JUDGMENT, CASES NOS. 86, 87, AND 89- RUDI LUIS CRESSA ET AL., MARÍA CECILIA ARES ET AL., KAREN ALLISON CANTERBURY ET AL. V. IDB

The Administrative Tribunal of the Inter-American Development Bank Group, composed of Judge Alberto Wray, President; Judge Edith Brown Weiss, Vice-President; Judge German Leitzelar V.; Justice Désirée Bernard (participating through electronic means); Judge Mónica Pinto; Judge Hugo Lorenzo; and Judge Shoschana Zusman Tinman, considered Cases 86, 87 and 89 following the procedures established in the Tribunal's Rules of Procedure.

PROCEDURAL HISTORY:

1. On December 12, 2013, seven national employees of the Country Office (CO) of the IDB in Venezuela (Rudi Luis Cressa Z., Xiomara Margarita Aleman Delfin, Ana Maria Brandt Rosell, Naily Contreras, Patricia Carolina Machado Artega, Carmen Teresa Martin, and Victor Eduardo Roa Rodriguez, hereafter "Complainants Case 86"), assisted by Counsel Omar Fumero, filed a Complaint before the IDB Administrative Tribunal ("the Tribunal") concerning the suspension on February 5, 2013 of the administrative facility for direct savings by means of the Global Payroll system.

2. On January 9, 2014, five national employees of the CO of the IDB in Argentina (Maria Cecilia Ares, Natalia Benasso, Damian Ricardo Crivaro, Felix Martin Soto, Gabriella Szarfer, hereafter "Complainants Case 87"), assisted by Alex Philippe Haines, Barrister, filed a Complaint before the Tribunal seeking relief from the effects of the Bank's administrative decision of November 30, 2012.

3. On March 11, 2014, the Inter-American Development Bank (hereinafter "IDB," "the Bank," or "the Respondent") represented by Salvador Corona, Esq., requested that, pursuant to Art. 32 of the Rules of Procedure, the President of the Tribunal authorize the joinder of Cases 86 and 87 as a substantial portion of the issues of fact and law in each of these cases coincide. All Complainants were national employees assigned to their respective Bank COs; all Complainants made allegations that the Bank's decision has affected their ability to have savings; all complainants requested the rescission of the Bank's decision to discontinue the administrative facility. The Tribunal accepted Respondent's request and joined the cases on June 10, 2014.

4. On June 12, 2014 nine national employees of the of IDB CO of Guyana (Karen Allison Canterbury; Michelle Charles (nee Day); Naveen Jainauth-Umrao; Christopher Persaud; Ramdeholl Ragubir; Leticia Ramjag; Sheron Ann Roberts; Derise Avione Williams; and Ava Yarde, hereafter "Complainants Case 89"), assisted as well by Alex Philippe Haines, Barrister, filed a Complaint before the Tribunal concerning the administrative decision of January 22, 2013. As of July 31, 2014, Mr. Persaud became an international employee, and his salary denominated and paid in US dollars. He withdrew from the case on February 11, 2016.

5. On November 6, 2014, the Respondent filed a request to join Case 89, Karen Allison Canterbury *et al*. to Cases 86 and 87; the request was granted for the reasons stated above in paragraph 3 above, on August, 28 2015; hereinafter "the Complainants."

6. Each of the Complaints challenge the Bank's decision to discontinue the administrative facility in each local office respectively, by which they, as national employees assigned to their respective IDB COs, requested the Bank to convert part of their salaries denominated in local

currency to US dollars and allocate the resulting amount to their IDB-IIC Federal Credit Union accounts held in Washington DC.

Complainants requested this Tribunal to:

1) Rescind the Bank decision of February 5, 2013 (Case 86), of 30 November 2012 (Case 87), and of January 22, 2013 (Case 89) to suspend of the administrative facility of direct savings through the Global Payroll system in view of the economic and moral harm it has caused to them;

2) Grant compensation for the damage caused for the violation of the policies and rules from the date of the suspension of this benefit up to compliance with the favorable judgment of the Tribunal in the amount of (80%) of the monthly remuneration of each complainant (Case 86); grant Compensation of the staff members for any losses attributable to the Bank's contractual breaches from January 22, 2013 (Case 87) and from January 22, 2013 (Case 89);

3) Grant compensation in the greater amount between two (2) times their monthly salary and two (2) times the average salary in the Bank for reasons of discrimination by country of origin, and for harm to the "Life Project" (Case 86);

4) Grant damages for breach of contract (Cases 87 and 89);

5) Grant punitive damages (Case 87 and Case 89);

6) Award reasonable legal costs incurred in remedying the Bank's unlawful conduct (Case 87 and Case 89).

7. On September 17, 2014, the Bank lodged its Answer to the Complaints in Cases Nos. 86 and 87.

8. On February 17, 2015, Complainants of Case No. 87 filed an application to consult the Confidential Annexes offered on the Bank's Answer. The inspection took place on April 14, 2015. Counsel for Complainants of Case 86 inspected the Confidential Annexes filed with the Bank's Answer to joined Cases 86 and 87 the week of July 12, 2015.

9. On September 23, 2015, the Bank filed a Motion to Dismiss Case No. 89, as the Bank took actions that would provide the relief sought by Complainants, supporting the Credit Union in maintaining a loan program for national staff members that at the same time would be consistent with the recommendations of the Executive Auditor, Bank rules and national laws of respective countries. On December 18, 2015, following the submission of the Complainants' arguments against the Motion to Dismiss case 89, the Tribunal deferred its decision and set down the Complainants' claim in all three joined cases for a full hearing. The Tribunal also granted the Bank the opportunity to amend its Answer in Cases Nos. 86 and 87 to include an Answer in Case No. 89.

10. On January 19, 2016, the Bank lodged its Supplement to Answer of Respondent to Joined Cases Nos. 86, 87 and 89 ("Supplement to Answer").

11. On February 10, 2016, Counsel for Complainants of Case 86 submitted their Replication. On February 11, 2016, Counsel for Complainants in Cases 87 and 89 filed their Replication.

12. On March 28, 2016, the President of the Tribunal ordered to open the probative phase of the proceedings for the Parties to offer evidence. On April 12, 2016 Counsel for Complainants of Cases 87 ad 89 submitted a "Submission of further Documentary evidence." On the same day, Counsel for Respondent of Joined Cases Nos. 86, 87 and 89 submitted "Respondent's petition for the admission of evidence." On April 14, 2016 Counsel for Complainants in Case 86 filed a Submission for the admission of evidence.

13. On May 16, 2016, the Tribunal admitted the evidence proposed by the Parties and notified Parties about the hearing dates. The evidence was received on July 11 and 12, 2016 in Washington DC.

14. On February 10, 2017, Respondent filed a Petition for the Admission of Additional Evidence. On February 15, 2017, the President of the Tribunal, after hearing both Complainants' Counsel admitted Respondent's Petition for the Admission of Additional Evidence.

15. The Tribunal heard oral argument on February 22, 2017; COs of Venezuela, Argentina and Guyana were connected via Video Conference.

PARTIES POSITION:

On the merits, Complainants' arguments can be summarized as follows:

a) Breach of the Complainants' acquired rights

16. According to Complainants, fundamental conditions of employment are defined as being those which would have induced the staff member to accept employment. Since the introduction of its Global Payroll system in 2004, the Bank has adopted a policy of actively encouraging its employees to save in this manner and thereby better protect their financial futures. The right to save in US dollars was not only used by the Bank's Human Resources Department ("HRD") as a recruitment tool to attract potential employees, but the Complainants themselves relied upon this benefit when they accepted employment with the Bank. Plus, the staff have enjoyed it for the past several years. In Complainants' views, this practice has become a source of law and formed part of the Bank's internal law and the employees' terms of employment acquired by them and cannot be revoked without their express consent. They conclude that the practice has, over the years, altered the contracts of employment or the terms and conditions of service for staff and as such the Bank's power to amend the benefits package enjoyed by the staff are limited by the doctrine of acquired rights. Such amendments may not adversely affect in a substantial way an essential term of the employment relationship (citing: De Merode WBAT Reports [1981], Decision No. 1; Mesch and Siy v. Asian Development Bank (Nos. 1, 2, 3 and 4) [1994, 1995, 1996, and 1997 respectively]; Mrs. M.M.A *et al*. v. PAHO [2008] ILOAT Judgement No. 2696, 104th session; IDBAT Case 20 Manuel Valderrama v. IDB [1988]).

b) Erroneous application/Failure to apply Domestic Law to the local IDB staff

17. Complainants argue that the Bank has not shown how continuing to allow the use of the conversion feature could be considered inconsistent with Argentinian, Venezuelan or Guyanese National Law.

18. Further, analyzing the domestic laws, Complainants note that the IDB is regulated by the provisions of public international law which grant juridical personality to the IDB, immunity of functions and of assets. Therefore, the handling of foreign exchange -Complaints claim- is covered

by these privileges and immunities and should be considered permitted under the respective national legal orders.

c) Lack of consultation

19. Complainants alleged that a breach of PE-381 section 104 (which provides for consultation from the Administration to the Staff Association about projects for new policies or amendments which may affect the working conditions of the employees) occurred. Further, they claim that the Bank's national staff in Argentina were only contacted for the first time on the same date that they were prohibited from depositing sums into their Washington DC US dollar based accounts and that their scheduled deposits were cancelled from their individual IDB payroll accounts.

d) Breach of the principle of equality of treatment

20. Complainants further claim that Bank Management tries to distinguish and discriminate national staff from international staff, as the latter, when working in a local office of the IDB, can save and make use of the services of the Credit Union while the former can't.

21. If there really was a legitimate reason to deprive the staff members of their right to save, one would hope that the Bank would have contacted all COs simultaneously and openly, announcing the changes and explaining the situation.

e) On the economic and moral harm from the suspension of the savings system through the Credit Union for IDB staff

22. Complainants claim that the unilateral suppression of the savings system, denominated in US dollars, causes an encumbrance and harm to the "life project" insofar as it restricts and makes more difficult the materialization of the personal goals established by each employee as they are not being allowed to have the income they initially planned on.

f) Bank's PN-7.02 incompatibility argument

23. Complainants reject the Bank's argument that allocating a percentage of Complainants salaries in US dollars to their respective IDB Federal Credit Union accounts is incompatible with section 3.04 of PN-7.02 of the IDB Manual. Complainants sustain that there is no incompatibility as staff members are in fact paid in their local currency. This is confirmed by the relevant documents issued by the Credit Union.

On the merits, Respondent's arguments can be summarized as follows:

a) The conversion feature did not constitute a "right to save" or "beneficio de ahorro" and the doctrine of acquired rights does not preclude the Bank's authority to discontinue the conversion feature

24. According to the Bank, the use of the conversion feature should not be understood as an employee benefit, which is why it is not defined as such in the National Staff Manual nor in the staff contract of employment. It was not mandatory to use it, and there was no guarantee that it would be maintained over time. But more importantly, the conversion feature was never intended to provide national staff members with a way to obtain an income in excess of their contractual salary. Any income that the national staff members may have obtained as a result of actions

subsequent to the receipt of the salary payments – such as income derived from differences in currency exchanges or investments in foreign jurisdictions – is not an acquired benefit as it cannot be considered an essential and fundamental term which could be said to have reasonably and legitimately induced national staff members to enter into a contract of employment with the Bank.

25. Respondent asserts that administrative tribunals around the world accept the proposition that an organization has the authority to change personnel policies that alter all conditions of employment, even when such changes result in a harm to the employees' interests, as long as there is no improper motive. An acquired right, however, is considered to be a term of the contract of employment which is so essential and fundamental that it cannot be subject to unilateral amendment by the organization (citing IDBAT Case 20, Manuel Valderrama v. IDB, [1988]; WBAT, Judgment 1, de Merode v. WB, [1981]; ILOAT, Judgment 832, In re Ayoub, [1987]).

26. Respondent concludes that, as the discontinuation of the conversion feature did not directly and generally affect the salaries and benefits of staff and as the benefit result from actions extraneous to the Bank, it cannot be considered a violation of an acquired right.

b) Payment of national staff salaries in US dollars is inconsistent with certain national laws and could result in reputational risks for the Bank

27. During the first semester of 2012, the Compensation, Benefits and Human Resources Services Division of the Human Resources Department ("HRD/COB") started to receive concerns from the COs regarding the increase in the percentages of salary that the national employees were requesting to convert to US dollars, particularly in countries with foreign exchange controls. Having this factor being analyzed by the Auditor General, and pursuant to the Auditor's recommendation, the Bank reviewed national laws of the countries where the Bank has a CO to determine whether this practice could be seen as inconsistent with them and whether this could have posed a Reputational risk in selected host countries and potential for national staff violating the Bank Code of Ethics by not complying with local laws.

28. The Bank concluded that, particularly in countries that have currency restrictions established, the conversion feature could be viewed as inconsistent with national laws. Further, national laws do not qualify the Bank as a business licensed or otherwise qualified to perform currency exchange services.

29. As per Complainants' argument regarding immunities, Respondent asserts that the Bank enjoys privileges and immunities granted by member countries in order to fulfill institutional purposes and functions, and staff members may not use or attempt to use the Bank's privileges and immunities to preserve and advance their own personal interests. Trying to use the privileges and immunities in any other way would be contrary to the Code of Ethics.

c) Bank adopted significant measures to try to alleviate national staff from the potential impact of a sudden discontinuation of the conversion feature

30. Respondent claims that in all COs, national staff members were allowed to continue requesting currency conversions for the purpose of paying loans that had been previously entered into with the Credit Union until their payment in full. Further, a transition period was established before salaries were again exclusively paid in local currency. The length of this transition period varied from country to country, depending on issues such as foreign exchange controls and other considerations arising from local laws, as well as whether the reputation risks for the Bank were more or less imminent.

d) Payment of salaries in local currency is not discriminatory

31. The Bank decided that the conversion feature would no longer be available to national staff members in any CO. This decision has been implemented in all 26 Bank COs. This measure was taken not only to provide national staff with a similar treatment, regardless of their location, but also because of the impracticability for the Bank to have to update its practices and payroll operations by continuously monitoring multiple legislation in all countries where the Bank has an office to assess whether the practice presents any legal or reputation risk, in addition to the substantial administrative burden that this would entail.

32. As per the alleged discrimination between national and international staff, the Bank explains that these two are distinct categories of employment, each with different conditions of appointment; this distinction is due to the special circumstances in which the Bank functions and is inherent in the contract of employment.

e) Staff Rule PN-7.02

33. Respondent states that there is no formal policy basis for payment of national staff salaries in a currency other than the local currency of the country where national staff members are assigned, and employment contracts expressly provide for a salary denominated and payable in local currency. Section 3.04 of Staff Rule PN-7.02 specifically provides that "national salaries are denominated and paid in the official currency of each country."

34. By virtue of the employment contracts and Staff Rule PN-7.02 salaries of national staff are denominated and paid in local currency, the Bank has no obligation to convert local-currency denominated salaries into US dollars and provide each of the Complainants the converted amounts in their IDB-IIC FCU accounts in U.S.A.

CONSIDERING:

35. The Tribunal has jurisdiction and can pass judgment "upon any application by which an Employee of the Bank or the Corporation alleges non-observance of his or her contract of employment or terms and conditions of appointment" (Statute of IADBAT, Article II.1). As a matter of principle, the Tribunal recognizes that it is not its place to substitute its managerial judgment for that of the managers whose decisions are under review, unless there is evidence of discrimination arbitrariness or improper motivation. (WBAT: Barnes, Decision 176, 1997, para.10; AE, Decision 392, 2009, para.24-25; Yoon (13,14,16,17,18), Decision 447, 2011, para.72; DA, Decision 523, 2015, para.100; CW, Decision 516, para. 119).

36. Therefore, allegations by Complainants challenging the need to respect national legislation and on reputational risks the Bank may have incurred had it not changed the questioned policy are beyond the scope of decisions by the Tribunal.

37. The Parties acknowledge that the Organization has international staff and national staff. Relating to National Staff, Rule PN 7.02, paragraph 3.04, provides that "National salaries are denominated and paid in the official currency of each country."

38. The Parties agree that staff members' contracts provide that staff members' salaries will be denominated and paid in local currencies and that there is no mention in the letters of appointment issued by in past and until the challenged measure was discontinued, of the possibilities offered to them through the Bank and the Credit Union facility.

39. The Complainants allege that the practice of the Bank of allowing them to have a part of their salaries in US dollars in a Credit Union account in the United States is binding for the Bank and that they have acquired rights in that respect.

40. It is common and legal wisdom that international organizations, including the IDB, are vested with the power to make rules regarding staff members' rights and duties and that, accordingly, they have the power to amend such rules. This statement that is shown in many constitutive treaties, in publications of legal authorities and in the case law of international administrative tribunals, can be referred to *De Merode* (WBAT Decision No.1, 1981). Judges in *De Merode* unanimously decided that the amendment of such rules should take into account respect for principles of non-retroactivity, nondiscrimination and of reasonable relationship between aims and means. Generally, those amendments should not impose "substantial adverse changes in the essential terms of the staff appointment."

41. Complainants in this case alleged that the benefit offered by the Bank is an essential right of workers that the Bank could not have been amended or suspended without consultation with staff. Secondly, they alleged that even if it does not meet the standard of a right, the Bank did not perform well because the measure was discriminatory and unreasonable. Generally, they characterized the situation as follows, [the benefit] is "a condition of employment which possesses a fundamental and essential character." They contended that the Bank did not abolish the practice in a manner consistent with international law and spelled six conditions as enumerated by the WBAT in *De Merode*, paragraphs 46 and 47. They considered that national staff were discriminated against vis-à-vis the treatment provided for international staff.

42. As a matter of principle, and as supported by legal authorities and case law, the Tribunal considers that international organizations should have the power to put in place and amend or suppress practices regarding the rights and duties of staff members. Equally, the Tribunal considers that it is not automatic that every practice dealing with the above issues becomes binding *per se*. If so, international organizations would be restricted in their possibilities of bringing improvements in the relationship with their staff.

43. Conditions of employment, when dealing with salary as in this case, include the amount of the salary, its components, the currency in which it is to be paid, the place in which it is paid, the date in which it is paid. All these elements regarding salary are conditions of employment.

44. The Complainants alleged that the measure taken by the Bank was in breach of ILO Convention No.95, the Protection of Wages Convention, and mentioned articles 5 and 6 which provide that "wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary" and that "employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages."

45. Putting aside the applicability of ILO Conventions and, in general, international treaties on human rights and labor law to international organizations, the Tribunal considers that it is unclear how the quoted provisions fit in the context of the instant case, because staff actually cash their salaries in due time and they keep the right to decide what to do with them.

46. In fact, it is the Bank's duty to pay the whole amount of the salary to every staff member, in the amount of the salary as it evolved from the moment of the letter of appointment in the respective banking account in the place in which the salary has to be paid. There was no dispute on that in the instant case.

47. At the same time, the Tribunal is of the opinion that other modalities offered by the Bank to help its staff to obtain credits and savings are accessories to the main conditions of employment regarding salary, as shown above. These modalities used to include, from 2005 to 2012, the possibility for the national staff members to ask the Bank to keep a portion or even the whole of their salaries in US dollars in a personal account with the Credit Union. This was a possibility that each staff member used in a different and very personal way, varying it even every time the salary was paid.

48. The Tribunal considers that the above possibility can be hardly assimilated to the payment of the salary for many reasons and, especially, because if so every staff member would be in a position to determine the currency or currencies in which his or her salary is paid and the place in which it is actually paid. It is a general principle that such conditions are shown in the letter of appointment, which constitutes an offer that becomes binding because of the signature of the staff member.

49. In some cases, the convergent behavior of employer and employee leads to a modification of the conditions of employment as agreed between the Parties. However, this is not one of those cases. In this case, the Bank acted as representative of each staff member to enforce the mandate of crediting a certain amount of the staff member's salary in US dollars in the staff member's account in the Credit Union in the United States. When introducing this policy, the employer had no intention to modify remunerations but to facilitate operations between the staff members and the Credit Union. This does not mean that staff members have acquired the right to decide the currency and the place of payment. The possibility and the right to decide what to do with the salary requires that it be an asset of the staff, that it be a part of his/her patrimony. That being so, the challenged practice does not modify the conditions of employment relating to the amount of the salary, the currency in which it is paid and the place in which it is paid.

50. Moreover, the fact that this policy was a benefit the Bank offered for a while is evidenced in the lack of any written rule, the silence of the letters of appointment on this point. The reasons behind its adoption were not public either.

51. The decision taken by the Bank was not retroactive. The Bank put in place a transitional period (nearly three years) so as to facilitate the payment of credits already awarded to staff and payable in US dollars to the Credit Union.

52. The Tribunal does not consider the measure taken by the Bank discriminatory as alleged by the Complainants. In fact, they failed to make their *prima facie* case because they compared international and national staff and at IDB as in other international organizations there are two different legal regimes, meaning different recruitment, different promotion possibilities, different duties and the no less important detail that international staff are recruited at headquarters, and then sent in mission to different countries, so their salaries are paid in international currencies. So, it is not reasonable to say that national staff were discriminated against in this case because they received different treatment than international staff. At the same time, the Bank affirmed that the measure was enforced vis-à-vis the national staff of its 26 COs.

53. Complainants have alleged the violation of the "project of life" of the national staff because of the decision taken by the Bank. However, they did not spell the concrete damages for each of them. In any case, the Tribunal is aware that the project of life is an element that the Inter American Court on Human Rights invokes when States, instead of protecting human rights of the people under their jurisdictions so that they can define their projects of life, do breach them, as in the case

of *Street Children* (1999, para.191). In the instant case, the Bank suspended a possibility for staff to keep a part of their salaries, upon request, in the US before wiring the salaries to the local offices. The amount of the salaries, denominated in local currencies, suffered no change and, depending on local regulations, staff could apply for credits and pay their debts with the Credit Union through international operations with local banks.

54. In line with these arguments, the Tribunal considers that the suspension of the possibility of using the Credit Union facility through the Bank at the time of cashing their salaries is not a "substantial adverse change in the essential terms of the employee's appointment."

NOW THEREFORE

For the above considerations, the Complaints are dismissed.

(signature)
Alberto Wray
President

(signature)
Edith Brown Weiss
Vice-President

(signature)
Désirée Bernard

(signature)
German Leitzelar V.

(signature)
Mónica Pinto

(signature)
Hugo Lorenzo

(signature)
Shoschana Zusman Tinman

(stamp)

(signature)
Giuliana Canè
Executive Secretary

Washington, D.C., February 24, 2017

DISSENTING VOTE OF Judges Zusman and Lorenzo:

In keeping with Article 26(4) of the Tribunal's Rules of Procedure, we, Judge Zusman and Judge Lorenzo, explain the reasons for our minority vote in the following statement:

We have voted against the operative part of the final judgment that brings to a conclusion joined Cases 86, 87, and 89, primarily for the following reasons:

1. In contrast to the majority opinion, with the respect that their opinion deserves, we consider that the three joined complaints should have been ruled upon favorably, and, at least, the administrative acts adopted by the Inter-American Development Bank that suppressed the labor benefit enjoyed for several years by the national staff of the IDB in Argentina, Guyana, and Venezuela, should have been annulled; the benefit entailed the ability of national staff to receive part of the respective salaries in Washington through deposit in the account of each worker at the IDB-ICC Credit Union.

2. In public international law, including international administrative law, which governs the establishment and operations of an international organization, which the IDB is, custom constitutes a source of law and "the teachings of the most highly qualified publicists" constitute "subsidiary means for the determination of rules of law" (Article 38 of the Statute of the International Court of Justice).

3. Professor of labor law Américo Plá Rodríguez was an author of greater international renown in his area, and was a member of this Tribunal from 2000 to 2005; in his book Los Principios del Derecho del Trabajo, pages 73 to 116, Plá Rodríguez analyzes, extensively and in depth, the protective principle, and within it, at pages 109 to 116, the result of the "most beneficial condition," according to which ""the existence of a specific situation previously recognized" "should be respected insofar as it is more favorable for the worker than the new provision" (page 109). At page 114, citing Spanish professor Alonso García, Plá mentions that "*setting working conditions more beneficial* than those previously enjoyed … may be done by statute, by agreement between the parties, by use or custom, by collective bargaining agreement, and even by mere unilateral decision." It also appears from the teachings of Professor Plá that the most beneficial labor condition, in order to become an acquired right of the workers, must arise from an indefinite change, not a provisional one (as could be, for example, a temporary transfer to a position with a better salary). When the worker returns to his or her permanent position the worker sees a reduction from the salary he or she had received temporarily, the prior temporary improvement does not bind the employer to respect that more beneficial condition, which by its nature did not entail a new permanent right acquired by the worker.

4. In the instant proceeding, as of 2005, by use or custom a more beneficial change had been introduced in the working conditions of the national staff members of the IDB,

according to which those staff members could request and obtain from the employer Bank that it withhold, in Washington, convert to dollars, and deposit in the account of each worker in the Credit Union, part of their respective salary. According to the rule of the most beneficial condition, which emanates from the general principle of universal law called the "protective principle," as of the consolidation of that practice (which lasted approximately eight years) said staff members, among them the complainants, acquired the right to that customary practice, and the IDB was legally bound to maintain it. The period of eight years during which that practice lasted allowed us to conclude that it had become a custom, and therefore was binding on the IDB.

5. In its defenses the respondent affirmed, as justifications for having put an end to that practice that benefitted its national staff members who worked in its country offices, first that "especially in countries that maintain currency restrictions, the practice of allowing national staff to request direct deposit of a certain percentage of their salaries converted into U.S. dollars, in their accounts at the Credit Union, could be considered incompatible with domestic legislation"; and second, that "the payment in U.S. dollars of the salaries of national staff members could give rise to reputational risk for the Bank."

6. In response to these fears which, in good faith, could be held by some high-level administrative officers of the IDB, this Tribunal would have to judge by applying the Agreement Establishing the Inter-American Development Bank, which is the constitution of this international juridical person, an independent international organization (see Article VI(3) of the Statute of this Tribunal).

7. Article V of the Agreement Establishing the Bank, at the part relevant to the instant case, establishes: "The currency of any member held by the Bank … may be used by the Bank and by any recipient from the Bank, without restriction by the member, to make payments for goods and services produced in the territory of such member….. Members may not maintain or impose restrictions of any kind upon the use by the Bank or by any recipient from the Bank" (and then Article V of the Agreement Establishing the IDB enumerates the resources that the IDB may use for said payments, which includes: gold, dollars, and any other currency of the member countries of that international organization).

8. According to the above-cited provisions of the Agreement Establishing the IDB, we the judges who sign this dissident vote understand that the fears expressed by the respondent were unfounded (the fears that led to the suppression of the practice that is the subject of the instant case), for given the rights and the international obligations of the IDB and its member states, freely agreed upon in the international treaty called Agreement Establishing the IDB, the Bank could not fear that any of its member states would have been able to demand of it, with a solid legal foundation, that it abide by domestic provisions of those state that might impede the IDB from carrying out its labor obligation to maintain the practice beneficial for its national staff members that was the subject to this dispute.

9. In view of the foregoing arguments, we the judges who have issued this dissenting vote, argue that the Bank was obligated to the national staff members at its country offices, to maintain the labor benefit they enjoyed for eight years. And the provisions of the Agreement Establishing the IDB cited above cover the IDB to freely perform that obligation, which arises from its administrative legal relationships regarding the performance of an international civil service position.

10. In addition, the signers of this dissenting opinion hold the conviction that maintaining the labor benefit granted by the IDB for eight years did not cause harm to the Bank, yet taking it away did cause harm to its local staff members in Argentina, Guyana, and Venezuela, who, without any participation in such acts, were prejudiced by the devaluation of their respective currencies, with which they saw their quality of life decline. It is true that exchange control regimes had a detrimental impact on their entire population, yet it is also true that the local staff members of the IDB relied on a benefit that protected them from that situation, which does not give rise at all to any reputational risk for the Bank.

11. It is true that the local staff members could have accessed the parallel market and made transactions considered unlawful under domestic law. That is, however, an assumption that was not shown and which, moreover, would have compromised only the worker, but not the Bank, which would have paid the salaries as it did for eight years during which, at least in Venezuela, exchange controls were kept in place.

12. Striking an equitable and sober balance between the reputational risk to which the IDB refers and a form of payment which, in our opinion, became a right of the local workers, led us to conclude that we should opt for the latter.

(signature)	(signature)
Soschana Zusman, Judge	Hugo Lorenzo, Judge

Dissenting Vote of Judge Edith Brown Weiss

The Bank for eight years offered a labor benefit to local staff members in its country offices, including in particular Argentina, Guyana, and Venezuela. Local staff members were permitted to allocate part of their salaries to be converted into US Dollars and deposited directly to their IDB-IIC Federal Credit Union accounts in Washington, D.C.

While the Bank has the power to alter benefits of employment that do not constitute essential elements of employment, it must do so in a manner that does not discriminate among staff, is reasonably related to the aims of the organization, and does not cause "substantial adverse changes to the essential terms of the staff appointment." In the instant case, the measure that was chosen, namely the immediate cessation without notice of the option for local staff members to have salary converted into US Dollars and held at the IDB-IIC Federal Credit Union, led to substantial adverse changes to salary conditions for local staff in three country offices and to *de facto* discrimination between local staff in different country offices. Local staff in Argentina, Guyana, and Venezuela had relied upon the labor benefit to protect them against the devaluation of their respective currencies. Other options were available to the IDB, other than the complete cessation of this labor benefit. The protective principle in international labor law, as discussed in the dissenting opinion of Judges Zusman and Lorenzo, protects staff from such practice. I, therefore, dissent from the Judgment.

(signature)
Edith Brown Weiss
Judge