

Mohammed Bedjaoui

Fonction Publique Internationale et Influences Nationales¹

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[Mezinárodní úřednická služba a národní vlivy]

An avid reader may ask a legitimate question – why am I reviewing the treatise of Judge Bedjaoui ‘Fonction Publique Internationale et Influences Nationales’ published in 1958 if we are now in November 2025 and we have at our disposal a number of publications on the law of the international civil service³ as well as a body of extensive and authoritative case-law of a number of international administrative tribunals such as the Administrative Tribunal of the International Labour Organization,⁴ the World Bank Administrative Tribunal⁵ or the International Monetary Fund Administrative Tribunal?⁶

The reasons for writing this book review are essentially fivefold – firstly, without understanding the notion of an international civil servant, their conditions of work, rights and obligations, privileges and immunities, guarantees of independence and security, as well as different modalities of legal recourses against adverse administrative decisions or disciplinary sanctions it is not possible to understand the concept and the role of the international civil service; secondly, this concept and role must be understood throughout its development; thirdly, this treatise written by one of the most prominent international lawyers may inspire new generations of lawyers and other professionals to study the law of the international civil service; fourthly, the relevant chapter on international administrative tribunals is a must for understanding the development of the law of the international civil service; and, fifthly, I personally know Judge Bedjaoui (I met him at The Hague in March 1999 on the occasion of the March 1999 Diplomatic Conference on the 1999 Second Protocol to the 1954 Hague Convention and I must say that Judge Bedjaoui is a very modest and easy going person. In

¹ International Civil Service and National Influences – translated by the author. All the translations of French terms in the present book review are provided by the author.

² The Author is most pleased to recommend to the readers Judge Bedjaoui’s course on international public law « L’humanité en quête de paix et de développement (I) et (II), cours général de droit international public (2004), Tomes 324 (2006) et 325 (2006) de la collection, Martinus Nijhoff Publishers, Leiden/Boston, 2008.

³ I recommend to the reader the following publications (I am using them in my activities of the Legal Advisor of the UNESCO Staff Union): *Les agents internationaux*, Société Française pour le Droit International, Colloque d’Aix-en-Provence, Éditions A. Pedone, Paris, 1985; *Le contentieux de la fonction publique internationale*, Société Française pour le Droit International, Actes des Journées d’études des 9 – 10 décembre 1994, Éditions A. Pedone, Paris, 1996; *International Administration (Law and Management Practices in International Organisations)*, Edited by Chris de Cooker, Martinus Nijhoff Publishers, Leiden/Boston, 2009 ; and, Laurent Germond, *Les Principes généraux selon le Tribunal administratif de l’O. I. T.*, Éditions A. Pedone, Paris, 2009.

⁴ All the relevant ILOAT judgments may be consulted on-line at https://wwwwex.ilo.org/dyn/triblex/triblexmain.advancedSearch?p_lang=en. Website visited on 2 July 2025.

⁵ All the relevant judgments of the World Bank Administrative Tribunal may be consulted on-line at <https://tribunal.worldbank.org/judgments-orders>. Website visited on 2 July 2025.

⁶ All the relevant judgments of the International Monetary Fund Administrative Tribunal may be consulted on-line at <https://www.imf.org/external/imfat/jdgmnts.htm>. Website visited on 2 July 2025.

addition, Judge Bedjaoui worked with UNESCO and played a crucial role in diplomatic negotiations leading to the elaboration and adoption of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.)

Judge Bedjaoui's treatise is divided into four main parts: Introduction and Preliminary Chapter, First Part (*L'indépendance et la sécurité des fonctionnaires internationaux devant les pressions étatiques*),⁷ Second Part (*Les garanties d'indépendance et de sécurité*)⁸ and general conclusion (*L'avenir de la fonction publique internationale*).⁹ In addition, the treatise contains a detailed bibliography.

The introduction introduces a general background related to intergovernmental organizations and administrative unions, the League of Nations, as well as the United Nations and its specialized agencies. The preliminary chapter provides a historical overview of the intervention of the United Nations in Korea (pp. 23–26), that of the United Nations in Palestine and the Middle East (pp. 26–29), and other United Nations interventions and international administration of certain territories and focuses on the personnel staffing such interventions. The reader may be interested to read the definition of an international civil servant provided by Ms Suzanne Bastid,¹⁰ which reads as follows:

Est fonctionnaire international tout individu chargé par les représentants de plusieurs Etats ou par un organisme agissant en leur nom, à la suite d'un accord interétatique et sous le contrôle des uns ou de l'autre, d'exercer, en étant soumis à des règles juridiques spéciales, d'une façon continue et exclusive, des fonctions dans l'intérêt de l'ensemble des Etats en question.¹¹ (p. 53)

The First Part – The independence and security of international civil servants from state pressures – is divided into six parts: (i) *Le choix et la nomination des fonctionnaires internationaux*;¹² (ii) *Le "Lien de Fonction"*;¹³ (iii) *Les Obligations des Fonctionnaires Internationaux*;¹⁴ (iv) *Les Privilèges et Immunités des Fonctionnaires Internationaux*;¹⁵

⁷ The independence and security of international civil servants from state pressures.

⁸ The guarantees of independence and security.

⁹ The future of the international civil service.

¹⁰ Ms Suzanne Bastid was an eminent specialist in the law of international civil service, member and President of the United Nations Administrative Tribunal, and author of the Hague Academy Course 'Les Tribunaux administratifs internationaux et leur jurisprudence' (International administrative tribunals and their case-law – translated by the author), volume 092 (1957), on file with the author.

¹¹ 'An international civil servant is any individual entrusted by the representatives of several States or by an organism acting on their behalf, following an inter-State agreement and under the control of one or the other, to exercise, subject to special legal rules, in a continuous and exclusive manner, functions in the interest of all the States in question.'

I also refer the reader to the definition of "agent" with regard to the United Nations contained in the Advisory Opinion of the International Court of Justice of 11 April 1949 'Reparation for Injuries Suffered in the Service of the United Nations', p. 7, available on-line at <https://www.icj-cij.org/case/4> (website visited on 2 July 2025). This definition reads as follows: '(c) The Court understands the word "agent" in the most liberal sense, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions – in short, any person through whom it acts.'

¹² The selection and appointment of international civil servants.

¹³ The "Function Link".

¹⁴ The obligations of international servants.

¹⁵ The privileges and immunities of international servants.

(v) Les Traitements et les Avantages Économiques et Sociaux;¹⁶ and, (vi) La Cessation des Fonctions.¹⁷

I advise the reader to read attentively Section 4 (Les “qualités” du fonctionnaire international et les exigences de la fonction)¹⁸ (pp. 148–161) of part (iii) and, in particular, sub-parts 1 (L’esprit international),¹⁹ 2 (La loyauté internationale),²⁰ and 3 (Le secret professionnel).²¹ When introducing Section 4, Judge Bedjaoui states the fundamental principle that «Le fonctionnaire international doit se consacrer exclusivement à sa tâche qu’il « *accomplira en toute loyauté, discrétion et conscience.* ».²²

With regard to Part (iv), I recommend to the reader to read attentively sub-part I (Immunités et privilèges non fiscaux)²³ and, in particular, parts on legal basis of such immunities and privileges (pp. 186–195), functional character of privileges (pp. 196–209) and content of those immunities and privileges (pp. 210–240).

Sub-part II deals with tax exemption. When explaining main reason for such exemption, Judge Bedjaoui pointed out that

[N]ous croyons pouvoir trouver une explication à l’obligation pour tous les Etats d’exonérer les fonctionnaires internationaux, dans la notion d’*égalité nécessaire entre les fonctionnaires internationaux dans l’intérêt de l’Organisation et pour la bonne marche de son administration.*²⁴ (p. 251) (Reference to the footnote omitted.)

The Second Part of the book (Les garanties d’indépendance et de sécurité)²⁵ is composed of three sub-parts. A lawyer may be interested to read attentively parts II (Les Garanties Administratives),²⁶ and III (Les Garanties Juridictionnelles).²⁷

Part II describes, among others, UNESCO’s Appeals Board,²⁸ its composition, competence, functioning, and procedure (pp. 419 – 421). It also describes the history of the Administrative

¹⁶ The salaries and economic and social benefits.

¹⁷ The termination of functions.

¹⁸ The “qualities” of the international servant and the requirements of the position.

¹⁹ The international spirit.

²⁰ The international loyalty.

²¹ Professional secrecy.

²² The international civil servant must devote himself exclusively to his task, which he ‘will accomplish with complete loyalty, discretion and conscience.’

²³ Non-tax immunities and privileges.

²⁴ [W]e believe that we can find an explanation for the obligation for all States to exempt international civil servants in the notion of equality necessary between international civil servants in the Organization and for the smooth running of its administration.

²⁵ The guarantees of independence and security.

²⁶ Administrative Guarantees.

²⁷ Legal Guarantees.

²⁸ To settle the employment-related disputes, the Staff Regulations and Staff Rules of UNESCO provide for the establishment of the Appeals Board, an advisory body composed of the Chairperson, two members appointed by the Administration and two members representing the staff.

The Appeals Board is open to three categories of persons:

- current staff members;
- former staff members appealing an administrative decision or a disciplinary measure taken during their employment with UNESCO; and,
- persons on whom the staff member’s rights have evolved on their death.

They may appeal an administrative decision (express or implied) or a disciplinary measure.

Tribunal of the League of Nations, the Administrative Tribunal of the United Nations, the Administrative Tribunal of the International Labour Organization and other international administrative bodies.

I advise the reader to read attentively sub-parts 3 (La Compétence),²⁹ 4 (La Procédure)³⁰ and 5 (Les Voies de recours).³¹ When analysing *ratione personae* competence of international administrative jurisdictions, Judge Bedjaoui raises a very interesting and pertinent question whether the head of an intergovernmental organization may have recourse to international administrative jurisdictions and provides an affirmative answer to it (p. 453). The prophecy of this statement has been proven in three judgements of the Administrative Tribunal of the International Labour Organization concerning the former Director-General of the Organization for the Prohibition of Chemical Weapons.³²

Sub-part 5 raises a very important issue concerning the difficulties of the execution of judgments of the Administrative Tribunal of the United Nations (Section 1), the role of the advisory opinion of the International Court of Justice (Section 2), the institution of the appeals process (Section 3), and the challenging of certain judgments of the Administrative Tribunal of the International Labour Organization (Section 4).

Section 2 (pp. 543 – 549) analyses very important Advisory Opinion of the International Court of Justice of 13 July 1954 on ‘Effect of Awards of Compensation Made by the United Nations Administrative Tribunal’.³³

The procedure before the Appeals Board is composed of two stages: preliminary procedure and procedure before the Appeals Board.

Preliminary procedure consists in the obligation of a staff member wishing to contest any administrative decision or disciplinary measure to address a written request for administrative review to the Director-General through the Director HRM, within a period of 60 calendar days from the date of receipt of the administrative decision or of the disciplinary measure. The request for the administrative review must clearly identify the administrative decision or disciplinary measure against which the request for administrative review is directed, including its date of receipt.

The hearing before the Appeals Board results in the adoption of a Report summarizing the Board proceedings and advising the Director-General on what action, if any, they should take. The Report of the Board and the Board’s recommendations should be based on the relevant Staff Regulations and Staff Rules of UNESCO and any other administrative issuance governing the conditions of service of staff members of the Organization. The Board’s recommendations are not legally binding for the Director-General. However, if they reject them or accepts them partially, they are required to provide a reason(s) for such rejection (either total or partial).

The Secretary of the Board is requested to forward the Report to the Director-General, and a copy to the Appellant, within 60 calendar days following the end of session of the Board.

The Director-General must take a decision thereon within a reasonable delay, and no later than 90 calendar days following the receipt of the Report. The Appellant and the Chairperson must be notified accordingly.

If the Appellant wishes to pursue their case further, they may wish to lodge a complaint before the Administrative Tribunal of the International Labour Organization within 90 days after the complainant was notified of the final decision of the Director-General.

²⁹ The competence.

³⁰ The procedure.

³¹ The remedies.

³² ILOAT Judgments 2232, 2327, and 2328. The Judgments are available both in English and French through ILOAT Triblex at https://wwwex.ilo.org/dyn/triblex/triblexmain.advancedSearch?p_lang=en. Website visited on 2 July 2025.

³³ The 13 July 1954 Advisory Opinion is available on-line at <https://www.icj-cij.org/case/21>. Website visited on 2 July 2025.

The request for this Advisory Opinion was submitted in follow-up to a Resolution of the General Assembly of the United Nations of 9 December 1953 whose operative paragraph reads as follows:

Decides to submit the following legal questions to the International Court of Justice for an advisory opinion:

- (1) Having regard to the Statute of the United Nations Administrative Tribunal and to any other relevant instruments and to the relevant records, has the General Assembly the right on any grounds to refuse to give effect to an award of compensation made by that Tribunal in favour of a staff member of the United Nations whose contract of service has been terminated without his assent?
- (2) If the answer given by the Court to question (1) is in the affirmative, what are the principal grounds upon which the General Assembly could lawfully exercise such a right?

The Court decided, by nine votes to three,

that the General Assembly has not the right on any ground to refuse to give effect to an award of compensation made by the Administrative Tribunal of the United Nations in favour of a staff member of the United Nations whose contract of service has been terminated without his assent.

Section 3 deals with the creation of the Committee on Applications for Review of Administrative Tribunal Judgements exercising a power conferred upon it by the General Assembly of the United Nations by its Resolution 957 (X) of 8 November 1955. Among other things, this Resolution introduced into the Statute of the Administrative Tribunal of the United Nations a new Article 11 providing for the possibility of challenging judgements of the Tribunal before the International Court of Justice through a request for an advisory opinion.³⁴

Section 4 (pp. 562–575) focuses on the challenging of certain judgments of the Administrative Tribunal of the International Labour Organization and, in particular, on the Advisory Opinion of the International Court of Justice dated 23 October 1956 on ‘Judgments of the Administrative Tribunal of the International Labour Organisation upon Complaints made against the United Nations Educational, Scientific and Cultural Organization’.³⁵

³⁴ Both the United Nations Administrative Tribunal and its Article 11 have been abolished. The United Nations Administrative Tribunal has been replaced by a two-tier system – the United Nations Tribunal and the United Nations Appeals Tribunal (For more information about the new system, please consult the following link at <https://www.un.org/en/internaljustice/oaj/about.shtml>). Website visited on 2 July 2025.

To date, three advisory opinions concerning reviews of judgments of the United Nations Administrative Tribunal have been made:

- Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal (Advisory Opinion of 12 July 1973), available on-line at <https://www.icj-cij.org/case/57> (website visited on 3 July 2025);
- Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal (Advisory Opinion of 20 July 1982), available on-line at <https://www.icj-cij.org/case/66> (website visited on 3 July 2025); and,
- Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal (Advisory Opinion of 27 May 1987), available on-line at <https://www.icj-cij.org/case/72> (website visited on 3 July 2025).

³⁵ Available on-line at <https://www.icj-cij.org/case/30>. Website visited on 3 July 2025.

The request for this Advisory Opinion was submitted in follow-up to a Resolution of the Executive Board of UNESCO dated 18 November 1955 whose operative paragraphs read as follows:

Decides to submit the following legal questions to the International Court of Justice for an advisory opinion:

Having regard to the Statute of the Administrative Tribunal of the International Labour Organisation;

Having regard to the Staff Regulations and Staff Rules of the United Nations Educational, Scientific and Cultural Organization, and to any other relevant texts;

Having regard to the contracts of appointment of Messrs. Duberg and Leff and Mrs. Wilcox and Mrs. Bernstein:

I. _ Was the Administrative Tribunal competent, under Article II of its Statute, to hear the complaints introduced against the United Nations Educational, Scientific and Cultural Organization on 5 February 1955 by Messrs. Duberg and Leff and Mrs. Wilcox, and on 28 June 1955 by Mrs. Bernstein?

II. _ In the case of an affirmative answer to question I:

- (a) Was the Administrative Tribunal competent to determine whether the power of the Director-General not to renew fixed-term appointments has been exercised for the good of the service and in the interest of the Organization?
- (b) Was the Administrative Tribunal competent to pronounce on the attitude which the Director-General, under the terms of the Constitution of the United Nations Educational, Scientific and Cultural Organization, ought to maintain in his relations with a Member State, particularly as regards the execution of the policy of the Government authorities of that Member State?

III. _ In any case, what is the validity of the decisions given by the Administrative Tribunal in its Judgments Nos. 17, 18, 19 and 21?

The International Court of Justice decided, by nine votes to four, to comply with the Request for an Advisory Opinion;

With regard to Question I, by ten votes to three, the Court stated

that the Administrative Tribunal of the International Labour Organisation was competent, under Article II of its Statute, to hear the complains introduced against the United Nations Educational, Scientific and Cultural Organization on February 5th, 1955, by Messrs. Duberg and Leff and Mrs. Wilcox, and on June 28th, 1955, by Mrs. Bernstein;

With regard to Question II, by nine votes to four, ‘that this question does not call for an answer by the Court;’

With regard to Question III, by ten votes to three, ‘that the validity of the decisions given by the Administrative Tribunal in its Judgments Nos. 17, 18, 19 and 21 is no longer open to challenge.’

The Executive Board of UNESCO took note of this Advisory Opinion and authorized the payment of indemnities to the international civil servants concerned (p. 570).

To conclude, the treatise of Judge Bedjaoui is a must for any professional interested in the law of the international civil service such as a person working in academia or a practicing attorney litigating cases before international administrative tribunals.

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