

SIXTY-FOURTH SESSION

***In re* DE PADIRAC (No. 2)**

Judgment 911

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Bruno de Padirac against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 8 April 1987, UNESCO's reply of 10 July, the complainant's rejoinder of 29 September and UNESCO's surrejoinder of 22 December 1987;

Considering the applications to intervene filed by:

Mr. M. Abadin

Mr. M. Abtahi

Mr. M. Achat

Mrs. J. Aguesseau

Mrs. N. Akiki

Mrs. V. Aldebert

Mrs. N. Allaghi

Mrs. S. Allen

Mr. M. Alphonse

Mr. F. Ambroise

Mr. P. Amour

Mrs. N. Amsellem

Mrs. L. d'Andigne de Assis

Mrs. Z. Andrejic-Ristic

Mr. P. Andrieux

Mr. R. Angiolani

Mrs. M. Apffel

Mrs. B. Appleyard

Mrs. F. Arbousse Bastide

Mr. T. Averitt

Mr. N. Badiane

Mrs. M. Bagot

Mr. J. Banaag

Mr. L. Barribaud

Mrs. J. Bartels

Mrs. Y. Basmadjian

Mrs. M. Bastide

Mr. H. Battaillard

Miss M. Baudet

Miss S. Bauristhene

Mrs. J. Bazin

Mrs. F. Begouen Demeaux

Mrs. I. Bellier

Miss S. Bennett

Mr. J. Benoit

Mrs. M. Bensa

Miss Y. Berenguer

Mr. J. Bertrand

Mrs. J. Bertaud

Mrs. N. Biche

Mr. J. Bitran

Mr. J. Blankleder

Miss T. Bleasdale

Mrs. F. Bloch

Mrs. M. Bocabeille

Mrs. M. Bodossian

Mr. J. Boivin

Mrs. M. Bonnerot

Mr. G. Bosseboeuf

Mrs. C. Bossut

Mr. R. Bouchez

Mrs. J. Boulmer

Mr. B. Bourre

Miss M. Branet

Mrs. V. Brasseur

Mr. M. Breton

Mrs. C. Breuil

Mr. A. Brock

Mr. S. Brusini

Mrs. C. Buchan

Mrs. Q. Bui

Miss F. Bunge

Mrs. P. Cabouat

Mr. N. Cabral

Miss J. Cahill

Mrs. D. Calavera

Mrs. H. Calcaterra

Mr. J. Caloudis

Mrs. C. Calvez

Mrs. S. Campbell

Mr. E. Canton

Mr. G. Carceles

Mrs. J. Carro Cavia

Miss L. Carroll

Miss M. Cartron

Mrs. F. Caula

Miss V. Cavicchioni

Mrs. J. Cenni

Mrs. S. Ceugniez

Mr. P. Chafik

Mr. J. Chenais

Mrs. J. Chevalier

Mr. R. Cintron

Mr. E. Cobas Puente
Mr. M. Coge
Mr. I. Collatin
Miss J. Collins
Mr. G. Condette
Mr. R. Constandse
Mrs. A. Cook
Mr. J. Corbett
Mrs. D. Corbinaud
Mr. Y. Courier
Mrs. A. Courtines
Mrs. M. Coutard
Mr. W. Coward
Mr. D. Daguin
Mr. L. Dangana
Mrs. N. Darrasse
Mr. J. Dauphin
Mrs. A. Daurat-Stevanovitch
Mrs. L. Dausque
Mr. M. Dauvergne
Mr. G. David
Mrs. C. Defforge
Mrs. M. Defretin
Mrs. C. Delaporte
Miss L. Del Barrio
Mrs. J. Delfino
Mr. J. Deneux
Mr. N. Dergatcheff
Mrs. R. Derosch
Mr. P. Deschamps

Mrs. C. Desmortiers

Mr. G. Despots

Mrs. A. Dessus

Mr. S. Detzel

Mrs. L. Diaz-Moreno

Mrs. S. Do Dinh

Mrs. J. Dombret

Mrs. F. Donneau

Mrs. E. Donnella

Mr. B. Dori

Mrs. A. Draxler

Mrs. G. Ducret

Mrs. Y. Dufrin

Mrs. V. Dunk

Miss C. Dunleavy

Miss M. Duros

Mrs. E. Duroux

Mrs. T. Easton

Mrs. C. Egli

Mr. M. El Baghir

Mrs. A. El Batraoui

Mr. F. El Boustani

Mrs. S. El Boustani

Mrs. A. El Sayed

Mrs. S. Enamoneta

Mrs. S. Esteller

Mrs. A. Evezard

Mrs. E. Eynon-Balin

Mrs. I. Fabbri-Mainero

Mr. F. Falchier

Mrs. T. Farcot

Mrs. J. Farey-Hassan

Mrs. M. Farge

Mr. R. Fatermann

Miss A. Fenton

Mrs. A. Fernandez

Mr. R. Ferrezuelo

Mrs. M. Figueroa

Mr. J. Fogen

Mrs. D. Fontowicz

Mrs. L. Forcet

Miss D. Foret

Mr. T. Forstenzer

Mr. J. Fourmy

Mr. M. Fournier

Mrs. J. Frank

Mrs. A. Gabr

Mrs. U. Gabrielsen

Mrs. C. Gainche

Mrs. M. Galdin

Mr. V. Galleron

Mrs. M. Gallicchio

Mrs. B. Gallou

Mrs. M. Gamarra

Mr. P. Garcia Karras

Mr. A. Garzon

Mrs. M. Gaujal-van Espen

Mrs. O. Gaullier

Mr. P. Gautier

Mr. M. Gayet

Mrs. V. Gdalia

Mrs. M. Geisler

Mr. E. Gelpi

Mrs. V. Gemayel

Mrs. L. Genelot

Mrs. A. Ghelfi

Mr. D. Ghosh

Mrs. M. Gicquel-Zachardiadis

Mr. M. Giersing

Mr. A. Gillette

Mrs. M. Girault

Mrs. C. Giroguy

Mr. L. Goddard

Mr. J. Gomes Leite

Mr. S. Gondek

Mrs. N. Gonzalez de German

Mrs. M. Gorand

Mrs. A. Goueffon

Mrs. B. Grauman

Mrs. A. Gregory Clesse

Mrs. J. Grosbout

Miss A. Grundman

Mrs. D. Guiblin

Miss M. Guttierrez

Mr. M. Guttierrez

Miss A. Guyot de Saint Michel

Mr. N. Haddad

Mr. C. Hakansson

Mr. A. Hancock

Mr. H. Hanna

Mrs. G. Hanouna

Miss P. Hapca

Mr. L. Harari
Mrs. N. Hardouin
Mrs. M. Hardy
Mr. R. Harguinteguy
Mrs. R. Harkous Faour
Mrs. P. Harvey
Mr. D. Hellio
Mr. P. Henquet
Mrs. F. Hesse
Miss S. Heyman
Mrs. M. Hoareau
Mr. K. Hochgesand
Mr. D. Hogg
Mr. F. Holert
Mrs. E. Hoyer
Mrs. A. Ibarra
Mr. S. Ibstedt
Mr. J. Irigoin
Mrs. I. Iskender Mochiri
Mrs. M. Jaman
Miss D. Jean
Mr. M. Jinadasa
Miss P. Johnston
Miss M. Joureau
Mrs. N. Kadem
Mr. A. Kahlaoui
Mr. R. Karrer
Mr. A. Kazancigil
Mrs. E. Keating
Mr. K. Kitazawa

Mr. A. Klajman

Mrs. J. Klajman

Mr. H. Knobil

Mr. J. Knott

Mr. G. Kostner

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Mrs. M. Kravetz

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Mr. G. Kullenberg

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Mrs. B. Lamoise Denis

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Miss N. Laroche

Mrs. E. Laskowska

Miss A. Laurenty

Mr. J. Laurot

Mrs. C. Lazarus

Mrs. J. Le Bras

Mr. P. Le Brun

Mrs. N. Leclercq

Mr. B. Lecocq

Mrs. P. Lecointe

Mrs. M. Le Corff

Mr. J. Le Coz

Mr. A. Legrand

Mrs. M. Legrand

Mrs. A. Lelot

Mrs. G. Le Moigne-Desjeunes

Mr. J. Leonard

Mr. J. Lepine

Mrs. F. Le Poittevin

Miss G. Leprince

Mr. P. Leseur

Miss B. Le Varlet

Mrs. N. Levy

Mrs. L. Limage

Mrs. C. Lomeli

Mrs. C. Lortal

Mrs. M. Loustalot

Miss M. de Madariaga

Mr. J. Maingot

Mr. M. Makhoul

Mr. D. Makinson

Mrs. M. Malavieille

Mrs. S. Marais

Mr. H. Marchl

Mr. M. Margeotte

Mr. A. Mari

Mrs. A. Mars-Vidor

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Mr. A. Martinez

Mrs. A. Maxwell

Mr. W. McLeod

Mr. A. McLurg

Mrs. A. McStravick

Mr. D. Meister

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Miss N. Michelson

Mr. S. Millet

Miss C. Millner

Miss A. Milstein

Mr. M. Mir

Mr. R. Missotten

Mr. B. Mokhtari

Mrs. S. Moradians

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Mrs. G. Motreff

Mr. C. Mourouvapin

Mr. F. de Mur

Mrs. C. Mura Cruz

Mrs. M. Nanos

Mr. G. Nascimento

Mrs. C. Navarro

Mr. M. Navillod

Mrs. C. Negrin

Miss R. Neri

Mr. G. Nexer

Mr. E. Nguni

Mr. C. Niclou

Mrs. C. Nollet

Mr. R. Norman

Mrs. Y. Nougier
Mr. E. Nykolyszyn
Mrs. C. O'Flaherty
Mr. C. de Oliveira
Mr. C. Ondobo
Mr. P. Ong
Mr. C. Ortiz
Mr. J. Ory
Mrs. C. Ouriaghli
Miss R. Ozeir
Mr. R. Pachcowski
Miss E. Paetrow
Mr. G. Painvin
Mrs. E. Papatzicos
Mr. W. Parmel
Mrs. M. Parrot-Lagarenne
Mr. M. Passet
Mr. J. Patin
Mrs. N. Paudras
Mrs. B. Pavlic
Mrs. A. Pawle
Mrs. J. Pentcheff
Mrs. L. Perdereau
Mrs. F. Perez Torreblanca
Mr. J. Pernau Llimos
Mrs. J. Perrin
Mr. J. Peynot
Mrs. Y. Pham Van Cang
Mrs. J. Piat
Miss M. Pierson

Mrs. D. Piuzzi

Mr. J. Plassais

Mr. M. Poncelet

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Mr. J. Porras

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Mr. S. Pravato

Mr. R. Pregassame

Mrs. A. Prevost

Mrs. E. Provenchere

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Miss A. Randouyer

Mr. M. Raoud

Mrs. C. Renard

Mrs. C. Restif

Mrs. F. Ricaud-Andrade

Miss M. Richon

Mr. M. Rider

Miss V. Ringelstein

Miss E. Riu Horta

Mr. P. Rizet

Mr. J. Robert

Mr. R. Roig

Miss M. Rolland

Miss N. Rollet

Mr. C. Romero

Mrs. A. Rona

Mrs. E. Rosales

Miss B. Ross

Mrs. P. Rousseau

Miss D. Roux

Mr. M. Roux

Mr. A. Rowley

Mr. J. Roy

Miss M. Ruleta

Miss M. Rumeau

Miss M. Rushworth

Miss P. Russell

Mrs. S. Russell

Mrs. M. Sagues

Mr. E. Sainz Rubio

Mr. A. Salinas

Mrs. N. Salluron

Mrs. M. Sanchez-Guerra

Mr. M. Sandman

Mr. G. Sanna

Mrs. I. Sanvoisin

Mrs. N. Sathiyarajan

Mr. R. Scagnelli

Mrs. A. Scavone

Mr. C. Schortgen

Miss A. Schurek

Mrs. L. Schwartzentruber

Mr. P. Schweitzer

Mr. J. Seguin

Mr. J. Sequeira

Mr. S. Shankar

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Miss I. Tarnowska

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Miss E. Tedeschi

Mrs. G. Terrazas

Mr. M. Tessier

Mr. M. Testoni

Miss R. Texier

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Miss K. Tuchscherer

Mrs. M. Turner

Mr. C. Ungur

Mrs. C. Vahlas

Miss M. Valles

Mrs. J. Vandaele

Mr. M. Vanier

Miss L. Vargas
Mr. B. Verity
Mrs. M. Verny
Mrs. A. Versini
Mr. W. Vestigo
Mr. A. Vibet
Mr. H. Vicenzi
Mr. G. Victoire
Mr. R. Vidal
Mr. E. Villegas Pincheira
Miss F. Vinel
Mrs. M. Vu Dinh
Miss S. Warde
Mr. J. de Weck
Mrs. V. Westbrook
Miss G. Westerwinter
Mrs. N. Whitmarsh
Mrs. C. Williams
Miss C. Wilkinson
Mr. P. Woodrow
Mrs. J. Wright
Mr. G. Young
Miss G. Zakarya
Mr. R. Zapata
Mrs. D. Zeidan
Mrs. G. Zellich
Mr. F. Zidour
Mr. W. Zyss

and UNESCO's observations of 21 April, 9 May, 26 May 1988 on those applications;

Considering Article II, paragraphs 5 and 6, of the Statute of the Tribunal, UNESCO Staff Regulations 8.1 and 8.2, UNESCO Staff Rules 108.1 and 108.2, UNESCO Manual paragraph 805.A and paragraph 7(a) of the Statutes of

the UNESCO Appeals Board;

Having examined the written evidence;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. UNESCO Staff Regulation 8.1 reads: "Machinery shall be provided by the Director-General to ensure continuous contact between the staff and himself through duly elected officials of the association or associations representative of the staff". There are two such associations, the Staff Association (STA), which was founded in 1947, and the International Staff Association, set up in 1981. The right of the STA to take part in the review of staff matters is embodied in article II of its constitution, which the Director-General has approved in accordance with Staff Rule 108.1(b): "The constitution of any staff association shall be adopted by the members of the association and submitted to the Director-General for approval". The STA prints and distributes at UNESCO's expense a bulletin known as "Opinion" which has a wide readership.

At the 23rd Session of the General Conference of UNESCO, held from 8 October to 9 November 1985 in Sofia, the agenda included items on staff retrenchment, recruitment, renewal of appointments, and setting up a dismissal compensation fund. The presidents of the STA and the other staff association were authorised to make statements to the Administrative Committee of the Conference on those items and they agreed on 22 October 1985 to the text of a joint statement they wanted to make to the Conference in plenary. But talks they had on the subject with the President of the Conference proved of no avail, and the Conference ended before they had been allowed to make the statement. So after the session was over a supplement to the STA bulletin was written to explain to the membership how attempts to get the joint statement made in plenary had come to naught. The supplement was to say that at a meeting on 24 October 1985 the President of the Conference had promised the presidents of the two associations he would recommend letting them make their joint statement, but that in a letter to them of 30 October 1985 he had said he had made no such promise; that on 4 November 1985 he had told them that after speaking to the Director-General he had recommended that the officers of the Conference should refuse permission; and that the statement had been thwarted by the President's dilatory tactics and his fear of offending the Director-General.

The complainant has been on the staff of UNESCO since 1976. He was President of the STA from March 1984 until March 1987. It is both as staff member and as staff representative that he has filed this complaint. On 20 December 1985 he got a minute dated 9 December from the Assistant Director-General for General Administration refusing permission to reproduce and distribute the text of the supplement. On 17 January 1986 he lodged an internal appeal with the Director-General under paragraph 7(a) of the Statutes of the Appeals Board.

On 28 March 1986 he received from the Director of the Bureau of Conferences, Languages and Documents another minute, dated 26 March, telling him that the STA's allotted print run for 1986 was reduced from the 1985 figure of 2 1/2 million to 2 million pages and that the STA would be charged for any printing over and above the lower figure. On 20 March 1986 the complainant lodged another internal appeal against that decision.

The Appeals Board took the two appeals together and reported on them on 1 December 1986. It held that the cut in the print run caused the complainant no direct injury and that it was therefore not competent to entertain his objections to it. But it recommended that the Director-General give instructions to the competent services to make sure that the facilities at the staff associations' disposal were never threatened unless UNESCO's interests so required or the rules were changed. By a letter of 8 January 1987, the impugned decision, the Director-General informed the complainant that he had taken note of the Board's report and its view that it was not competent to entertain the claim about the print run; he affirmed that the action taken had been in the Organization's interests.

B. The complainant contends that a staff association's right to sue is a corollary of the right of association. In any event his complaint is undoubtedly receivable inasmuch as he is a member of UNESCO's staff.

As to the merits he submits that the refusal to let the STA print and issue the supplement to its bulletin was in breach of the right of association which is embodied in Staff Regulation 8.1 and is inseparable from freedom of speech. UNESCO flouted its rights by censoring the STA's protest against the breach of freedom of speech in the Director-

General's refusal to let the elected staff representatives address the Conference. UNESCO was guilty of improper interference in staff association affairs.

The decision to cut the print run shows procedural flaws. The Appeals Board was wrong to hold that it was not competent and its chairman was hostile to him. And the Administration failed in its duty to consult the STA, a duty reflected in Manual paragraph 805.A, which says that the print run allotted to each branch of the Organization depends on the branches own yearly estimates, among other things. Besides, even if nothing were said on the matter in the Staff Regulations and Staff Rules, the STA would have to be brought in when staff interests were at stake.

He asks the Tribunal to quash the two impugned decisions and award damages for the loss of facilities to the STA, for breach of the STA's rights and for breach of the complainant's right of association in the censorship of the text of the supplement. If the Tribunal holds that its judgment affords fit redress, he asks it to make him a further award to cover the cost of reproducing the text of his complaint and of the judgment in the bulletin for the information of the staff at large.

C. In its reply UNESCO gives its own version of the facts. It observes that the two staff associations had a chance to make their views known to the Administrative Committee; indeed that was why the officers of the Conference saw no call for any further joint statement in plenary. The President of the Conference saw the two staff representatives on 24 October 1985 and told them he would not be making any recommendation. He had no reason to shelter behind the Director-General's alleged displeasure. Even after the Conference was over, whereas the International Staff Association treated the matter as closed, the STA went on stirring up feelings over it. The text of the supplement gave a one-sided and argumentative account of what had happened and was blatantly insulting to the President of the Conference. That is why the Assistant Director-General told the complainant that UNESCO would not co-operate in publishing it.

The Organization also had to lower expenditure and was anxious to make savings by reducing the volume of printing and publication. A letter of 21 September 1984 asked the president of the STA, in making his estimates for the next year, to try to keep down the size of the print run. That was how the Organization came to send him its minute of 26 March 1986 announcing the cut. There was nothing discriminatory about that since every branch in the secretariat was also having to retrench.

The Organization pleads that the complaint is irreceivable. Under Article II(5) of the Tribunal's Statute a staff member may file a complaint only as such, not as a staff association leader or member. The complainant incurred no injury himself, and the decision he is challenging was not directed at him as an individual. The decision not to print the supplement and the cut in the print run were decisions of a general character that affected him neither in his personal capacity nor in the performance of his STA duties.

As to the merits, the Organization contends that its decision not to print the supplement was in breach neither of the right of association nor of freedom of speech. It intended nothing of the kind; indeed the STA was free to draw on means of its own to get its message out.

UNESCO has a subsidiary plea that even if the Tribunal held there had been limitation of freedom of speech, the decision was warranted by the proposed text, which was grossly improper in branding as dilatory tactics the President's attempts to get talks going.

The cut in the print run was part of the policy of retrenchment applied throughout UNESCO from 1984 on. There was no procedural flaw. Manual paragraph 805.A does not require consultation of the STA, which is not part of the secretariat and not covered by the paragraph. The sole purpose of the yearly estimates the STA may put in is to enable it to say what it wants and the printing service to bear its wishes in mind as far as possible.

The charge that the Board chairman was hostile is unfounded. Besides, even if it were not the decision would not necessarily be flawed on that account.

The claim to damages is devoid of merit because the impugned decision was in no respect unlawful and the complainant has shown no moral injury the Organization may be held liable for.

D. In his rejoinder the complainant maintains that the President did not rule out a joint statement and was sympathetic to the staff representatives' wishes. In the end he fell in with the Director-General, presumably because he thought the matter of little moment, the Conference was nearly over, and he cannot have cared much about how the staff might react.

As for the policy of making savings, no branch of the Organization that goes beyond its allotted print run is to be

charged for the excess: only the STA's.

As to the issue of receivability, the complainant argues that, though the Tribunal does not allow a staff association to file an application to intervene, there is no reason why it should not be able to protect its rights by having someone lodge a complaint on its behalf.

He enlarges on his submissions on the merits. E. In its surrejoinder the Organization observes, as to receivability, that the complainant is espousing what is really the STA's own cause. Since a complaint filed by the STA itself would be irreceivable, so too is the present one, filed on its behalf by a staff member.

The Organization develops its earlier pleas on the merits.

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CONSIDERATIONS:

1. The complainant has been a staff member of UNESCO since 1976 and was elected in 1984 President of the Staff Association known as the STA. It is in both capacities that he is inviting the Tribunal to rule on two disputes with the Organization.

One dispute arose out of a minute of 9 December 1985 from the Assistant Director-General for General Administration refusing to put the Organization's printing and distribution services at the Staff Association's disposal for the purpose of issuing a supplement to its bulletin. The other dispute began with a minute of 26 March 1986 from the Director of the Bureau of Conferences, Languages and Documents informing the complainant that the print run allotted to the Association for 1986 was reduced from 2.5 to 2 million pages and any number over that figure would have to be paid for.

The internal appeals against the two minutes were taken together, the Appeals Board reported on them on 1 December 1986 and the Director-General rejected them on 8 January 1987.

Receivability². The Organization submits that the complaint is irreceivable because it is filed on behalf of the Staff Association.

Article II(6) of the Statute of the Tribunal reads:

"The Tribunal shall be open (a) to the official, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death; (b) to any other person who can show that he is entitled to some right under the terms of appointment of the deceased official or under provisions of the Staff Regulations on which the official could rely."

The list is exhaustive. For one thing, it does not include bodies that have legal personality. For another, even supposing the Association, though it is an official body, did not have personality in law but was just a *de facto* group, it does not hold a contract of appointment with the Organization. On both counts it does not have access to the Tribunal under Article II and the complaint is irreceivable insofar as it purports to be a party.

3. The complainant is also suing in his own name. Again the Organization submits that his complaint is irreceivable because he has suffered no injury as a staff member and because the decision he is challenging is not directed at him as an individual.

The claims advanced by the complainant as a member of the staff rest solely on the Organization's alleged failure to abide by Staff Regulations 8.1 and 8.2 and Staff Rules 108.1 and 108.2, which acknowledge the staff's right of association. To put it more broadly, what the complainant is alleging is breach of freedom of association.

Regulation 8.1 reads: "Machinery shall be provided by the Director-General to ensure continuous contact between the staff and himself through duly elected officials of the association or associations representative of the staff". Regulation 8.2 says that the Director-General shall set up an administrative body with staff participation. Whatever the details may be, the further rights embodied in the rules are the corollary of the general principle of freedom of association.

The Organization thus accepts as a term of every contract of appointment its duty to respect freedom of association, and anyone who has such a contract may challenge any decision that impairs that freedom. What the complainant is saying - indeed it is the sole issue - is that the Organization acted in breach of freedom of association. His complaint is therefore receivable insofar as he is suing in his own name.

4. Applications to intervene in his complaint have been filed by 477 other staff members. They too are alleging breach of freedom of association and, as was said above, every staff member enjoys such freedom. Since the exercise of it may be affected by the Tribunal's judgment the applications are receivable.

The printing and distribution of the Association's text

5. The Staff Association was founded in 1947. That it is a representative body is not in dispute and has indeed been acknowledged by the Director-General, who has approved its Statute in accordance with Staff Rule 108.1. The facilities it is allowed include the printing and distribution at UNESCO's expense of a bulletin known as "Opinion", which has a readership but is addressed mainly to members of the Association who are or were officials of UNESCO.

6. In October and November 1985 the General Conference of UNESCO was holding its 23rd Session in Sofia. One topic of debate was the Organization's financial straits, which plainly mattered a great deal to the staff, and at the start of the session the presidents of the STA and the other staff association sought permission to comment on the agenda items about personnel policy. They were readily granted permission to address the Administrative Committee but, despite their insistence, not the Conference itself. They approached the President of the Conference, among others, and he saw them three times. The complainant contends that the first time he promised to recommend giving them a hearing in plenary but that he went back on his word. Immediately afterwards they wrote to him setting out what they had agreed to but a few days later he wrote back saying he had never made any commitment.

The President saw them on two further occasions but the Conference ended before they had even had a chance to read out a mere declaration they had put to him.

The President's stand did not impair the courtesy that marked his contacts with them, as is plain from a letter he sent them on 30 October 1985 and a text he read to the officers of the Conference.

Once the Conference was over the executive committee of the STA wanted to explain why they had failed to get a hearing and so they wrote a supplement to the bulletin headed "The freedom of speech of the staff's elected representatives challenged in Sofia". The Organization refused to print and distribute the supplement and so the Association reproduced the text at its own expense and put it on display on UNESCO premises. The Organization had no authority to object to that and the sole issue is its refusal to let the Association have the facilities it was usually granted for printing the bulletin.

7. The main purpose of the supplement was to explain why the reasons given for refusing the staff representatives a hearing at the Conference had been unsound. In other words, they were reporting on how they had fulfilled their responsibilities, a matter that did not warrant any ban, and indeed the Organization does not say it did.

There are two passages which prompted the Organization to refuse.

In one passage the committee say that it was on the President's recommendation that the officers of the Conference refused to let the two staff associations make a joint statement. Yet the President promised them at an interview on 24 October 1985 that he would recommend letting them make one, only to change his mind after speaking to the Director-General.

In the other passage the committee said that the reason why a statement had not been authorised in time was that the President had resorted to dilatory tactics from fear of offending the Director-General.

8. The Organization is not challenging the Association's freedom of speech as such: what it says is that such freedom must be exercised with due regard to the obligations laid down in the Staff Regulations, with discretion and with respect and courtesy towards others. It goes on to observe that the executive committee's allegation that the President had promised to recommend hearing the staff representatives in plenary was belied by a further statement from the President himself. So the executive committee were publicly accusing an eminent man of lying.

They also went too far in describing his attempts to debate the subject as dilatory tactics.

The complainant retorts that the refusal to print the supplement was tantamount to censorship and was a serious restriction of the freedom of speech any association should enjoy.

Interestingly enough, the Appeals Board's report was not unqualified. It said that proof of the Organization's bad faith would have affected its conclusions. The case being of interest only as a precedent, however, it recommended that the Director-General instruct the competent services never to subject Staff Association texts to prior approval nor to question the grant of the facilities, in whole or in part, unless the Organization's interests so required or the rules were changed.

Earlier judgments of the Tribunal's have set forth the principles that govern freedom of association, and UNESCO maintains that it respected them. According to precedent a staff association enjoys special rights that include broad freedom of speech and the right to take to task the administration of the organisation whose employees it represents. Like any other freedom, however, freedom of speech has its bounds. A staff association may not resort in public to action that impairs the dignity of the international civil service, save that the degree of discretion required of it is not as great as is expected of an individual staff member: both law and practice allow it wider freedom of speech and only gross abuse will be inadmissible.

9. The Organization has two objections to the supplement, the first being that the text contained mistakes of fact.

Such a plea is in itself inadmissible. Judgment 496 of 3 June 1982 reads: "This has from time immemorial been the standard excuse for censorship; the alleged object is never to suppress the truth but just to make sure that only the truth is told. Freedom of association is destroyed if communication between the members is allowed only under supervision."

Besides, more than one construction might be put on the talks with the President - which, as was said, were courteous - without casting doubt on anyone's integrity or good faith. Without saying which interpretation was right and which was wrong the Tribunal holds that the Organization committed an unlawful act of censorship.

The Organization's other, and more cogent, objection is that the term "dilatory tactics" was insulting or even libellous.

Of course the President of the Conference, who does not belong to the Administration, exerts no direct authority over the staff, and that is why they have a duty to show great discretion in any criticism of him. Yet while the Conference is in session he has authority that goes beyond the mere direction of business and his position is not neutral. When he turns down a request from a staff association he is not acting as the political representative of a sovereign member State but is on a par with a senior official and as such is not immune to criticism. The language may have been ill-chosen but taking it out of context lends it undue weight. The text of the supplement did not go beyond the proper bounds of a dispute over matters the Staff Association believed to threaten the essential interests it safeguards. It did not act from malice or bad faith.

10. As to the first part of the complainant's case the Tribunal concludes that in denying the Association its customary privilege of having a text printed and issued the Organization infringed its rights as representative and defender of the staff's interests. The impugned decision cannot stand.

The reduction in the print run

11. The STA is customarily granted facilities that help it to function. One of them is an allotment of paper and a print run which enable it to keep in touch with its membership and make its views and claims more widely known. UNESCO determines the size of the print run and every year, or every other year, sets the number of pages it will provide and the number the Association may print, both at the Organization's expense.

The impugned decision was in two parts: on the grounds of financial stringency the Director of the Bureau of Conferences, Languages and Documents reduced the print run from the 2.5 million pages it had been in 1984 and 1985 to 2 million in 1986 and he said that anything over that figure would have to be paid for.

12. To begin with, the Organization pleads that on this issue the complaint is irreceivable because in allotting the resources at his disposal the Director-General took a merely administrative measure which affords no cause of

action and is not subject to review by the Tribunal.

In Judgment 496 and others the Tribunal held that the executive head of an organization does enjoy some degree of discretion and in exercising it is immune to judicial review. Thus the Tribunal will not entertain any claim from the Staff Association arising out of the alleged breach of an agreement with the Organization for the supply of facilities. Actually in this case the print run is granted, not under any express agreement, but by custom and usage. That is immaterial: the issue is not a legal concept but whether the Organization was guilty of an actionable breach of freedom of association.

The impugned decision seriously curtailed the facilities at the STA's disposal and made a real difference. What is more, the facilities were not of the lesser kind that might be withdrawn without detriment to the running of the Association. The Tribunal is therefore competent to rule on the lawfulness of the decision.

13. The complainant begins with pleas on procedure and, more particularly, with pleas about the Appeals Board proceedings.

That the Appeals Board held that it was not competent is immaterial to the lawfulness of the decision: all that matters is that the complainant lodged a valid appeal with it.

Another allegation he makes by the way is that the Chairman of the Appeals Board was hostile to him. Insofar as the allegation amounts to a plea it fails for want of any evidence to suggest prejudice either in the Board or in its Chairman.

14. His other procedural plea is a more telling one: there was, he says, no consultation with the STA before the decision was taken. First, he cites Manual paragraph 805.A, which says that the print run for each sector, bureau and department of the Organization takes account of its yearly estimates, among other things. Secondly, he argues that even had there been no such rule there was a duty to consult the Association.

15. It is true that the print run was reduced without consulting the Association. Though the Organization cites a letter of 21 September 1984 inviting it to put in by 31 December its estimates for 1985, the letter was about that year alone and may not be deemed to have more lasting effect. Indeed the Organization does not contend that it did: its purpose in mentioning the letter is merely to show by way of example that its attitude was not as unhelpful as the complainant makes out.

The fact is that there was no prior consultation of the Association, and the issue is whether such consultation was required in law.

16. Manual paragraph 805.A does not serve the complainant's case. It relates only to the various departments of the Organization and, however closely linked it may be with the Organization, the Association is an independent body which is not covered by 805.A. The Tribunal need not therefore look at the provision any further.

17. In answer to the second part of the plea the Organization says that it may at any time alter the facilities it grants ex gratia to the staff associations, that because of its financial troubles in 1986 there could be no demur about the need to reduce the facilities and that in 1985 the STA itself had agreed to a smaller print run.

The grant of facilities to a staff association is not a privilege the Organization may withdraw as it pleases. The reason why it grants them is not just goodness of heart but its own broad interest in having the association perform its responsibilities fully and efficiently. Thus it is the Organization's own interest that decrees the grant of facilities and, conversely, they may not be withdrawn entirely or in part unless that interest so requires. Such are the principles the Tribunal applied in Judgment 496 and others and will apply to this case.

Chapter VIII of the Staff Regulations and Staff Rules, which governs staff relations, provides among other things for a top-level administrative body with staff participation to advise the Director-General on staff matters in general. The provision is mentioned not to establish that the joint administrative body ought to have been consulted in this case, but to show the kind of spirit in which the two sides should deal: they are not adversaries but are expected to do their utmost to work constructively together.

Although, as UNESCO says and indeed the Tribunal has held, facilities are not a matter for negotiation or agreement and although no obligation attaches to the actual outcome of consultations, one of an executive head's

duties is to consult the staff association in keeping with the general principles set forth above and reflected in Chapter VIII.

The allegedly exceptional circumstances the Organization relies on did not relieve it of that duty, and indeed that is really the nub of the case.¹⁸ Since the Organization acted unlawfully in taking a decision which seriously disrupted the Staff Association's work and in failing to let the Association state its views, the impugned decision must be set aside.

19. That being so, there is no need to take up the complainant's further objections to the minute of 26 March 1986 upheld by the Director-General on 8 January 1987. It will, however, add one comment.

UNESCO was in deep financial trouble by 1985, its Director-General took his decision in the exercise of his discretionary authority, and in particular the plea of abuse of authority is not proven. Still, his conclusion might have been different had he consulted the Association as he was bound to do: the broader his authority, the greater the need for co-operation.

The claims to damages

20. The complainant says that his claims to damages are not the most important to him: what he wants first and foremost in seeking the quashing of two of the Director-

General's decisions is that the Staff Association be no longer victimised, and he observes that without a staff association that is well run and well thought-of there cannot be good relations with the staff.

He is nevertheless seeking an award of damages to the Staff Association.

The two decisions that are quashed caused the Staff Association moral injury which the publication of this judgment will remedy: setting the decisions aside affords full redress.

No damages are awarded for material injury. The complainant himself says that the STA has kept within its allotted print run and, as for the further cost of text processing, the alleged injury cannot be measured.

No order is made for the disclosure of other evidence or for oral proceedings.

21. The complainant is awarded 20,000 French francs in costs.

DECISION

For the above reasons,

1. The applications to intervene are allowed.
2. The impugned decisions are quashed.
3. The Organization shall pay the complainant 20,000 French francs in costs.
4. The other claims are dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

