Dispute Tribunal also pointed out in the Mindua case that while fully recognizing the applicant's right to justice, the Tribunal was forced to apply its Statute, making it unable to exercise jurisdiction over the application. However, as the court cannot create

legal channels for applicants beyond the Statute, it can only emphasize that the lack of specific legal basis for judges to resort to justice is a serious flaw that requires prompt intervention from internal legislators. In addition, the dispute resolution manual on the website of the United Nations internal justice system clearly stipulates that interns can only apply for evaluation by authorities but cannot apply to the dispute tribunal. Response to the contradiction between jurisdictional immunity enjoyed by staff and domestic remedies solating interns outside the jurisdiction of the court contradicts the original intention of the internal justice system to provide a fair and just internal dispute resolution mechanism for all staff members; On the other hand, compared to regular employees, interns themselves enjoy limited protection and are more likely to be infringed upon in the work environment. However, based on personal reasons, interns have no right to apply for relief from the court in the face of rights infringement[8-11].

Once again, as a second instance court, the jurisdiction of the United Nations Appeals Tribunal is also very limited. Article 2 of the Statute of the United Nations Appeals Tribunal stipulates that the scope of jurisdiction of the Appeals Tribunal mainly involves the Dispute Tribunal exceeding its jurisdiction or authority during the trial of cases, failure to exercise jurisdiction in accordance with regulations, and errors in the application of law. The general principle of enjoying the right of appeal is that only appeals against the final judgment of the dispute court can be accepted. From this perspective, the emergence of the appellate court did not expand the jurisdiction of the dispute court and the appellate court, but rather relied on the fact that the dispute court did not hear on the basis of limited "subject matter jurisdiction" and "personal jurisdiction".

In addition, there are many situations in practice where United Nations staff members are unable to apply for judicial relief when their rights are violated in the workplace. In summary, the jurisdiction and personal jurisdiction of dispute courts and appellate courts are too narrow on the basis of "limited jurisdiction", which cannot meet the relief needs of employees' rights infringement in the workplace.

2.2 Unclear legal application and limited scope of application

The legal application issues of the United Nations Dispute Tribunal and the Appeals Tribunal are relatively clearly defined in the statutes of the Tribunal, but do not exist in the form of independent provisions, but are included in the provisions of the Tribunal's "jurisdiction over matters". Article 2 (1) of the statute of the United Nations Dispute Tribunal stipulates that the Dispute Tribunal has the power to hear and make judgments on "appeals against administrative decisions accused of non-compliance with appointment conditions or employment contracts" and "appeals against administrative decisions that take disciplinary measures". The terms "conditions of appointment", "employment contract", and "disciplinary measures" here indicate that the legal application of the Dispute Tribunal in hearing cases mainly comes from two categories: employment contract and internal rules of the United Nations organization.

However, relying solely on so-called employment contracts and internal rules of the United Nations organization as trial standards is far from enough when trying specific cases in the court. The essence of an employment contract is a "contract", and the establishment, effectiveness, termination, breach of contract, and the division of liability for breach of contract cannot be solved solely by relying on the provisions of the employment contract, which requires the use of contract law. As an international organization, the United Nations does not have its own contract law, and can only derive general principles of contracts by comparing the internal contract laws of various countries, using general principles as the basis for sentencing. For example, the internal rules of the United Nations organization exist in the form of resolutions of the United Nations General Assembly, which belong to the "internal law" of the United Nations organization and are also "secondary legislation". The interpretation and application of "secondary legislation" cannot be separated from the provisions of international treaties and international law. In addition, in the practice of dispute courts and appellate courts, there are significant differences in the hierarchical system of applicable legal norms compared to other international courts. In other international courts, treaties occupy an important position in the application of law, followed by international customs, general legal principles, and other legal norms. Article 38 of the Statute of the International Court of Justice is a typical example where treaties are placed in an important position in the application of law. However, in terms of legal effectiveness, there is no hierarchical relationship between treaties, international customs, or general principles. For dispute and appellate courts, "contract" (employment contract) and "internal law" are given priority in the application of law in the court. When handling cases, the court will first apply "contract" and "internal law", while treaties, international customs, and general legal principles are ranked later. Although treaties and international customs are ranked lower in application, they themselves have a higher level of effectiveness. Once "contract" and "internal law" contradict the provisions of the underlying treaty or

international custom, then "contract" and "internal law" are deemed invalid. In addition, due to the inability of international law rules to regulate judicial relations, and the inherent private law nature of internal disputes among staff within the United Nations organization, there may be situations in practice that cannot be relied on [12-14].

Unclear legal application can bring many problems to specific judicial practice. On the one hand, for the parties involved in the case, there is no other legal basis besides the employment contract and internal rules of the United Nations organization, making it difficult to predict the outcome of the trial, which can lead to a loss of confidence in the lawsuit and inhibit the willingness to sue. On the other hand, for the court, unclear application of the law can bring about a risk of excessive discretion. The United Nations organization will avoid risks by strictly controlling the scope of case acceptance. Although the establishment of the appellate court also avoids this risk to some extent, it is far less direct than controlling the scope of case acceptance. This will further lead to the problem of insufficient court authority, limited acceptance capacity, and inability to meet employee demands.

3. Reform directions for the United Nations Dispute Tribunal and Appeals Tribunal

3.1 Expand jurisdiction and relax the definition of "staff"

The United Nations' Handbook on Dispute Resolution in the Judicial System states that the jurisdiction of a court refers to the status of a judicial authority enjoyed by the court in a type of case or against a type of party. The rules of jurisdiction, as the "golden rule" of the court, are the foundation of the court's standing. If there is a lack of jurisdictional rules, there is no place to discuss the application and implementation of other trial rules. The current dispute courts and appellate courts have a narrow jurisdictional scope, and appropriately expanding the jurisdiction of the courts is conducive to promoting the healthy development of the courts and thereby promoting the development of the entire United Nations organization.

Firstly, for the dispute court, the management evaluation has already divided and digested most of the cases that require litigation, and the court itself no longer needs to set strict jurisdiction rules, which should be appropriately relaxed. On the one hand, incorporating multiple types of employee cases in the "jurisdiction over matters" provides relief for employees encountering new rights violations in the workplace. On the other hand, in terms of "jurisdiction over individuals", the benefits of employees who can apply for litigation should be extended to every employee working for the United Nations, no longer limited to formal employees who have signed formal employment contracts, but should also include interns from United Nations organizations and outsourced personnel working for various organizations.

Secondly, for the appellate court, as the second instance court of the internal judicial system, in addition to accepting appellate cases on its own, it should also play the supervisory function commonly possessed by the second instance court and flexibly adjust the jurisdiction rules of the dispute court based on the supervisory results. Specifically, the clerk of the appellate court shall review cases that the dispute court refuses to accept on the grounds of exceeding the jurisdiction rules. For cases where the rights of employees are indeed violated and judicial remedies are needed, but cases that are not within the jurisdiction rules of the dispute court and the appellate court are refused to accept, recommendations shall be made to the appellate court, and the appellate court shall issue instructions authorizing and guiding the dispute court to conduct the trial. On the one hand, the supervision of the appellate court can expand the jurisdiction of the dispute court and the appellate court, providing timely and effective judicial remedies for employees whose rights have been violated. On the other hand, the supervision of the appellate court can also control the number of cases and prevent excessive trial burden on the court and judges due to blind expansion of jurisdiction.

3.2 Clear legal application, not limited to "contracts" and "internal laws"

The application of law also plays an important role in the operation of the court. In addition to serving as a basis for judgment in case judgments, for the parties involved, the application of law can affect the litigation willingness of the people at that time. In general, employees who believe that their rights have been violated will seek legal basis based on their own case before filing a lawsuit with the court, and judge their victory rate based on the legal basis to decide whether to proceed with the lawsuit. Therefore, having clear legal application is equally crucial for the operation of the court.

4. Conclusions

Firstly, in the statute of the court, separate provisions on the application of law will be listed, changing the current situation where the provisions on the application of law in the court are hidden in the provisions of the jurisdiction rules, providing a clear basis for the application of law for the court and the parties involved. For example, in the statute of the Tribunal, it is pointed out that because the Dispute Tribunal and the Appeals Tribunal are special judicial bodies that handle disputes within the United Nations organization, "contracts" and "internal law" have the status of "special law" in the legal application of the Tribunal compared to other international tribunals. At the same time, it is pointed out that the legal application of the court is not limited to "contracts" and "internal law", and in specific practice, treaties or international customs can also be directly cited as the basis for judgment. On the one hand, the Dispute Tribunal and the Appeals Tribunal, as judicial institutions within the United Nations, are themselves established based on the United Nations Charter, which itself has a treaty nature. On the other hand, although "contract" and "internal law" have priority in legal application, they are indeed the "subordinate law" of treaties and international customs in terms of effectiveness. The establishment must comply with the provisions of general treaties and international customs, and conflicting "contracts" and "internal laws" shall be invalid. For example, in the Khisa case, the Dispute Tribunal simultaneously applied the provisions on human rights in the preamble of the United Nations Charter, Article 17 of the International Covenant on Civil and Political Rights, and Article 12 of the Universal Declaration of Human Rights, found that the authorities of the South Sudan Mission had violated the applicant's human rights, and ordered the defendant to compensate the party for six months of net salary. In addition, in the S. Nourain case, the Appeals Tribunal supported the Dispute Tribunal's rejection of the two sisters' application for return to work and compensation of wages on the grounds that S. Nourain and A. Nourain violated the core values of integrity of United Nations staff.

In addition, the development of case law is of great significance in court practice, and increasing the application of case law in law is also beneficial for the development of courts. As early as the time of the United Nations Administrative Tribunal, in order to clarify the rules regarding "litigation costs", the Tribunal cited several cases from the time of the League of Nations Administrative Tribunal in the "Crawford case". The appellate court has also cited its previous precedents in the Elhabil case to demonstrate that the appellate court can not only accept cases in which the dispute court makes judgments, but also cases in which appeals are made against intermediate orders of the dispute court. But it is required that appeals against intermediate orders must be "clearly" beyond the jurisdiction or authority of the intermediate order issued by the dispute court. The court's invocation of case law is not only limited to precedents made by the court itself, but can also sometimes refer to precedents made by other courts of the same type. For example, the United Nations Administrative Tribunal cited two judgments of the International Labour Organization Administrative Tribunal in the "Happenils case" to illustrate the rule that wages increase with the cost of living. It can be seen that not only the precedents of the court itself have guiding significance for the trial of the court, but also the precedents of other similar courts have reference significance for the development of dispute courts and appellate courts.

Finally, the position of legal doctrine in the application of law is also worthy of attention. US Supreme Court Justice Gray pointed out in the "Barquet Habenner case" that "in the absence of treaties, administrative, legislative acts, and judicial precedents, it is necessary to seek the works of jurists (in order to identify relevant practices) because they provide reliable evidence of the true essence of the law". Legal theory has made significant contributions to the development of law since the 16th and 17th centuries. Although its status in modern times is not as important as before, there are still courts that use it as evidence to determine the law. Article 38 of the Statute of the International Court of Justice stipulates that "the doctrine of the most authoritative experts in various countries is one of the auxiliary materials for determining international law", which endows legal doctrine with the status of auxiliary materials at the legislative level and has important reference significance for dispute courts and appellate courts

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