

Presentation of the OAS Administrative Tribunal before the Committee on Administrative and Budgetary Affairs of the Permanent Council



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October 10, 2017



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1. BACKGROUND OF THE ADMINISTRATIVE TRIBUNAL

It is an
autonomous
organ

It is the only tribunal with competence
in labor disputes between the GS /OAS
and its officials, and may be extended to
other inter-American specialized
agencies, such as IICA

It was created 46
years ago by the
OAS General
Assembly
(Resolution AG /
RES. 35 (I-O / 71)
And installed 45
years ago.

It has adopted
165 judgments
and 390
resolutions.


It decided over 304 cases v. gr.
separation of service, job classification,
work accidents, appointment and
selection, benefits, retirement,
performance evaluations, benefits and
subsidies, institutional parity.



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2. IMPORTANCE OF THE TRIBUNAL FOR THE ORGANIZATION

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1. It concludes disputes arising from the employment relationship.
 2. **Contributes to conflict prevention**, since its decisions promotes the improvement of internal policies and compliance with internal rules.
 3. **It constitutes the principal safeguard of jurisdictional immunity.** It avoids litigation expenses outside its headquarters in any of the 35 jurisdictions of the Member States and the risk of awarding costs, indemnities and other compensations for damages for amounts greater than those regulated in the Statute of TRIBAD.



value
Worth
fair and suitable
desirability, utility
being useful or de



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3. CURRENT CIRCUMSTANCES

Despite the content of the statements made by OAS officials and authorities regarding the significance of this Tribunal for the stability of the organization, the following circumstances have affected its institutionality:

1. Dilation in the implementation of Judgment 165 and failure to submit the schedule requested by the Tribunal.
2. Insufficient economic resources to function and to provide guarantees of due process to the parties.
3. Requiring unsuitable conditions in order to grant resources.
4. Reporting requirement to an inappropriate instance.
5. Setting of fees that do not correspond to the judicial work carried out.
6. Exclusion of the selection process of the Secretary of the Tribunal
7. Precarious working conditions of the legal assistant (CPR).
8. Failure or delay in answering notes sent by the Tribunal





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4. SUSPENSION OF FUNCTIONS SINCE JUNE 1, 2017

TRIBAD considered that the previous conditions obstructed its normal functioning and declared the suspension of its functions, having previously alerted the GS/OAS and the political bodies of the Organization about the following **RISKS**

1. Loss of jurisdictional immunity and,

2. Loss of several rights and procedural benefits for Plaintiffs, i.e.:

- Self-representation or representation by a colleague when it is not possible to hire legal services;
- Presentation of testimonies in any of the 4 languages of the Organization;
- Free documents translation;
- Exemption of Tribunal fees
- Procedure speediness
- The opportunity to be interrogated through technological platforms;
- Appeals procedure.





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DETAIL OF CERTAIN CIRCUMSTANCES



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1. DILATION IN THE IMPLEMENTATION OF JUDGMENT 165 AND FAILURE TO FURNISH INFORMATION REQUESTED



- On **January 31, 2017**, Judgment 165 was issued resolving: “2.TO ORDER the OAS General Secretariat to proceed, **as promptly as possible** and in accordance with the legal arguments and reasoning set out in this judgment, to organize a new selection process for the position of Director of the Department of Human Resources in the same terms that apply for the position of the Organization’s Inspector General.”.



- On **May 2, 2017**, the GS/OAS, through Note TRIBAD 28/17, was requested to **provide information on the measures implemented** to comply with the decisions communicated in the judgment.



- On **May 17, 2017**, the Secretariat of the Tribunal received the Note OSG/215/2017 dated May 10, 2017, by which the Secretary General reports that it was decided to appoint José Luis Ramírez, Adviser to the Office of the Secretary General, due to the resignation of the Director of the Department of Human Resources.



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- On **May 22, 2017** the Tribunal adopted **Resolution 388** in which resolved: "*To request the Secretary General to deliver, **within a maximum period of 15 days** from the date of receipt of this notification, the official institutional timetable with indication of activities, dates and persons responsible for the implementation of the measures informed*".
- On **June 5, 2017** the Office of the Secretary General transmitted Note OSG-246-17 dated June 2, 2017, whereby the Secretary-General reports as follows: ". [...] Likewise, in relation to the competition for the new director of the HRD, the General Secretariat will carry out this process in accordance with the General Standards and following the order of the Tribunal in its judgment 165 of December 29, 2016, **in such a way that a new director may be available no later than February 2018.** " (emphasis added)
- On **October 03, 2017** the Tribunal adopted **Resolution 391** in which resolved: "To request the Secretary General to deliver, within a **maximum period of 15 working days** from the date of receipt of this Resolution, the official institutional timetable with indication of activities, dates and persons responsible for carrying out the selection process of the Director of the Department of Human Resources, to ensure that post is filled in February 2018, under warning of incurring a breach of the terms of Judgment 165 regarding the obligations arising from the resolution of this Tribunal".



2. DENIAL OF ECONOMIC RESOURCES TO GIVE GUARANTEES OF DUE PROCESS

The average budget execution in recent years is \$125,000 - \$130,000. IICA receives \$24,000 annually and the rest (approximately \$100,000) from two sources:

- (I) Regular funds approved by the General Assembly and
- (II) Supplementary funds to those approved by the General Assembly ("reinforcements")

For 2017 the General Assembly approved \$36,700, which represents 1/3 of the necessary budget for the proper functioning. In May, a reinforcement was requested for a CPR (USD 13,500) and another for operating expenses during the second quarter (\$6,500), the latter being denied.





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What happened in 2017?

The Secretariat of Administration and Finance (SAF), on **May 12, 2017** (with only **\$612** available in the account) informed the Tribunal that *"it should not assume that future reinforcements in 2017 may occur neither from the ICR nor from the regular fund"*.

On **May 23, 2017** TRIBAD, through note TRIBAD 40/17, requested an amount of \$36,300 to cover its operations until the end of the year, sending an urgent alert on the consequences of a possible loss of jurisdictional immunity. In the absence of a timely response, **TRIBAD decided to suspend its jurisdictional functions on 1 June.**





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After that suspension, an additional accreditation of USD 9,500 was communicated to TRIBAD, which is still insufficient for the projected expenditures until December 2017. There is a pending amount **of USD 26,800 to be credited as requested by the Tribunal to the GS/OAS** (reiterated through Note 52/17 of July 20 submitted to the GS / OAS).



It is important to highlight that the current balance of this Tribunal is **\$7,967**. Such amount is not enough to hold the annual session of the Tribunal scheduled on November 2017), which directly hinders the Tribunal's normal functioning.





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Dripping for resource allocation

Failure to consult the Tribunal during the budgetary planning process in 2016 meant that the proposed program-budget submitted to Member States omitted its real operational needs and therefore the amount approved by the General Assembly for 2017 has been insufficient, and systematic requests for reinforcements have therefore been made.



The Tribunal has operated under the reiterated and customary understanding that its expenditure requirements would be covered under this scheme, although this system should be modified for being incompatible with the Independence of the Tribunal.

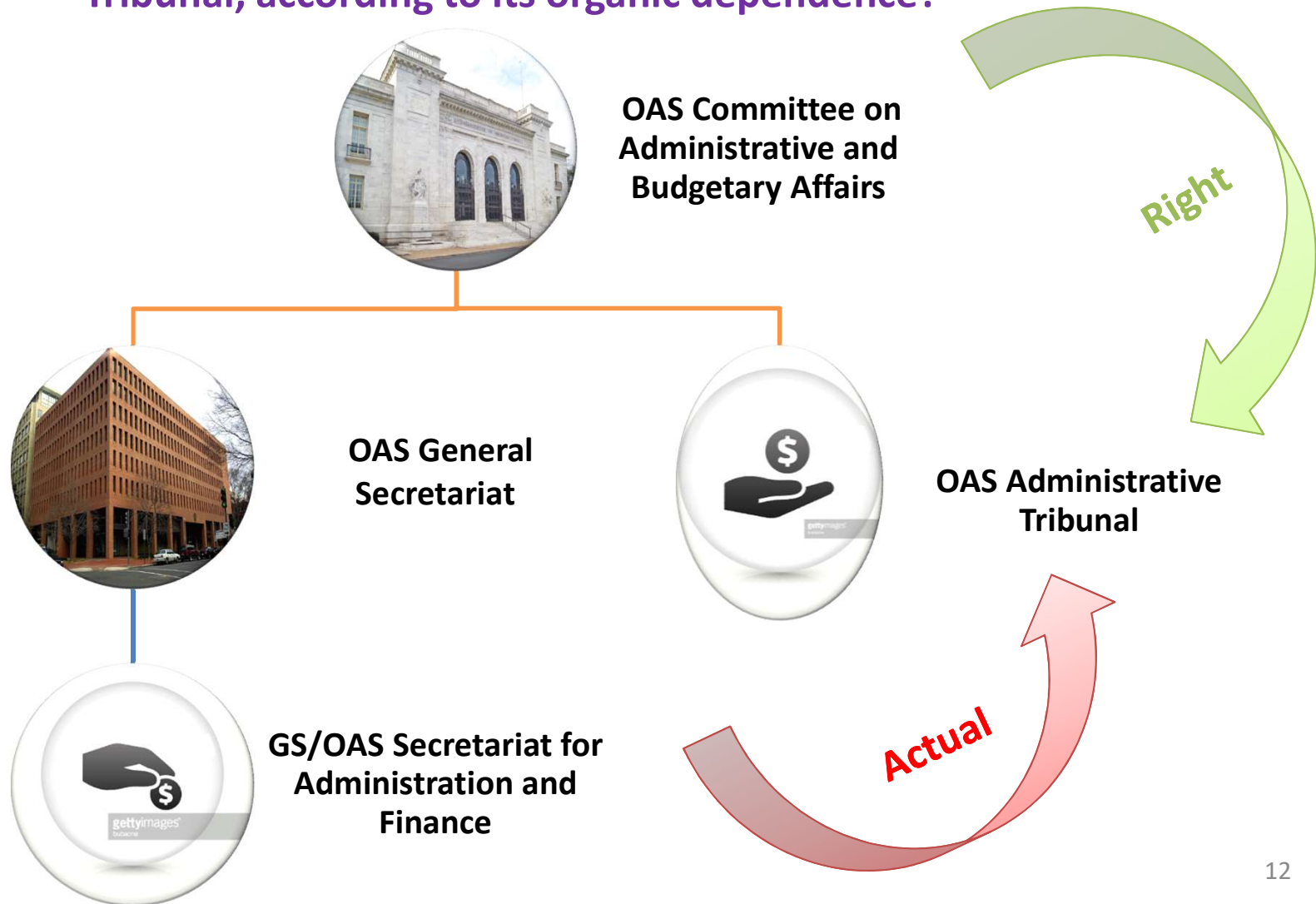




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How should be the correct subjection with respect to the budget of the Tribunal, according to its organic dependence?





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Position of the Tribunal and request for 2017

This Tribunal reiterates its rejection to the dripping system in the allocation of its budget and reaffirms its status of suspension until the **funds necessary to function properly until the end of the year are credited.**



**IT SHOULD BE NOTED THAT
POTENTIALLY THIS
JURISDICTION CAN BE
ACTIVATED IF THERE ARE
CASES AT THE CURRENT
TIME BEFORE THE
RECONSIDERATION
COMMITTEE.**

If the requested resources are allocated and, in the event that no case is submitted for the remainder of 2017, all funds reserved for the substantiation of a case may be returned to their original source for redistribution by the Member States.

It should be noted that if there is one or more cases currently under review by the Reconsideration Committee (Chapter XII of the Staff Regulations), the possibility that any of them may transcend the judicial process is latent.



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3. SITUATION OF STAFF AT THE SERVICE OF THE TRIBUNAL

STATUTE OF THE ADMINISTRATIVE TRIBUNAL

Article V General Secretariat Support

The General Secretariat shall provide the Tribunal with the technical and secretariat services necessary for its functioning.

It is necessary to review the current working conditions of the two persons who render services to the Administrative Tribunal:



- 1 Secretary that has not been formally designated



- 1 CPR, legal assistant. whose contractual modality is not according to her functions.



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Selection Process of Secretary

In 2015, the GS/OAS opened a competitive process for the selection of the Secretary of TRIBAD.

That "consultation with the organ" , as such, is not an action to be taken 'after a competition'.

The proper action that must follow 'after a competition' is the appointment by the Secretary General, while the consultation with the involved body must be made from the beginning of the process because otherwise would prevent fulfillment of the purpose of the rule.

The applicable rule is Article 22 of the General Standards which provides as follows:

*"[...] c. Until the General Assembly approves any necessary modifications to the corresponding Statutes of the organs and entities referenced in this Article, for any organs or entities whose statutes do not provide for competitive selection of the corresponding Secretary, Executive Secretary, or Director, as the case may be, those officials will be appointed by the Secretary General in **consultation with the organ** or entity concerned, and following a competition in accordance with Article 44 of the General Standards."*



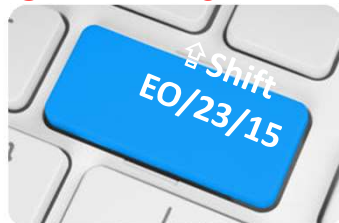


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INTERVENTION IN THE COMPETITION

Although TRIBAD asked the GS/OAS since **2000** to intervene in the selection of its Secretary as a technical area, it was only notified until January 27, **2017**, after almost 2 years since the vacancy announcement of competition was posted. The Office of the Secretary General acted in the process as technical area, configuring a situation of **CONFLICT OF INTEREST**.



TRIBAD after internal consultations decided to interview the pre-selected candidates, conduct written tests and determine which candidate was the most suitable for the position.

AMENDMENT PROPOSAL

The foregoing circumstances motivated the Tribunal to prepare and submit to the Permanent Council a proposal for a reform of its Statute in accordance with Article 22 of the General Standards, which will be consistent with Article 113 of the OAS Charter.





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AMENDMENT PROPOSAL OF THE SELECTION OF THE TRIBUNAL SECRETARY

CLARIFICATIONS IN REFERENCE TO THE LETTER OSG/274/17

SUBMITTED BY THE GS CHIEFF OF STAFF TO THE TRIBUNAL

- 1. The proposal under review is compatible with the General Standards, and the resulting candidates list in the competitive process will be presented to the Secretary General.** In this case the main concern and essential objective of the Tribunal is that the competitive process is carried out without undue interference and that the judges of the Tribunal directly assess the suitability of any particular candidate, who would ultimately be under their supervision and not under the General Secretariat's.
- 2. This Tribunal shares the understanding that the position of its Secretary must be a full-time position, and the proposal will include such opinion.** The erroneous definition of the part-time position does not correspond to the workload of the Tribunal (which exceeds the proceeding of cases); being necessary the modification of that practice implemented by the GS / OAS in the past.



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TRIBAD's position on the selection of the Secretary



*Article III.2 of the Statute of the Tribunal specifies that all Judges shall be “**experienced lawyers, law professors, or judges by profession**”.*

The specific functions of the Secretary must be supervised in practice by experienced jurists.

The Secretary General supervision of the Secretary of TRIBAD is limited only to administrative matters, not to daily substantive tasks, in order to avoid any conflict of interest that would undermine the independence of this Tribunal.

*Article 4 the Rules of Procedure of the Tribunal provides that “**With respect to his specific functions, the Secretary shall be responsible to the Tribunal and, when it is not in session, to its President.**”*



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Working situation of the legal assistant under CPR contract

For more than a decade, TRIBAD has asked that its legal assistant's position be regularized. The current one was hired since 2011 with a CPR contract carrying on her functions on an ongoing basis.

TRIBUNAL POSITION

**THIS ORGAN BELIEVES THAT IN THE
CASE OF ITS LEGAL ASSISTANT,
BEARING IN MIND THE NATURE OF
HER TASKS, A FULL-TIME CONTRACT
IS REQUIRED.**



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PETITIONS FROM THE ADMINISTRATIVE TRIBUNAL TO THE CAAP





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1. To consider the situations listed related to the General Secretariat, and to take appropriate measures to regularize the budgetary, administrative and institutional situation of this body, so as to ensure a proper functioning that allow us to provide a high quality service to the parties that litigate before this instance; the reestablishment of a stable working atmosphere for the Organization, and the reaffirmation of the autonomous and independent nature of this organ.
2. To indicate to the Tribunal the course of the meetings to be followed in order to resolve this serious institutional situation.

OAS Administrative Tribunal
Judge Michel Bastarache, Vicepresident
Judge Michael T. Peay



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