

29 APRIL 2010

ORDER

**JUDGMENT No. 2867 OF THE ADMINISTRATIVE TRIBUNAL OF THE
INTERNATIONAL LABOUR ORGANIZATION UPON A COMPLAINT
FILED AGAINST THE INTERNATIONAL FUND FOR
AGRICULTURAL DEVELOPMENT**

(REQUEST FOR ADVISORY OPINION)

**JUGEMENT N° 2867 DU TRIBUNAL ADMINISTRATIF DE L'ORGANISATION
INTERNATIONALE DU TRAVAIL SUR REQUÊTE CONTRE LE FONDS
INTERNATIONAL DE DÉVELOPPEMENT AGRICOLE**

(REQUÊTE POUR AVIS CONSULTATIF)

29 AVRIL 2010

ORDONNANCE

INTERNATIONAL COURT OF JUSTICE

YEAR 2010

**2010
29 April
General List
No. 146**

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Present: Vice-President TOMKA; Judges SHI, AL-KHASAWNEH, BUERGENTHAL, SIMMA, ABRAHAM, KEITH, SEPÚLVEDA-AMOR, BENNOUNA, SKOTNIKOV, CANÇADO TRINDADE, YUSUF, GREENWOOD; Registrar COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 48, 65 and 66, paragraphs 2 and 4, of the Statute of the Court and to Articles 13, paragraph 3, and 104 of the Rules of Court,

Makes the following Order:

Whereas on 22 April 2010, at its Ninety-ninth Session, the Executive Board of the International Fund for Agricultural Development adopted the following resolution:

“The Executive Board, . . .

Whereas, by its judgment No. 2867 of 3 February 2010, the Administrative Tribunal of the International Labour Organization (ILOAT) confirmed its jurisdiction in the complaint introduced by Ms A.T.S.G. against the International Fund for Agricultural Development,

Whereas article XII of the Annex of the Statute of the Administrative Tribunal of the International Labour Organization provides as follows:

‘1. In any case in which the Executive Board of an international organization which has made the declaration specified in Article II, paragraph 5, of the Statute of the Tribunal challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Executive Board concerned, for an advisory opinion, to the International Court of Justice.

2. The opinion given by the Court shall be binding.’

Whereas the Executive Board, after consideration, wishes to avail itself of the provisions of the said Article,

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

I. Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?

II. Given that the record shows that the parties to the dispute underlying the ILOAT’s Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT’s statement, made in support of its decision confirming its jurisdiction, that ‘the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes’ and that the ‘effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund’ outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

III. Was the ILOAT’s general statement, made in support of its decision confirming its jurisdiction, that ‘the personnel of the Global Mechanism are staff members of the Fund’ outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IV. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

V. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VI. Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VII. Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

VIII. Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IX. What is the validity of the decision given by the ILOAT in its Judgment No. 2867?";

Whereas certified true copies of the French and English texts of that resolution were transmitted to the Court under cover of a letter from the President of the International Fund for Agricultural Development dated 23 April 2010 and received in the Registry of the Court on 26 April 2010;

Whereas the President of the Fund indicated in his letter that, pursuant to Article 65 of the Statute, all documents likely to throw light upon the question would be transmitted to the Court;

Whereas, by letters dated 26 April 2010, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the Statute,

1. *Decides* that the International Fund for Agricultural Development and its Member States entitled to appear before the Court, the States parties to the United Nations Convention to Combat Desertification entitled to appear before the Court and those specialized agencies of the United Nations which have made a declaration recognizing the jurisdiction of the Administrative Tribunal of the International Labour Organization pursuant to Article II, paragraph 5, of the Statute of the Tribunal are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion;

2. *Fixes* 29 October 2010 as the time-limit within which written statements on these questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;

3. *Fixes* 31 January 2011 as the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute;

4. *Decides* that the President of the International Fund for Agricultural Development shall transmit to the Court any statement setting forth the views of the complainant in the proceedings against the Fund before the Administrative Tribunal of the International Labour Organization which the said complainant may wish to bring to the attention of the Court; and *fixes* 29 October 2010 as the time-limit within which any possible statement by the complainant who is the subject of the judgment may be presented to the Court and 31 January 2011 as the time-limit within which any possible comments by the complainant may be presented to the Court; and

Reserves the subsequent procedure for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-ninth day of April, two thousand and ten.

(*Signed*) Peter TOMKA,
Vice-President.

(*Signed*) Philippe COUVREUR,
Registrar.
