



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

Unofficial

No. 2012/6

1 February 2012

### **The Court finds that the decision given by the Administrative Tribunal of the International Labour Organization in its Judgment No. 2867 is valid**

THE HAGUE, 1 February 2012. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Advisory Opinion concerning Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development.

In its Advisory Opinion, the Court:

(1) Finds unanimously that it has jurisdiction to give the advisory opinion requested;

(2) Decides unanimously to comply with the request for an advisory opinion;

(3) With regard to the questions put for an advisory opinion by the Executive Board of the International Fund for Agricultural Development, is of the opinion:

(a) Unanimously, with regard to Question I, that the Administrative Tribunal of the International Labour Organization was competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development on 8 July 2008 by Ms Ana Teresa Saez García;

(b) Unanimously, with regard to Questions II to VIII, that these questions do not require further answers from the Court;

(c) Unanimously, with regard to Question IX, that the decision given by the Administrative Tribunal of the International Labour Organization in its Judgment No. 2867 is valid.

### **I. Factual background**

The request for an advisory opinion concerns the validity of the Judgment rendered by the Administrative Tribunal of the International Labour Organization (hereinafter the “Tribunal”) on 3 February 2010, relating to Ms Saez García’s contract of employment. In March 2000, Ms Saez García was offered, and accepted, a two-year fixed-term contract with the International Fund for Agricultural Development (IFAD) to serve as a Programme Officer in the Global Mechanism, an entity hosted by IFAD. The Global Mechanism — established by the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa — works to mobilize and channel financial resources

to developing countries. Ms Saez García's contract was twice extended by IFAD. By a memorandum of 15 December 2005, the Managing Director of the Global Mechanism informed her that, due to a reduction in the budget of the Global Mechanism, her post would be abolished and her contract would not be renewed. Ms Saez García requested a facilitation process, which ended with no settlement, and she then challenged the decision before the Joint Appeal's Board of the Fund, which unanimously recommended that she be reinstated and awarded a payment of lost salaries, allowances and entitlements. On 4 April 2008 the President of the Fund rejected the recommendations. On 8 July 2008, Ms Saez García filed a complaint with the Tribunal, and, in its Judgment of 3 February 2010, the Tribunal decided that "[t]he President's decision of 4 April 2008 is set aside" and made orders for the payment of damages and costs. In a resolution of 22 April 2010 (attached as Annex 1), the Executive Board of the Fund requested an advisory opinion of the Court on the validity of that judgment.

## **II. The Existence and Scope of the Court's Jurisdiction**

After recalling the terms of Article XII of the Annex to the Statute of the Tribunal, the Court observes that the power of the Executive Board to request an advisory opinion and the jurisdiction of the Court to give such an opinion are founded on the Charter of the United Nations and the Statute of the Court, and not on Article XII of the Annex to the Statute of the Tribunal alone. In addition to the latter provision, the Court examines Article 96 of the United Nations Charter, Article 65, paragraph 1, of its Statute and Article XIII, paragraph 2, of the Relationship Agreement between the United Nations and the Fund, concluding that the Fund has the power to request an advisory opinion on the validity of the decision given by the Tribunal in its Judgment No. 2867 and that the Court has jurisdiction to consider the request. These provisions are included in Annex 2 to this press release. The Court recalls that its power to review a judgment of the Tribunal is limited to two grounds: that the Tribunal wrongly confirmed its jurisdiction or the decision is vitiated by a fundamental fault in the procedure followed.

## **III. The Court's Discretion**

With regard to its discretion under Article 65 of its Statute as to whether to reply to a request for an advisory opinion, the Court recalls that "compelling reasons" would be required to justify a refusal. Indeed, it has always considered that to give the advisory opinion requested represents its participation in the activities of the Organization and, in principle, a request should not be refused. The Court then examines the principle of equality before it of IFAD on the one hand and the official on the other, including inequality of access to the Court and inequalities in the proceedings before the Court. With regard to the former, the Court observes that it is only the employing agencies which have access to the Court; the staff member concerned does not. The Court considers that questions may now properly be asked whether such a system, established in 1946, meets the present-day principle of equality of access to courts and tribunals. With regard to the latter, the Court finds that although the process of ensuring equality in the proceedings was not without its difficulties, the Court ultimately did have the information it required to decide on the questions submitted; that both the Fund and Ms Saez García have had adequate and, in large measure, equal opportunities to present their case and to answer that made by the other; and that, in essence, the principle of equality in the proceedings before the Court has been met. Thus, the Court considers that the reasons that could lead it to decline to give an advisory opinion are not sufficiently compelling to require it to do so.

## **IV. Merits**

Before turning to the questions put to it for an advisory opinion, the Court observes that, in light of the different instruments setting up the Fund, the Conference of the Parties of the

Convention on Desertification (hereinafter the “COP”), the Global Mechanism and the Permanent Secretariat, and of the practice included in the record before the Court, the Global Mechanism had no power and has not purported to exercise any power to enter into contracts, agreements or “arrangements”, internationally or nationally.

### **A. Response to Question I**

In Question I, the Court is requested to give its opinion on the competence of the Tribunal to hear the complaint brought against the Fund by Ms Saez García. Under Article II, paragraph 5, of its Statute, the Tribunal could hear the complaint only if the complainant was an official of an organization that has recognized the jurisdiction of the Tribunal, and if the complaint related to the non-observance of the terms of appointment of such an official or the provisions of the staff regulations of the organization. The Court examines the first set of conditions with reference to the competence ratione personae of the Tribunal and the second set of conditions under the heading of the competence ratione materiae of the Tribunal.

With respect to the Tribunal’s competence ratione personae, since recourse to the Tribunal is open to staff members of the Fund, the Court first considers whether Ms Saez García was an official of the Fund, or of some other entity that did not recognize the jurisdiction of the Tribunal. On the basis of an examination of her offer of employment and the renewals of her contract, the Court concludes that an employment relationship was established between Ms Saez García and the Fund, and that this relationship qualified her as a staff member of the Fund. The Court considers that this is further evidenced by the facts surrounding her appeal against the decision to abolish her post, an appeal that was at no point contested by IFAD, and the consequent non-renewal of her fixed-term appointment. The Court thus concludes that the Tribunal was competent ratione personae to consider the complaint brought by Ms Saez García against the Fund.

With respect to the Tribunal’s competence ratione materiae, the Court concludes that Ms Saez García’s complaint to the Tribunal falls within the scope of allegations of non-observance of her terms of appointment and of the provisions of the staff regulations and rules of the Fund, as prescribed by Article II, paragraph 5, of the Statute of the Tribunal. With regard to the Fund’s contention that the Tribunal lacked jurisdiction to examine matters outside the scope of Article II, paragraph 5, of its Statute, such as the legal arrangements governing the relationship between the Global Mechanism and the Fund, the Court is of the opinion that the Tribunal could not avoid examining such matters, as well as the status and accountability of the Managing Director of the Global Mechanism. Consequently, the Court is of the view that the Tribunal was competent ratione materiae to consider the complaint brought before it by Ms Saez García in respect of the non-renewal of her contract by the Fund.

### **B. Response to Questions II to VIII**

The Court states that its answer to the first question put to it by the Fund covers also all the issues on jurisdiction raised by the Fund in Questions II to VIII. To the extent that Questions II to VIII seek the opinion of the Court on the reasoning underlying the conclusions reached by the Tribunal, the Court reiterates that, under the terms of Article XII of the Annex to the Statute of the Tribunal, a request for an advisory opinion is limited to a challenge of the decision of the Tribunal confirming its jurisdiction or to cases of fundamental fault of procedure. Questions II to VIII do not identify any fundamental fault in procedure which may have been committed by the Tribunal in its consideration of the complaint against the Fund.

### C. Response to Question IX

In response to Question IX put by the Executive Board of the Fund, concerning the validity of the Tribunal's decision in its judgment No. 2867, the Court, having decided that the Tribunal was entirely justified in confirming its jurisdiction, and not having found any fundamental fault in procedure committed by the Tribunal, finds that the decision given by the Tribunal in its Judgment No. 2867 is valid.

#### Composition of the Court

The Court was composed as follows: President Owada; Vice-President Tomka; Judges Koroma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Caçado Trindade, Yusuf, Greenwood, Xue, Donoghue; Registrar Couvreur.

Judge Caçado Trindade appends a separate opinion to the Advisory Opinion of the Court; Judge Greenwood appends a declaration to the Advisory Opinion of the Court.

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A summary of the Advisory Opinion appears in the document "Summary No. 2012/1". In addition, this press release, the summary and the full text of the Advisory Opinion can be found on the Court's website ([www.icj-cij.org](http://www.icj-cij.org)) under "Cases".

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Note: The Court's press releases do not constitute official documents.

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. It is assisted by a Registry, its international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international

judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an institution founded in 1899, which is independent of the United Nations).

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## ANNEX 1

### **Resolution adopted by the Executive Board of the International Fund for Agricultural Development on 22 April 2010**

The Executive Board of the International Fund for Agricultural Development, at its ninety-ninth session held on 21-22 April 2010:

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 [to] 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?
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## ANNEX 2

### **Article XII of the Annex to the Statute of the Administrative Tribunal of the International Labour Organization**

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.

### **Article 96 of the Charter of the United Nations**

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

### **Article 65 of the Statute of the Court**

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

### **Article XIII, paragraph 2, of the Relationship Agreement between the United Nations and the International Fund for Agricultural Development**

The General Assembly of the United Nations authorizes the Fund to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the Fund's activities, other than questions concerning the mutual relationships of the Fund and the United Nations or other specialized agencies. Such requests may be addressed to the Court by the Governing Council of the Fund, or by its Executive Board acting pursuant to an authorization by the Governing Council. The Fund shall inform the Economic and Social Council of any such request it addresses to the Court.

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