

EPO and AT-ILO

Staff members who have a dispute with the EPO can seek relief from the Administrative Tribunal of the International Labour Organisation (ATILO), in accordance with Article 13 EPC.

The ATILO receives a disproportionate number of cases from the EPO. While EPO staff accounts for 16% of all staff under the jurisdiction of the ATILO, EPO cases amount to about 40% of the Tribunal's workload. In a report dated 15 October 2015 (**ANNEX 1, §18**) to its Governing Body's 325th session, the ILO stated that this state of affairs is unsustainable:

...Problems around the "litigation culture" and social dialogue in that organization are not conjunctural but are most likely to persist unabated for many years. The general sense is that, based on available information, the current situation is not sustainable and that measures such as the increase of the number of judges or the number of sessions will not have a lasting effect on, much less resolve, the current flow of complaints filed by EPO officials. While noting the explanations of EPO administration officials about their genuine efforts to improve the situation, member organizations agreed that this was a governance problem of broader dimensions which called for urgent action in the interest of preserving the Tribunal's operation.

The Draft Minutes of the ILO Governing Body's session (**ANNEX 2, §61**) expand on this issue:

The problems encountered within the EPO appeared to be ongoing and substantial, with an increasing number of labour disputes that could not be solved through internal remedies. Government members of the Governing Body that were also members of the EPO should raise concerns within the governing structure of the EPO over the management of human resources and the need to establish good industrial relations. Alternative measures such as mediation could also be considered to address staff issues within the EPO. If those measures failed, the EPO should consider establishing its own internal judicial system. The Workers agreed on the need to find an urgent, practicable and time-bound solution to adjudicate all EPO complaints in a manner that allowed the Tribunal to fulfil its mandate and serve effectively the other organizations that had recognized its jurisdiction.

It should not come as a surprise that the International Labour Organisation places emphasis on good industrial relations. We wish to remark that such relations presupposes the existence of a lawful and equitable framework for proper negotiations, and means to resolve disputes and/or break deadlocks between the negotiating parties. Effective relations also imply the availability of expertise and resources for the parties charged with discussing and finding together a way forward -- Management, elected Staff Representatives, and

Unions. The EPO should review its recent moves and redirect itself to true social democracy. Good industrial relations should not be substituted by litigation.

By mentioning governance problems, the ILO indicates its awareness of the fact that the volume of cases from the EPO is not solely due to an alleged “litigious nature” of the EPO employees, but rather stems from structural deficiencies, some of which our lawyers have brought to the ILO’s attention (**ANNEX 3**).

The ILO now proposes to the 326th session of its Governing Body (to be held 10-24 March 2016) to change some of the Tribunal Statutes (**ANNEX 4, §10.14**). This document explains that the ATILO should be seen as a Court of final instance, and not as a trial Court. In other words, the organisations under its jurisdiction should have adequate judicial (or at least quasi-judicial) internal bodies to act as trial courts, and the ATILO should be used as a kind of court of appeal. The document therefore recommends including in the list of requirements an organization must meet to be admitted to the jurisdiction of the ATILO the following:

“The organization concerned must have effective means for dealing with internal appeals.”

Not only that. The ILO shall henceforth also expel from its jurisdiction organisations that no longer comply:

Such approval may be withdrawn if in the opinion of the Governing Body the organization concerned no longer meets the standards set out in the Annex or fails to honour the commitments undertaken at the time of the recognition of the Tribunal's jurisdiction, or if the inefficiency of its internal means of appeal hinders in a lasting manner the proper functioning of the Tribunal.

Unsurprisingly, this is a strong hint to the EPO, and the risk of expulsion from the ATILO system should not be underestimated. The Administrative Council must be aware that if that risk were to materialize, a change in Article 13 EPC would be required, which implies convening a diplomatic conference and, presumably, a thorough enquiry in the circumstances.

Reading the documents of the ILO, it is clear that **the minimum expected from the EPO is:**

1. To establish an appeal committee which is fully independent and capable of acting as a (quasi-) judicial trial court.
2. Providing said appeal committee with sufficient resources to adjudicate the case within a reasonable time.
3. Ensuring that its recommendations are binding on the administration, and not merely an option.

4. Ensuring that the legislative acts are properly discussed and enacted, so as to reduce the risk of litigation to challenge the legislation itself.

The conflict-resolution system must be revised to make it more effective, less litigious and more oriented to problem solving in good faith. With the reform of the conflict resolution system in 2013, the intention was to introduce a pre-litigation stage (review) followed by litigation (internal appeal). **It is not working as intended.**

At the moment there is a rather cumbersome, generalized “management review” step followed, frequently, by an internal appeal that does not meet the standards of a quasi-judicial procedure on which the ATILO can rely¹.

We therefore take the liberty of **recommending** the following changes:

- a) **The informal, pre-litigation review** should be divided into two *branches* (rather than *stages*): a management review, and a peer-review. The role of the appeals committee should be revisited.
- b) **Formal litigation** should be professionalized and entrusted to a different body.

Specifically:

- a) The management review should be used exclusively to give the manager the opportunity to double-check that no mistake was made². The requirement of a review should be limited to lower-level managerial decisions, not to presidential ones, and should exclude cases where a point of law is at stake. If the reviewing manager cannot find a mistake that warrants an immediate correction, the matter including the full reasoning of management should be forwarded *automatically* to the peer-review if the staff member has requested so.

The independent peer-review (carried out by what we call the “Appeals Committee”) should be used primarily as a disclosure exercise, to obtain a complete overview of the facts surrounding the dispute and should issue its recommendation to the President. The “Appeals Committee” is perfectly equipped for carrying out this task. At this stage, the main goal is to ensure that no relevant fact is overlooked, and that the complainant understands why the Office has made a given decision. The peers in the committee ought to act as independent counselors who explain to the employee what the

¹ The Appeals Committee consists of two members appointed by the Staff Representation, and two members and a chairperson appointed by the President. They are all under the authority of the President. They issue opinions and recommendations, which are not binding and can be ignored. Therefore, they do not meet the minimum requirements for a quasi-judicial, let alone a proper judicial body.

² This was the initial intention behind the introduction of the Request for Review pursuant to Article 109 – but it has regrettably been used much too formally, with both parties « lawyering up » at this stage.

rules are and how they have been applied to arrive at the decision. If there a manifest mistake is spotted, they will tell the Office to correct it³. The peers might also act as independent mediators to see if an amicable settlement can be reached.

If there is no manifest mistake, and/or there is a doubt about the application of the rules, and/or an issue about the lawfulness of the rules, and/or an issue of receivability, the employee should be advised that legal clarification may be sought through formal litigation.

In order for the Appeals Committee to carry out these tasks independently, competently and swiftly:

- A number of subject-matter now excluded from their review should be reintroduced.
- They should have sufficient resources to function properly, and administer justice quickly⁴.
- The creation of two chambers to serve the two largest places of employment should be considered.

- b) The **formal litigation** stage, which should not be the norm, should be professionalized. It should be used only if there are doubts about the correct application of the law, or about the lawfulness of the rules, or issues of receivability. (In fact, when it is manifest that the lawfulness of the rules is the only issue, the informal pre-litigation stages should be optional.

For this purpose, the Council must appoint a Judicial Committee, either using its prerogatives under Article 26(2) EPC, or as part of DG3 and subject to Article 23(1) EPC.

- The members of the Committee should be renowned legal professionals and/or scholars, appointed by the Council if necessary on a joint proposal by the President and the Staff Committee.
- The Judicial Committee should adjudicate, and not merely make recommendations.
- The Judicial Committee should uphold standards of due process, including discovery and burden/standard of proof, normally applied in judicial proceedings.
- The Judicial Committee should have sufficient resources to function properly. It should, preferably, also have judges-in-residence at both of the two largest Places of Employment (MU, TH) so as to be in tune with local issues.

³ and this should in principle be binding, not merely an recommendation – at least when the opinion is unanimous.

⁴ As things are now, the Office chooses when to file its response to an appeal. Delays of more than two years are not uncommon. The Appeals Committee should have the authority to set binding deadlines.

- c) Low-level legislation (like Guidelines and Circulars) should only laid down the details of how the law should be implemented – not the law itself; the practice of enacting substantive law through circulars should be firmly abandoned. (This would ensure a measure of “separation of power”, placing the substantive law more firmly in the hands of the Council.)

- d) When new substantive law is envisaged, the proposal should be first submitted to the Judicial Committee for a legality check – including but not limited to a check for internal consistency and for compliance with fundamental principles of law. (In the alternative, a legality check should be done on request of the staff representation.) This would have the benefit that, having formed a binding opinion on the legality, any further challenge of a legislation found lawful would *ipso facto* be superfluous.



Governing Body

325th Session, Geneva, 29 October–12 November 2015

GB.325/PFA/9/1 (Rev.)

Programme, Financial and Administrative Section
Personnel Segment

PFA

Date: 15 October 2015

Original: English

NINTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO

Workload and effectiveness of the Tribunal

Purpose of the document

This paper provides background information and analysis of the situation faced by the ILO Administrative Tribunal, particularly as regards its increasing workload, and outlines a series of possible measures for the consideration and guidance of the Governing Body (see draft decision in paragraph 33).

Relevant strategic objective: None.

Policy implications: No immediate policy implications.

Legal implications: Depending on the guidance and decisions of the Governing Body.

Financial implications: No immediate financial consequences.

Follow-up action required: Depending on the guidance and decisions of the Governing Body.

Author unit: Office of the Legal Adviser (JUR).

Related documents: GB.323/PFA/11/2; GB.323/PV; GB.271/LILS/1; GB.325/PFA/9/2.

Introduction

1. At its 323rd Session (March 2015), the Governing Body approved the recognition of the jurisdiction of the ILO Administrative Tribunal by two international organizations, bringing the number of international organizations currently covered by the Tribunal's jurisdiction to 59, including the ILO. While the Governing Body noted that the recognition of the Tribunal's jurisdiction by other organizations entailed no additional cost to the ILO, it also took note of the concerns regarding the potential effect of the Tribunal's expanding membership on its capacity to effectively manage its workload and requested the Office to prepare an information paper on the basis of which it could decide whether any further steps would be required.¹
2. Part I of this paper gives a factual overview, including through comparative statistical data, of the expanding jurisdiction of the Tribunal and analyses the current challenges in relation to its workload taking also into account the views of the Tribunal itself, the international organizations under its jurisdiction and the staff representatives of those organizations. Part II summarizes the main conclusions resulting from these consultations and overview and proposes possible means of action to address the difficulties identified.

Part I. The impact of the continued acceptance of the Tribunal's jurisdiction by international organizations on its workload

1. The evolution of the Tribunal's expanding membership

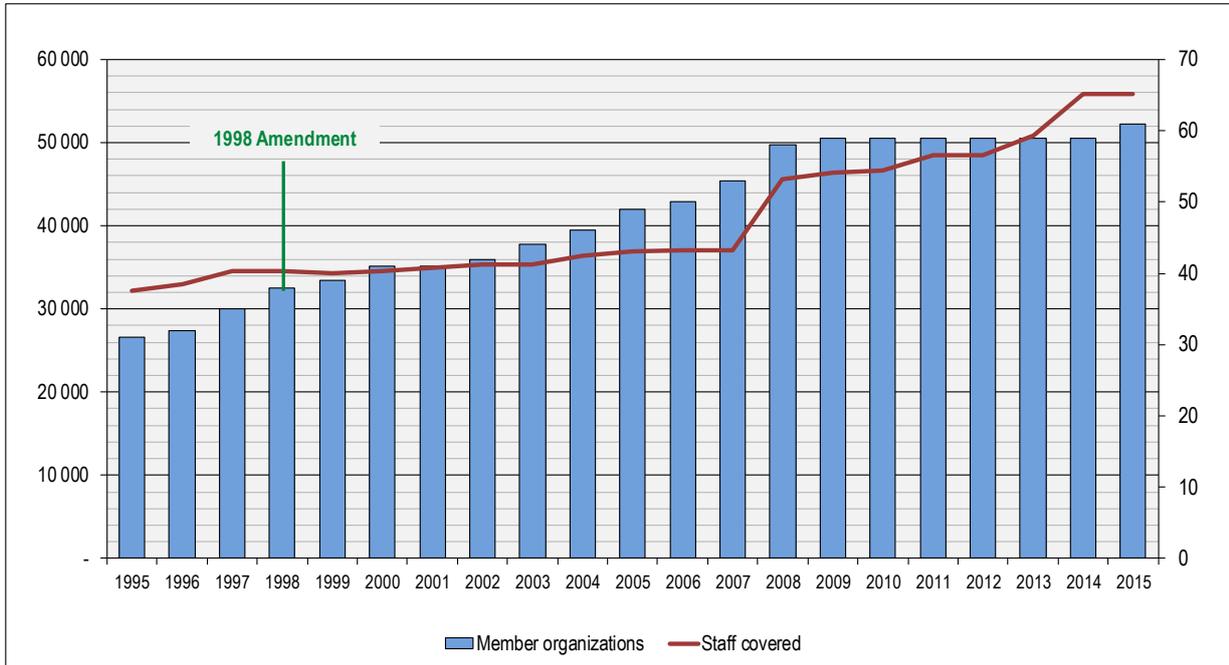
3. Because of the ILO's immunity from legal process before national courts, which is considered an essential guarantee of the Organization's international status and independence, ILO officials cannot bring labour disputes before national courts. Instead, provision has been made for adjudication by an independent Administrative Tribunal.
4. Originally established in 1927 as the Administrative Tribunal of the League of Nations, it was taken over by the ILO as its own Administrative Tribunal in 1946. Some years later, in 1949, the International Labour Conference agreed to amend the Tribunal's Statute in order to allow other intergovernmental organizations to join the Tribunal, as it was recognized that it would be in line with the Organization's mission to make an independent and reliable settlement procedure generally available to a special category of workers, namely international civil servants, who did not have legal protection at the national level. In the 50-year period following this amendment, 36 intergovernmental organizations, including 11 organizations of the United Nations common system and six European regional organizations, recognized the Tribunal's jurisdiction. The Tribunal's Statute was again amended in 1998 to offer the possibility, under certain conditions, to non-intergovernmental international organizations to become parties to the Tribunal's Statute.² Since 1998, a further 24 international organizations, both intergovernmental and non-governmental, have accepted the Tribunal's jurisdiction, which now covers

¹ GB.323/PFA/11/2, para. 23 and GB.323/PV, para. 545. Since the last session of the Governing Body, two more organizations have requested approval of their recognition of the jurisdiction of the Tribunal. See GB.325/PFA/9/2.

² GB.271/LILS/1.

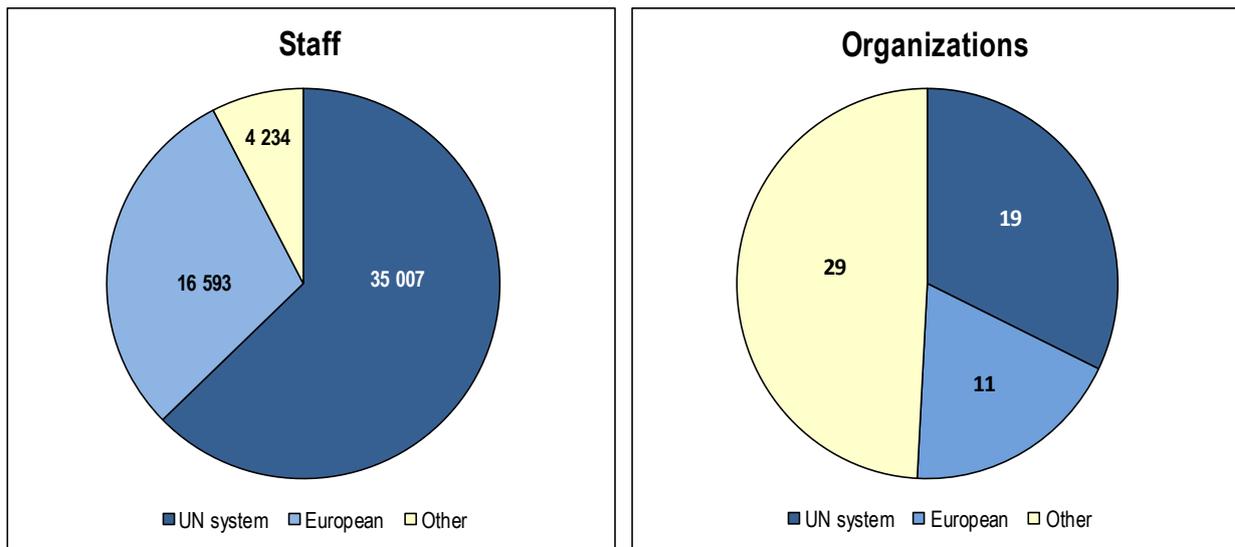
55,834 officials (see figure 1). The list of all organizations having accepted the Tribunal’s jurisdiction, including the year of acceptance, relevant Governing Body decision, number of staff and number of judgments generated, is provided in the appendix.³

Figure 1. Tribunal membership (1995–2015)



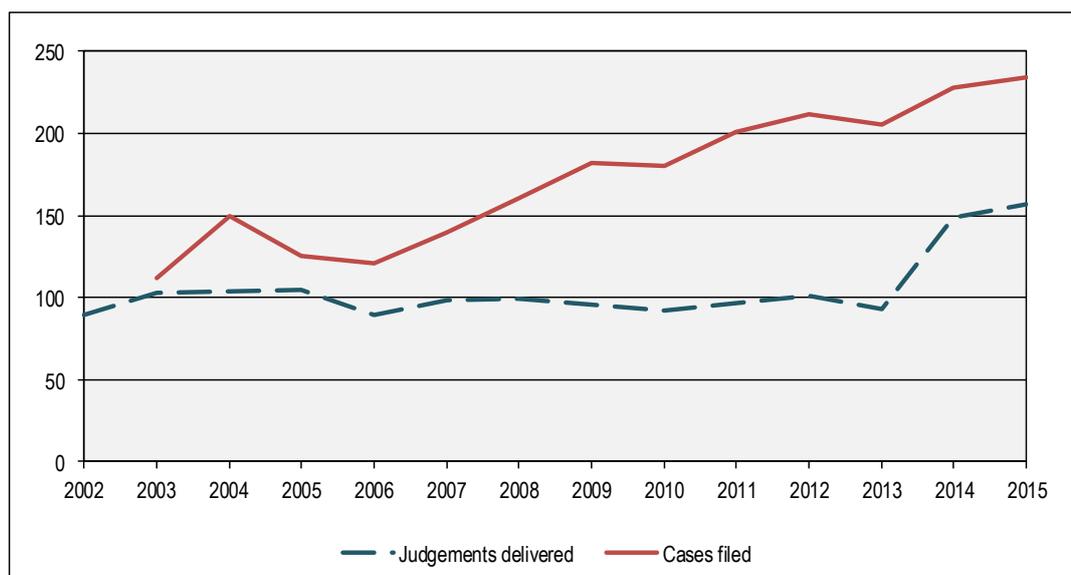
5. The organizations that have accepted the jurisdiction of the Tribunal since 1998 represent almost half of the total number of member organizations, but only 6.1 per cent of the total number of staff covered. Eleven out of these 24 organizations employ less than 20 staff whereas ten organizations employ between 20 and 100 staff and only six employ more than 100 staff. The biggest of these organizations is the International Criminal Court (ICC) with 858 staff members and the smallest is the European Telecommunications Satellite Organization (EUTELSTAT) with three staff members. The sharp increase since 2007 of over 18,700 additional staff covered by the ILO Tribunal is mainly due to increases in staff hired by older member organizations, as the aggregate staff of the 11 organizations having joined the Tribunal since 2007 is only 1,352.
6. The current membership of the Tribunal comprises 19 organizations applying the United Nations common system of salaries, allowances and other conditions of service (or 32 per cent of total) and 11 European regional organizations (or 19 per cent of total). However, taken together, these 30 organizations employ 51,600 officials, or 92 per cent of the total staff covered (see figure 2).

³ Among the organizations which have accepted the jurisdiction of the Tribunal, two have ceased their operation, namely the Intergovernmental Council of Copper Exporting Countries (CIPEC) and the International Service for National Agricultural Research (ISNAR).

Figure 2. Tribunal membership and staff coverage by type of organization

2. The Tribunal's caseload – Facts and figures

7. Over the years, the Tribunal has experienced a constant increase in its caseload. From 112 in 2002, the cases submitted to the Tribunal rose to 180 in 2009, 212 in 2012 and 234 in 2014. The same trend is reflected in the number of judgments delivered by the Tribunal; from approximately ten judgments rendered per year in the 1960s, the Tribunal went on to deliver about 25 judgments per year in the 1970s, 60 judgments per year in the 1980s, over 80 judgments per year in the 1990s and more than 100 judgments per year in the 2000s (see figure 3). It is indicative that in its two last sessions, for which the judgments were delivered in February and July 2015, the Tribunal rendered 77 and 90 judgments respectively, or a total of 167 judgments; the Tribunal also took note of the withdrawal of 19 complaints.

Figure 3. Cases filed and judgments delivered (2002–15)

8. As the average output of the Tribunal in the last ten–15 years did not increase proportionally to the number of new cases, this has inevitably led to an increase of pending

cases – from 348 in 2012 they stood at 450 in July 2015 – and also to an increase of the average processing time per complaint.

9. Faced with this situation, the Tribunal has had recourse in the last two years to several measures, including the holding of an extra third session in 2014, the introduction of a fast-track procedure in its Rules, and longer presence of judges during sessions. In parallel, the Tribunal's Registry has sought cost savings and administrative efficiencies. This set of measures permitted the Tribunal for the first time to deal in sessions held in 2015 with more cases than the number of cases received.

3. The European Patent Organization (EPO) – A case apart

10. The largest member organization, employing approximately 8,800 staff, accepted the Tribunal's jurisdiction in 1978. The EPO's membership has always been marked by significant level of litigation. EPO-related complaints have generated, on average, 21 judgments per year, the lowest number being ten judgments in 1998 and the highest being 69 judgments in 2015. In its 37 years of Tribunal membership, the EPO has been concerned by 761 judgments out of a total of 3,560 judgments delivered by the Tribunal since its creation. By way of comparison, the Tribunal's second oldest member organization – the World Health Organization – with similar staff numbers has been concerned by 447 judgments in 66 years of membership, that is an average of seven judgments per year (see the table below). In the last five years, whereas the EPO's staff represents less than 16 per cent of all officials covered by the Tribunal's jurisdiction, the number of cases filed annually against the EPO represented on average more than 30 per cent of all the cases received by the Tribunal, with peaks above 40 per cent of the overall annual Tribunal workload. This persisting pattern stretches the Tribunal's resources and inevitably impacts on the processing time of complaints, including those filed against all other international organizations that have recognized its jurisdiction.
11. Despite the written exchanges between the ILO Director-General and the President of the EPO on this matter, and the measures taken internally by the EPO in recent years with a view to improve its internal remedies and reduce litigation, no progress has been registered so far to contain the number of labour disputes which give rise to cases referred to the Tribunal. In this regard, it should be noted that out of the 193 cases filed with the Tribunal from 1 January to 18 September 2015, 112 (or 56 per cent) originated from EPO officials, while the remaining 81 complaints were filed by officials of 23 different international organizations. In addition, following important reforms introduced in the EPO in the past two years, the number of internal individual grievances has grown exponentially, a situation that may reasonably be expected to give rise to an even larger number of EPO-related complaints with the Tribunal in the very near future.

Number of Tribunal judgments: Top 12 organizations

Organization	Year of membership	Number of judgments	Average number of judgments per year	Number of staff (2014)
EPO	1978	761	21	8 820
WHO	1949	447	7	8 265
ILO	1946	329	5	2 983
FAO	1954	323	5	5 779
Eurocontrol	1964	234	5	1 957
UNESCO	1953	214	3	2 156

Organization	Year of membership	Number of judgments	Average number of judgments per year	Number of staff (2014)
ITU	1953	155	3	773
PAHO	1971	109	2	919
IAEA	1959	105	2	1 832
UNIDO	1986	105	4	666
CERN	1955	103	2	3 100
WIPO	1963	101	2	1 214

4. Causes of increased caseload – The views of stakeholders

12. In order to present a balanced overview of the underlying reasons for the increase in the Tribunal’s caseload, the Office undertook broad consultations with the principal stakeholders, including the judges of the Tribunal as well as the administration and staff representatives of organizations having accepted the Tribunal’s jurisdiction.

4.1. The Tribunal’s assessment

13. According to the written reply provided by the Tribunal, the increase in the number of organizations is not a problem in itself as statistical data show that the organizations which recognized the Tribunal’s competence in the last ten years did not significantly increase the Tribunal’s workload.⁴ It is the number of complaints filed against a single organization, the EPO, rather than the rise in the overall number of organizations having accepted its jurisdiction, that represents the main challenge for its effective functioning. The Tribunal further considers that all its efforts are being compromised by the continuing increasing trend of EPO-generated cases and also indicates that the complexity of the problem may require the attention of the Governing Body.

14. The Tribunal has made it clear that it has reached its limits in terms of output and that it could not be expected to increase it any further without compromising the quality of its services. This is probably also connected with the fact that the judges do no work for the Tribunal on a full-time basis, but usually sit only twice a year for three to four weeks each time, and that some of them have extremely busy schedules as they are still serving in the supreme courts of their respective countries.

15. The Tribunal also drew attention to the fact that administrative tribunals of much narrower coverage – geographical or other – have gradually come into existence which raises legitimate questions as to whether it can still be considered to be the “natural judge” to hear complaints against organizations operating, for instance, within the administrative framework of the Council of Europe or the European Union. While there is nothing in the Tribunal’s Statute to restrict admission on the basis of an organization’s coverage, it should be remembered that the original intention was to open up the Tribunal’s jurisdiction to truly global organizations which would be otherwise deprived from access to any international administrative jurisdiction.

⁴ According to these data, 15 organizations have recognized the competence of the Tribunal since 2005 and have generated 65 complaints out of a total of 1,863 complaints; among those organizations, six have not so far been the object of any complaint, four organizations have each generated one complaint, and one organization has been the object of two.

16. Finally, the great diversity of staff rules of organizations under the Tribunal's jurisdiction, the lack of internal means of redress in some organizations, the frequent challenges to normative acts of general application, especially by staff representatives, and the lack of employment stability of the Registry staff, were also identified as additional factors contributing to the Tribunal's increasing caseload.

4.2. *The views of member organizations*

17. Based on written replies provided by seven organizations and the views expressed by representatives of 29 organizations during a one-day consultation meeting, it is generally recognized that the admission of small international organizations in recent years is neither at the origin of the rising backlog of the Tribunal nor likely to impact on the Tribunal's caseload in any significant manner in the near future. However, the resulting diversity of legal frameworks governing employment relations of staff under the Tribunal's jurisdiction may occasionally generate delays.
18. Member organizations expressed serious concern about the volume of complaints against the EPO, and most importantly about the fact that problems around the "litigation culture" and social dialogue in that organization are not conjunctural but are most likely to persist unabated for many years. The general sense is that, based on available information, the current situation is not sustainable and that measures such as the increase of the number of judges or the number of sessions will not have a lasting effect on, much less resolve, the current flow of complaints filed by EPO officials. While noting the explanations of EPO administration officials about their genuine efforts to improve the situation, member organizations agreed that this was a governance problem of broader dimensions which called for urgent action in the interest of preserving the Tribunal's operation.
19. As regards the question of delays in judgment delivery and other perceived weaknesses in the functioning of the Tribunal, member organizations identified a number of areas where improvement was possible, while taking into account the rules and practices of other administrative tribunals such as those of the International Monetary Fund, the World Bank, the United Nations dispute and appellate tribunals and the European Union Civil Service Tribunal. They expressed support for better use of modern technological solutions and IT-based facilities such as an e-filing system. There was also general agreement that improving the quality and efficiency of internal appeal mechanisms was a priority and could help to reduce the number of Tribunal cases.
20. Member organizations gave favourable consideration to several concrete measures – most of which would not require an amendment of the Tribunal's Statute – including: (a) introducing the possibility for defendant organizations to submit a motion for summary dismissal of a complaint; (b) facilitating the use of joinder of cases; (c) formalizing the current practice whereby the Tribunal accepts applications for review of judgments on limited grounds; (d) allowing defendant organizations to apply for the payment of monetary compensation in lieu of rescinding the challenged decision; (e) organizing oral hearings when necessary; (f) deterring frivolous and vexatious complaints by imposing costs penalties; (g) identifying and promoting opportunities for amicable settlement at an early stage. Member organizations noted that some of these measures were already provided for by the existing Rules of the Tribunal but rarely put into practice. They also noted that the cost implications of certain measures should not be underestimated as they would call for increased material and human resources.

4.3. The views of staff representatives

21. Fifteen staff associations replied to an Office questionnaire. The increasing membership of the Tribunal is generally viewed as a positive development on condition that it is accompanied by a corresponding increase in the number of judges, support staff and sessions per year. Some expressed the view that a permanent composition of nine-ten judges should be considered which would permit to hold four sessions per year.
22. All staff associations expressed dissatisfaction with the length of judgment delivery time. Among the weaknesses identified in the operation of the Tribunal, several staff associations drew attention to the systematic refusal of the Tribunal to allow witness examination and oral arguments. In their view, oral hearings is a fundamental prerequisite of a fair judicial process and should be organized whenever the facts of a case are in dispute. Staff associations also underlined the absence of procedures which would permit the urgent intervention of the Tribunal in order to suspend the execution of a presumably unlawful decision and also the quasi-absence of case management on the part of the Tribunal before the completion of submissions and the assignment of a case to a judge. Moreover, they emphasized the need for the Tribunal to follow more scrupulously its own jurisprudence in cases similar in fact and in law (*stare decisis*), allow class action and grant *locus standi* to staff representatives to bring complaints in the general interest of staff.
23. Finally, some staff associations stressed the lack of transparency in the process of appointing the judges and considered that the “long-standing practice” of the ILO Governing Body appointing the judges upon the recommendation of the ILO Director-General should be revised. They further suggested that judges should be appointed for a single, non-renewable term so as to avoid any reproach of a real or perceived conflict of interest in case of reappointment.

Part II. Analysis of the situation and possible way forward

1. Principal findings and proposed course of action

24. On the basis of the information presented in Part I above, and following the broad consultations undertaken by the Office of the Legal Adviser over the past three months, three main conclusions seem to emerge: firstly, it is difficult to see how the Tribunal could continue under its current configuration and arrangements to cope with both its accumulated backlog and increasing workload. Secondly, the recognition of the Tribunal’s jurisdiction by new international organizations does not affect in any significant manner the capacity of the Tribunal even though the diversity of legal rules and regulations may at times prove challenging. Thirdly, the introduction of further changes to those undertaken by the Tribunal to increase its capacity to deal effectively with the workload may well result in efficiency gains in specific areas of the Tribunal’s functioning but will not be sufficient for the Tribunal to cope with the growing volume of complaints filed against one single organization (the EPO).
25. Faced with such reality, the Office could explore three strands of action in order to find long-lasting solutions to address the current situation. Firstly, an urgent, practicable and time-bound solution needs to be found regarding the facilitation of the speedy adjudication of all EPO complaints in a manner that permits the Tribunal to fulfil its mandate and effectively serve all other organizations, which have recognized its jurisdiction.

26. Secondly, while the reasons for the ILO to open the jurisdiction of its Administrative Tribunal to other organizations remain valid today, the conditions in the Tribunal's Statute pertaining to the acceptance of new organizations could be reviewed for instance in order to ensure that member organizations have effective internal remedies compatible with the Tribunal's role as a final adjudicatory mechanism.
27. Thirdly, a comprehensive review of the Tribunal's working methods and procedures is needed to ensure that it can continue to effectively administer justice in respect of a growing number of member organizations and covered staff. Such review should be undertaken in full consultation with all stakeholders concerned, and could address the following topics: (i) criteria for the joinder of cases so as to increase the capacity of the Tribunal to address a greater number of interrelated cases in a single judgement; (ii) new procedures allowing for the expeditious treatment of cases requiring a limited review by the Tribunal, such as motions for the dismissal of cases on grounds of their formal irreceivability and requests for clarifications necessary for a proper execution of previous judgments; (iii) a more proactive role for the Tribunal in the direction and investigation of each case from the submission of a complaint, including the early identification of opportunities for informal settlement; (iv) consideration of procedures specific to the growing number of disputes involving collective rights or of disputes challenging decisions of a general or regulatory nature; (v) measures to deter possible cases of abuse of process or unnecessary referrals to the Tribunal without affecting the free access to the Tribunal; (vi) feasibility study of the legal, practical and cost implications of the establishment of a more permanent structure for the Tribunal.

2. Other areas of possible improvement

28. Even though not directly related to the question of the Tribunal's capacity to manage its workload, additional important adjustments and improvements could be considered in the Statute, Rules and functioning of the Tribunal in three main areas.

2.1. Repealing Article XII of the Tribunal's Statute

29. Article XII of the Statute of the Tribunal provides that the ILO Governing Body may challenge a decision of the Tribunal on grounds that it confirmed its jurisdiction by error or that its decision is vitiated by a fundamental procedural flaw. This procedure is available to the Governing Body but not to the aggrieved complainant. An almost identical provision is found in Article XII of the Annex to the Statute of the Tribunal offering the same possibility to the executive boards of the international organizations that have recognized the competence of the Tribunal. Having been employed only twice in a nearly 70-year period, the review procedure set out in Article XII has been of minimal value and impact on the justice system built around the ILO Administrative Tribunal. The prevailing view is that Article XII of the Statute and its Annex reflects a juridical anachronism which fails to meet the principle of equality of arms and which therefore calls for long overdue action.
30. In the last advisory opinion sought by a specialized agency under Article XII of the Annex to the Tribunal Statute, the International Court of Justice affirmed in 2012 that the principle of equality of arms as a corollary to good administration of justice must be understood as including access on an equal basis to available appellate or similar remedies and considered that "questions may now properly be asked whether the system established

in 1946 meets the present-day principle of equality of access to courts and tribunals”.⁵ It should be noted that the Tribunal itself has recognized in Judgment No. 3003 of 2011 that the procedure set forth in Article XII of the Annex to its Statute is “fundamentally imbalanced to the detriment of staff members”. The equivalent provision in the Statute of the former United Nations Administrative Tribunal was repealed in 1995. Urgent consideration should therefore be given to repealing Article XII of the Statute along with the formalization of the procedure for the review of judgments developed in the Tribunal’s case law.

2.2. Establishing a procedure for the selection of judges

31. Concerns have been raised from time to time on the perceived lack of transparency of the procedure for the selection of the seven judges of the ILO Administrative Tribunal. The credibility of the Tribunal would therefore be reinforced if the criteria and process for the selection of judges and their appointment by the International Labour Conference were to be clearly established and set out in the Tribunal’s Statute.

2.3. Updating the Tribunal’s working methods and procedures

32. Despite the significant development in the Tribunal’s membership and covered staff over the past 20 years, and the evolution of Tribunal’s jurisprudence to adapt to the diversity and complexity of disputes referred to it, the Tribunal’s rules and procedures have remained practically unchanged. A comprehensive review of such rules and procedures should therefore be undertaken to better reflect modern realities, including the introduction of an e-filing system, the organization of oral hearings, the publication of an annual activity report by the Tribunal’s Registry, the formalization in the Tribunal’s Statute and Rules of new principles elaborated in its case law, and the review of time limits, as well as the responsibilities and structure of the Tribunal’s Registry.

Draft decision

33. The Governing Body requests the Director-General:

- (a) to initiate without delay discussions with the European Patent Organization (EPO), in consultation with the Tribunal as required, in order to identify a solution to the difficulties caused by the number of complaints generated within the EPO and which threaten the ability of the Tribunal to serve all other member organizations, and to report to the Governing Body at its next session;*
- (b) to consider with the Tribunal, and in consultation with member organizations and their staff representatives, concrete proposals for possible improvements and to keep the Governing Body informed of any progress achieved in this regard;*
- (c) to prepare draft amendments to the Tribunal’s Statute relating to Article XII, the selection process of judges and the conditions of admission of new organizations, for consideration by the Governing Body.*

⁵ Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development, Advisory Opinion of 1 February 2012, *ICJ Rep. 2012*, para. 44, p. 29.

Appendix

ILO Administrative Tribunal – List of member organizations (in chronological order)

	Name of organization	Year of acceptance	Decision reference	Number of judgments	Number of staff
1	International Labour Organization (ILO)	1946	ILC resolution	329	2 983
2	World Health Organization (WHO)	1949	(GB.109/205, page 18)	447	8 265
3	United Nations Educational, Scientific and Cultural Organization (UNESCO)	1953	(GB.122/205, para. 55)	214	2 156
4	International Telecommunication Union (ITU)	1953	(GB.122/F.A./D.22)	155	773
5	World Meteorological Organization (WMO)	1953	(GB.123/205, para. 101)	28	310
6	Food and Agriculture Organization of the United Nations (FAO)	1954	(GB.124/205, para. 90)	323	5,779
7	European Organization for Nuclear Research (CERN)	1955	(GB.129/205, para. 78)	103	3 100
8	World Trade Organization (WTO) – successor of General Agreement on Tariffs and Trade (GATT)	1958	(GB.138/14/28); (GB.274/PFA/14/3)	27	722
9	International Atomic Energy Agency (IAEA)	1959	(GB.141/F.A./D.18/30)	105	1 832
10	World Intellectual Property Organization (WIPO)	1963	(GB.157/13/36, paras 153–156); (GB.183/FA/14/2)	101	1 214
11	European Organization for the Safety of Air Navigation (Eurocontrol)	1964	(GB.159/F.A./D.18/5)	234	1 957
12	Universal Postal Union (UPU)	1965	(GB.163/F.A./D.17/2)	61	269
13	Pan American Health Organization (PAHO)	1971	(GB.184/FA/14/6)	109	919
14	European Southern Observatory (ESO)	1972	(GB.186/7/21, paras 45–49)	99	660
15	Intergovernmental Council of Copper Exporting Countries (CIPEC) – ceased its operations in 1992	1972	(GB.188/13/33, paras 41–45)	9	–
16	European Free Trade Association (EFTA)	1975	(GB.195/PFA/21/20)	9	141
17	Inter-Parliamentary Union (IPU)	1975	(GB.195/PFA/21/4)	0	41
18	European Molecular Biology Laboratory (EMBL)	1977	(GB.203/PFA/10/9)	32	1 811
19	World Tourism Organization (UNWTO)	1977	(GB.204/PFA/16/26)	12	95
20	European Patent Organization (EPO)	1978	(GB.205/PFA/15/9)	761	8 820
21	African Training and Research Centre in Administration for Development (CAFRAD)	1979	(GB.211/PFA/11/23)	4	16

	Name of organization	Year of acceptance	Decision reference	Number of judgments	Number of staff
22	Intergovernmental Organization for International Carriage by Rail (OTIF)	1980	(GB.212/PFA/13/11)	7	20
23	International Centre for the Registration of Serials (CIEPS)	1983	(GB.224/PFA/18/20)	1	14
24	International Office of Epizootics (OIE) – World Organisation for Animal Health since 2003	1984	(GB.226/PFA/10/5)	5	89
25	United Nations Industrial Development Organization (UNIDO)	1986	(GB.232/PFA/11/12)	105	666
26	International Criminal Police Organization (Interpol)	1988	(GB.240/PFA/7/6)	38	745
27	International Fund for Agricultural Development (IFAD)	1988	(GB.241/PFA/10/12)	18	656
28	International Union for the Protection of New Varieties of Plants (UPOV)	1991	(GB.249/PFA/13/4)	10	12
29	World Customs Organization (WCO)	1993	(GB.258/PFA/12/17)	12	100
30	Court of Justice of the European Free Trade Association (EFTA Court)	1994	(GB.259/PFA/13/18)	9	17
31	Surveillance Authority of the European Free Trade Association (EFTA Surveillance Authority)	1994	(GB.259/PFA/13/20)	3	63
32	International Service for National Agricultural Research (ISNAR) – ceased operations in 2014	1996	(GB.267/PFA/15/1)	3	–
33	Organization for the Prohibition of Chemical Weapons (OPCW)	1997	(GB.270/PFA/16)	51	457
34	International Organization for Migration (IOM)	1997	(GB.270/PFA/16)	24	7 485
35	International Centre for Genetic Engineering and Biotechnology (ICGEB)	1997	(GB.270/PFA/16)	4	174
36	International Federation of Red Cross and Red Crescent Societies (IFRC)	1998	(GB.273/PFA/13/2; GB.273/PFA/13/2(Add. 1); GB.273/PFA/13/2(Corr.))	17	524
37	Energy Charter Conference (ECC)	1998	(GB.271/10/2 and subsequent decision of the Officers of the Governing Body).	2	28
38	International Hydrographic Organization (IHO)	1998	(GB.271/10/2)	0	19
39	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom)	1999	(GB.276/PFA/15)	28	243
40	International Plant Genetic Resources Institute (IPGRI) Biodiversity International since 2006	2000	(GB.279/PFA/15)	0	193
41	European and Mediterranean Plant Protection Organization (EPPO)	2000	(GB.279/PFA/15/1)	0	13

	Name of organization	Year of acceptance	Decision reference	Number of judgments	Number of staff
42	International Institute for Democracy and Electoral Assistance (International IDEA)	2002	(GB.283/PFA/15)	1	72
43	International Criminal Court (ICC)	2003	(GB.286/PFA/17/3(Rev.))	17	858
44	International Olive Oil Council (IOOC)	2003	(GB.288/PFA/20/1)	6	30
45	Advisory Centre on WTO Law	2004	(GB.291/PFA/19/1)	0	11
46	African, Caribbean and Pacific Group of States (ACP Group)	2004	(GB.291/PFA/19/2)	0	92
47	Agency for International Trade Information and Cooperation	2005	(GB.292/PFA/20/3)	4	12
48	European Telecommunications Satellite Organization	2005	(GB.294/PFA/18/3)	1	3
49	International Organization of Legal Metrology (OIML)	2005	(GB.294/PFA/18/4)	1	9
50	International Organization of Vine and Wine (OIV)	2006	(GB.295/PFA/9/1)	1	14
51	Centre of the Development of Enterprise (CDE)	2007	(GB.298/PFA/21/1)	11	23
52	South Centre	2007	(GB.300/PFA/19/3)	2	16
53	Permanent Court of Arbitration (PCA)	2007	(GB.300/PFA/19/2)	0	22
54	Global Fund to Fight AIDS, Tuberculosis and Malaria	2008	(GB.303/PFA/15/2)	9	596
55	Technical Centre for Agricultural and Rural Cooperation ACP-EU (CTA)	2008	(GB.301/PFA/18/3)	7	32
56	ITER International Fusion Energy Organization (ITER Organization)	2008	(GB.303/PFA/15/3)	1	500
57	Bureau International des Poids et Mesures (BIPM)	2008	(GB.301/PFA/18/4)	0	73
58	International Organization for the Development of Fisheries in Eastern and Central Europe (EUROFISH)	2008	(GB.301/PFA/18/2)	0	8
59	International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM)	2009	(GB.306/PFA/19/2)	0	35
60	Global Crop Diversity Trust (CropTrust)	2015	(GB.323/PFA/11/2)	0	24
61	Consortium of International Agricultural Research Centers (CGIAR Consortium)	2015	(GB.323/PFA/11/2)	0	23



Governing Body

325th Session, Geneva, 29 October–12 November 2015

GB.325/PFA/PV/Draft

Programme, Financial and Administrative Section

PFA

Warning: this document is a draft and may contain omissions or errors. It is made available solely for the purpose of verification and correction. Persons referred to in this document are not to be regarded as bound by statements attributed to them. The ILO declines all responsibility for any errors or omissions which this document may contain, or for any use which may be made of it by third parties.

DRAFT MINUTES

Programme, Financial and Administrative Section

Contents

	<i>Page</i>
Programme, Financial and Administrative Segment.....	1
First item on the agenda	
Update on the headquarters building renovation project (GB.325/PFA/1).....	1
Second item on the agenda	
Proposed 2016–17 budgets for extra-budgetary accounts: Inter-American Centre for Knowledge Development in Vocational Training (CINTERFOR) (GB.325/PFA/2).....	3
Third item on the agenda	
Other financial questions Programme and Budget for 2014–15: Regular budget account and Working Capital Fund (GB.325/PFA/3/1).....	4
Audit and Oversight Segment	6
Fourth item on the agenda	
Independent Oversight Advisory Committee (IOAC):	
Appointment of members (GB.325/PFA/4).....	6
Addendum: Appointment of a replacement member to the IOAC (GB.325/PFA/4(Add.)) ...	7
Fifth item on the agenda	
Annual evaluation report 2014–15 (GB.325/PFA/5(Rev.)).....	7
Sixth item on the agenda	
Discussions of high-level evaluations (strategy and DWCP evaluations) (GB.325/PFA/6)...	9
Seventh item on the agenda	
Matters relating to the Joint Inspection Unit (JIU): Reports of the JIU (GB.325/PFA/7)	12

Personnel Segment	14
Eighth item on the agenda	
Statement by the staff representative	14
Ninth item on the agenda	
Matters relating to the Administrative Tribunal of the ILO Workload and effectiveness of the Tribunal (GB.325/PFA/9/1(Rev.))	14
Recognition of the Tribunal’s jurisdiction by two international organizations (GB.325/PFA/9/2)	16
Appendix	
Statement by the Chairperson of the Staff Union Committee to the Programme, Financial and Administrative Section of the Governing Body (325th Session – 2 November 2015)	17

DRAFT

Programme, Financial and Administrative Segment

First item on the agenda

Update on the headquarters building renovation project (GB.325/PFA/1)

- 1. A representative of the Director-General* (Deputy Director-General, Management and Reform) invited interested members to contact the Office to make a tour of the project. He informed members that the renovation works were ongoing and that it had been arranged that noisy work would be restricted to the hours of 6 a.m. to 9 a.m., so as not to disturb staff or the Governing Body proceedings.
- 2. The Worker spokesperson* said that his group was pleased to learn that the plot of land located on Avenue Appia had been sold and that the Office was finalizing arrangements for disposal of the leasehold plot located on the Route de Ferney. It also welcomed the news that the total budget remained within the limits previously endorsed by the Governing Body. The Office should ensure a regular flow of information on the project, including between sessions of the Governing Body, and provide staff and visitors with clearer information about potential hazards. Improvements were also needed with regard to fire drills, a centralized hotline for problems and better separation of working areas.
- 3. The Employer spokesperson* said that his group was pleased to learn that a management contractor had been selected but noted that, in order to cover the maximum guaranteed price, the project budget had been revised by removing the provision for inflation and a proportion of the provision for unforeseen costs. He requested the Office to confirm that those budget line items were no longer needed. Because the format of the project budget had been changed, it was difficult to compare it with the 2014 budget. The two budgets should be integrated or provided side by side for purposes of comparison. His group would also like to receive additional information on the disposal of the leasehold property as soon as it was available.
- 4. Speaking on behalf of the Africa group*, a Government representative of Zimbabwe requested clarification of the issues mentioned in paragraph 1 of the document and the measures taken to minimize their impact. While welcoming the sale of the land, he noted that the sale price of 26 million Swiss francs (CHF) fell far short of the estimated CHF60 million that would repay a portion of the loan of CHF130 million to be obtained to finance the renovation. His group would appreciate an explanation of that discrepancy and clarification of how the Office planned to bridge the gap. Lastly, as the document did not contain a decision point, the group proposed the following: “The Governing Body takes note of the progress made in the renovation project of the headquarters building and requests the Office to provide an update of the status of the project during its 326th Session (March 2016)”.
- 5. Speaking on behalf of the group of industrialized market economy countries (IMEC)*, a Government representative of the United Kingdom said that IMEC would welcome information on possible solutions if the income from the combined land sale and disposal fell short of the reduced estimate of CHF56.8 million and on the impact of that eventuality on member States. She asked how the Office intended to fund the interest payments on the proposed loan from the Swiss Government and how that loan fitted in with other proposed

funding mechanisms. While the Office's continued commitment to stay within the original project cost of CHF205 million was to be commended, it was disappointing that the report contained no information on possibilities for financing additional renovations. The Office should continue to explore innovative financing options, for both completing the full renovation and reducing the cost to member States of the reduced project.

6. *A Government representative of Mexico* looked forward to receiving additional information on the disposal of the leasehold plot, in order to learn the exact amount of the loan to be requested from the Swiss Government.
7. *The representative of the Director-General* (Deputy Director-General, Management and Reform), replying to questions, said that a hotline had been in place for the previous two years and that segregation walls had been installed throughout the building except on the seventh floor, where work would be completed within two weeks. Two fire drills had revealed shortcomings that had been addressed by installing new alarms and signage, with further improvements planned for the future.
8. Under the recently awarded guaranteed maximum price contract, the management contractor had taken over responsibility for inflation and contingencies, and those elements had accordingly been built into the project cost. He explained that the 2014 budget had contained only one line for floors 1 to 11 of the building, which had been broken down into a number of more detailed components in the new budget.
9. As examples of the "issues" mentioned in paragraph 1, it had been discovered during installation of the scaffolding that additional anchor points were needed, necessitating a reconfiguration of offices, and certain forms of work had had to be restricted to certain times in order to minimize noise disturbances. Other issues would be addressed as they arose.
10. The estimate of CHF56.8 million was based on the total income from the sale of the plot located on Avenue Appia and the disposal of the leasehold plot on the Route de Ferney. That combined amount of the proceeds from the disposal and sale was still expected to be close to the estimate. Any shortfall would have to be made up through efficiencies or other project savings. Further details would be provided at the March 2016 session of the Governing Body.
11. Any loan from the Swiss Government would be limited to the amount agreed at the 104th Session of the International Labour Conference and would be repaid not from membership income, but by letting out space within the building after the renovation. In order to pay for the full renovation project, the Office had been looking at models used by other agencies and would put forward options to governments in the months to come.

Decision

12. ***The Governing Body took note of the progress made in the renovation project of the headquarters building and requested the Office to provide an update of the status of the project during its 326th Session (March 2016).***

(GB.325/PFA/1.)

Second item on the agenda

Proposed 2016–17 budgets for extra-budgetary accounts: Inter-American Centre for Knowledge Development in Vocational Training (CINTERFOR) (GB.325/PFA/2)

13. *The Employer spokesperson* stressed the importance of CINTERFOR for countries in Latin America and the Caribbean. While the increases included in the proposed budget for 2016–17 seemed reasonable, staffing costs alone accounted for 80 per cent of the total; more action should be taken in the areas of training, knowledge management, jobs for youth and entrepreneurship. His group was pleased that the Government of Uruguay had paid most of the arrears in its contribution to the Centre and hoped that additional donors would make their promised voluntary contributions during the coming months. The Office, after consultation with the tripartite constituents, should provide a detailed explanation of each of the planned areas of activity set out in paragraph 11 and include expected outcomes for each budget line.
14. *The Worker spokesperson* stressed the importance of an integrated approach that recognized a Decent Work Agenda, freedom of association and collective bargaining as integral elements of a vocational training package. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), provided guidance on the formulation and implementation of a comprehensive employment policy, which must include education, skills development and lifelong learning, in response to the evolving labour market and new technologies, and must recognize prior learning, such as informal apprenticeship systems, in order to broaden options for formal employment.
15. The group welcomed the provision of capacity building for workers' and employers' organizations and called for the integration of normative components into the CINTERFOR strategy, including by promoting the ratification and implementation of Conventions Nos 122 on employment policy, 140 on paid educational leave, 142 on human resources development and 102 on social security, and of Recommendation No. 195 on human resources development. Workers' organizations should play a real role in discussing and setting vocational training policies, with a focus on sustainable and inclusive development and decent work creation. Vocational training should be included in collective agreements at the sectoral and enterprise levels, and in framework agreements between trade union federations and multinational enterprises. The experience of CINTERFOR should be shared through South–South cooperation and other methods. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) provided useful guidance by calling on multinationals to ensure that training was provided to workers in the host country, bearing in mind the country's development needs and policies.
16. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe noted with satisfaction that CINTERFOR planned to synchronize youth training policies with employment policies. With regard to paragraph 11(f) of the report, persons with disabilities should be recognized as a vulnerable group requiring inclusion. The Office was commended for allocating substantial funding to the Centre; it was hoped that such support could also be provided to training centres in other regions, including three in Africa.
17. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of Mexico expressed appreciation for the work of

CINTERFOR and endorsed its proposed programme and budget for 2016–17. He supported the Centre’s new strategy and the lines of action set out in paragraph 11, particularly with regard to decent work, the rural economy, youth and vulnerable groups, and the effort to strengthen the capacities of employers’ and workers’ organizations in response to new technologies. The Centre’s objectives should be aligned with discussions on the ILO’s centenary initiative on the future of work.

18. *A representative of the Director-General* (Regional Director for Latin America and the Caribbean) said that the new lines of action set out in paragraph 11 had been developed through extensive consultation and cooperation with member States; more detailed information would be circulated as requested by the Employers’ group. The Workers’ group had rightly noted the importance of collective bargaining and freedom of association; at a recent seminar on public sector collective bargaining in Buenos Aires, the Centre’s Director had made a presentation on the role of vocational training in successful collective bargaining and social dialogue. The Centre would be focusing more closely on the instruments mentioned by the Workers’ spokesperson and intended to align its work with the centenary initiative as requested by GRULAC. New technologies had an unavoidable impact on the world of work and CINTERFOR was already engaged in relevant collaboration and partnerships; for instance, one of the main collaboration programmes between vocational training institutions was training on the Brazilian SENAI methodology of technological prospection, which helped to provide vocational training that would prepare workers for employment at least five years into the future.
19. *The Employer spokesperson* said that, while his group endorsed the current wording of the draft decision contained in paragraph 20, it would welcome the inclusion of a second paragraph requesting CINTERFOR to submit information to the Governing Body at its 326th Session in March 2016 on how the lines of action set out in paragraph 11 of the document would be funded and on the results that it expected to achieve during the 2016–17 biennium. He subsequently withdrew that proposal, on the understanding that the group would be provided with the requested information before the Governing Body Session in March 2016.

Decision

20. *The Governing Body approved the income and expenditure estimates of the CINTERFOR extra-budgetary account for 2016–17, as set out in Appendix I of document GB.325/PFA/2.*

(GB.325/PFA/2, paragraph 20.)

Third item on the agenda

Other financial questions

Programme and Budget for 2014–15: Regular budget account and Working Capital Fund (GB.325/PFA/3/1)

21. *A representative of the Director-General* (Treasurer and Financial Comptroller) said that, since the preparation of document GB.325/PFA/3/1 at the end of September 2015,

contributions amounting to CHF12,176,618 had been received from nine member States, as detailed below:

Member States	Contribution received for 2015	Contribution received for arrears	Total contributions received in Swiss francs
Bahamas	3 348	–	3 348
Cuba	1 015	–	1 015
Dominican Republic	171 269	107 329	278 598
Iraq	258 707	304 770	563 477
Myanmar	4 452	–	4 452
Panama	4 065	–	4 065
Paraguay	–	5 189	5 189
Senegal	2 364	–	2 364
Spain	11 314 110	–	11 314 110
Total	11 759 330	417 288	12 176 618

Including contributions received between 1 October and 2 November 2015, the total contributions received in 2015 amounted to CHF296,092,496. Of that amount, CHF255,792,917 represented contributions for 2015 and CHF40,299,579 represented contributions for arrears. The balance due as of 2 November 2015 was CHF166,601,242.

22. *The Worker spokesperson* thanked those member States who had already paid their contributions for 2016 and previous years, and hoped that others would follow suit by the end of 2015. In the light of the information provided in paragraph 9 of the document, his group endorsed the draft decision contained in paragraph 11.
23. *The Employer spokesperson* said that his group endorsed the draft decision contained in paragraph 11.
24. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe commended the 20 member States who had already paid their 2016 contributions and settled their arrears. He encouraged those member States who had not yet settled their arrears to do so as soon as possible to avoid losing their voting rights and to enable the Office to pursue its work. His group endorsed the draft decision contained in paragraph 11.

Decision

25. *The Governing Body delegated its authority under article 16 of the Financial Regulations to the Chairperson who may approve any transfers within the 2014–15 expenditure budget that the Director-General may propose, if needed, prior to the closing of the biennial accounts and subject to the endorsement of such approval by the Governing Body at its 326th Session.*

(GB.325/PFA/3/1, paragraph 11.)

Audit and Oversight Segment

Fourth item on the agenda

Independent Oversight Advisory Committee (IOAC): Appointment of members (GB.325/PFA/4)

26. *The Employer spokesperson* said that his group concurred that there was a need to review the selection process defined in the IOAC terms of reference in order to guarantee its efficiency and cost-effectiveness in the future. His group endorsed the draft decision contained in paragraph 10.
27. *The Worker spokesperson* said that, while his group endorsed the draft decision contained in paragraph 10, care should be taken in the future to ensure gender balance, in addition to equitable geographical representation, in appointments to the IOAC.
28. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe thanked the three outgoing members of the IOAC, commended the work of those members standing for reappointment and endorsed the candidature of the proposed new members. His group endorsed the decision contained in paragraph 10.
29. *Speaking on behalf of IMEC*, a Government representative of the United Kingdom fully endorsed the benefits, value and importance of the IOAC and considered it complementary to other oversight bodies. IMEC agreed on the need to undertake a full selection process in 2018 to identify replacement members to serve for the period 2019–21. She thanked the three outgoing members for their contribution to the work of the IOAC during the period 2013–15 and welcomed the appointment of the three new members and two reserve candidates proposed. Her group endorsed the draft decision contained in paragraph 10.

Decision

30. *The Governing Body:*
 - (a) *conveyed its appreciation to Ms Eileen Fusco, Ms Hilary Wild and Ms Jeya Wilson for the valuable contributions they had made to the work of the IOAC during the period 2013–15;*
 - (b) *appointed Ms Carine Doganis, Mr Barry Greene and Mr N.R. Rayalu as new members of the IOAC for a term of three years commencing on 1 January 2016, and retained the candidatures of Mr Mukesh Arya and Mr Frank Harnischfeger on a reserve list.*

(GB.325/PFA/4, paragraph 10.)

Addendum: Appointment of a replacement member to the IOAC

(GB.325/PFA/4(Add.))

31. Following the non-acceptance of the appointment by one of the newly appointed IOAC members, Mr Greene, the Governing Body was called upon to select one of the two candidates on the reserve list as a replacement member, and to retain the other on the reserve list.
32. *The Employer spokesperson* recognized that both candidates on the reserve list were considered to be qualified for the position. His group would recommend the appointment of Mr Frank Harnischfeger (Germany) as the replacement member, but it would be open to join the consensus if strong support emerged for Mr Mukesh Arya (India).
33. *The Worker spokesperson* also supported Mr Harnischfeger as the replacement member.
34. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe also supported the appointment of Mr Harnischfeger, based on due consideration for geographical diversity in the Committee.

Decision

35. *The Governing Body appointed Mr Frank Harnischfeger as a member of the IOAC for a term of three years commencing on 1 January 2016, and retained the candidature of Mr Mukesh Arya on the reserve list.*

(GB.325/PFA/4(Add.), paragraph 7.)

Fifth item on the agenda

Annual evaluation report 2014–15

(GB.325/PFA/5(Rev.))

36. *The Worker spokesperson* welcomed the largely positive results of the 2013 independent review of ILO high-level evaluations and the Evaluation Office's (EVAL) efforts to enhance the quality and use of evaluations. He welcomed the fact that the assessment conducted by the Joint Inspection Unit (JIU) had ranked the ILO among the top three UN agencies with a demonstrably relevant and effective evaluation function. He endorsed recommendation 1 and invited the Office to ensure greater participation of constituents and workers' organizations in the design, implementation and follow-up to programmes under biennial milestone 2.1. His group agreed with the topics proposed in table 2 and supported the reduced number of evaluations in 2016. The evaluation of the ILO field structure should not be postponed beyond 2017. The evaluation of capacity-building efforts should cut across all outcomes. Constraints on staff must be considered when addressing milestone 3.2 on professionalization of the evaluation function. He inquired about the target on self-evaluations that had not been met but welcomed EVAL's intention despite capacity constraints to improve the quality of evaluations and the recommendations contained therein. EVAL should address shortcomings it had identified in project design, which could pose serious limitations to what evaluations could ultimately measure and lessons they could draw. His group encouraged EVAL to continue to provide additional support to high-budget projects to allow their effectiveness and results to be better

documented, especially given the critical gaps identified in box 1. His group fully endorsed recommendation 2.

37. *The Employer spokesperson* said that his group looked forward to receiving the results of the independent assessment of the ILO's evaluation function and hoped that it would bring the ILO's evaluation strategy into closer alignment with its Strategic Policy Framework 2018–21. He requested more information on the supervisory role of EVAL in assessing the performance of the Evaluation and Impact Assessment section of the International Programme on the Elimination of Child Labour (IPEC). He supported Office efforts to improve evaluation recommendations, but expressed concern about persistent poor project and programme design and insufficient monitoring and reporting. The critical gaps identified in box 1 required immediate attention. His group endorsed recommendation 2 and the draft decision.
38. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe commended the Office on having been ranked among the top three UN agencies with a demonstrably relevant and effective evaluation function. The independent assessment of the evaluation function should be conducted in a manner which guaranteed the credibility of its results. While his group welcomed the collaboration between EVAL and the Turin Centre, it requested more information on the impact of training on staff. He encouraged the Office to direct its efforts towards remedying shortcomings in the design of projects and programmes to ensure the effectiveness of evaluations, and to addressing the critical gaps identified in box 1. Clear performance indicators and the inclusion of monitoring and evaluation components at the implementation stage were essential for assessing project performance. He asked why the topic of labour migration proposed by his group had not been selected for the 2018 independent assessment of the evaluation function. He endorsed recommendations 1 and 2.
39. *Speaking on behalf of IMEC*, a Government representative of Norway welcomed the progress made by EVAL in institutionalizing evaluation as a tool for learning and for documenting results, including the "less is more" strategy. It was important to introduce good evaluation practices into the programme implementation process and, crucially, the programme and budget. She welcomed the systematic implementation of the results-based evaluation strategy, with positive results, and the development of effective and objective systems for evaluating project performance. She asked whether assimilating donor evaluation requirements which conflicted with Office-wide evaluation policies could enhance the ILO's evaluation function. IMEC attached great importance to the 2016 independent assessment of the ILO's evaluation function. It should be conducted in a manner which would guarantee its independence, credibility and utility. She generally supported the structure outlined in paragraph 13, but asked how the support secretariat would ensure independence and credibility. The Office should ensure greater evaluability of projects and programmes through better project design. She supported recommendations 1 and 2 and the draft decision.
40. *A representative of the Director-General* (Director, EVAL) concurred that the use of evaluation reports was crucial to the ILO's evaluation function. He stressed that investments in monitoring systems and adequate resources for the evaluation process were key to ensuring the quality of evaluations, particularly impact evaluations. With limited capacity, reducing the number of evaluations could therefore enhance their quality and produce better lessons learned. To overcome capacity constraints EVAL had decided to focus on independent rather than on self-evaluations. It was important for EVAL to play a role in the former to ensure their credibility. In the case of self-evaluations, it could monitor reporting compliance but could not manage them directly. The main problems affecting larger projects concerned design and the need to include better monitoring requirements therein as that affected their evaluability. EVAL was not responsible for

improving the design of such projects, as that could compromise their independence. That task belonged to the Partnerships and Field Support Department and technical departments. The use of the volunteers' network of certified evaluation managers had enabled EVAL to manage its workload. That model to deal with capacity constraints was considered to be cost-efficient in a zero-growth budget and had been emulated by other agencies. EVAL recognized the importance of the involvement of the tripartite constituents in the design, implementation and evaluation of projects as evaluations had shown it enhanced quality on all fronts. The Office's evaluation standards were based on international standards set by the OECD, which were compatible with most donor evaluation requirements. The ILO should manage the evaluation process to facilitate follow-up and the drawing of lessons learned, while taking steps to preserve the independence of such evaluations. The independent evaluation of the ILO's evaluation function would be fully independent, as it had been in 2010. EVAL would provide secretarial support but would not influence results. IPEC's authority to manage independent evaluations pre-dated the current evaluation policy. Discussions were under way with a view to integrating IPEC more fully into the ILO's evaluation strategy. The topic of labour migration proposed by the Africa group had not been selected as an evaluation topic for 2018 as an independent evaluation on migration had been conducted two years previously.

Decision

- 41. *The Governing Body took note of the report in document GB.325/PFA/5(Rev.) and endorsed the recommendations (paragraphs 14 and 64) to be included in the ILO's rolling plan for the implementation of recommendations to be reported on in the annual evaluation report 2015–16. It also confirmed the priorities identified in the report on the programme of work 2016–18.***

(GB.325/PFA/5(Rev.), paragraph 65.)

Sixth item on the agenda

Discussions of high-level evaluations (strategy and DWCP evaluations)

(GB.325/PFA/6)

- 42. *The Employer spokesperson*** understood that the independent evaluation had gone beyond just evaluating the ILO's Technical Cooperation Strategy 2010–15, also looking at the ILO's performance in implementing it. It would have been useful to evaluate the effectiveness of Governing Body decision-making and implementation of the Strategy, including delivery on outcomes and targets, such as the targets of Decent Work Country Programmes (DWCPs). He expressed surprise that there was insufficient data to evaluate the Strategy's impact. The discussion on the ILO Development Cooperation Strategy 2015–17 was therefore critical. It was necessary to see how the ILO reform and new development cooperation policies and programmes could be more outward looking. It was a concern that DWCPs lacked solid financial foundations and realistic budgets. He welcomed criticism of the narrow view of capacity development, saying that it should be more holistic. Regarding Part II, he regretted the inadequate acknowledgement of the important preventative function of labour inspection. While governments were ultimately responsible for implementing labour laws and ensuring independent and objective labour inspection, and should be the principal recipients of development assistance and labour inspection, the ILO should support balanced tripartite cooperation in that area. Regarding Part III on DWCPs in the Caribbean, for smaller countries a subregional approach could be

more cost effective and have greater impact. His group supported in particular recommendations 1 and 5, and the draft decision.

43. *The Worker spokesperson* was pleased to note the strong endorsement in the findings of the Technical Cooperation Strategy evaluation that more needed to be done to make more systematic use of development cooperation to promote the ratification of international labour standards across the four strategic objectives and improve implementation. Proposals on how to guarantee full tripartite consultation on DWCPs would be welcomed. He expressed concern that in none of the cases reviewed were the DWCPs costed and anchored in budgets. He agreed with the finding that raising capacity went beyond training. DWCPs should have a capacity-building component to prepare trade unions for greater involvement. The ILO strategy should be based on the development of solid DWCPs. The insufficient data on the impact of ILO development cooperation was a concern. The ILO must act on the low efficiency and sustainability ratings contained in table 1. He supported recommendation 1. Recommendation 3 should also refer to ratification of standards. Recommendation 5 must be consistent with the values and principles of the Organization, especially regarding funding. He requested clarification on the flagship reports mentioned in paragraph 41 of the Office response. Regarding Part II, he welcomed the alignment of the ILO's strategy and actions to strengthen labour inspection systems with the 2011 Conference conclusions and resolution. Regarding outcome 7 in the transitional strategic plan for 2016–17, results-based criteria would contribute to strengthening labour inspectorates and improving compliance. He requested reassurance that the Labour Administration, Labour Inspection and Occupational Safety and Health Branch (LABADMIN/OSH) had sufficient staff to perform its mandate, requesting reports on the ratio of staff with labour inspection expertise. Office remedial action in project design was necessary. Serious issues and scope for improvement were identified in Part III concerning the Caribbean. More needed to be done to ensure a systematic design and implementation of approaches based on an analysis of country situations. He agreed with the conclusions and lessons learned and welcomed the recommendations, particularly 4, 5 and 8. He welcomed the Office's readiness to follow-up on the recommendations of the evaluations.
44. *Speaking on behalf of the Africa group*, a Government representative of Algeria said that the evaluations had highlighted the deficiencies of the development cooperation programmes and ways to improve them. Financial support was needed to improve the coherence and effectiveness of the programmes so that they had a real impact on the countries involved. It was essential to set quantifiable and measurable objectives that took into account the specific situation of each country to enable the impact of the programmes to be evaluated, particularly in terms of decent work. He supported the recommendation to increase and strengthen the ILO's presence in the field and provide relevant resources. More consistent and focused programmes for reinforcing labour inspectorate systems in terms of skills and human resources were important, as well as mastering techniques and supervisory, advisory and assistance procedures. The reasons for the lack of programme effectiveness and impact should be established. Programmes should be tailored to the specific situation and characteristics of each country. He supported the draft decision.
45. *Speaking on behalf of IMEC*, a Government representative of Belgium urged the Office to act promptly to address the issue identified in the Technical Cooperation Strategy evaluation of insufficient data in order to ensure that constituents benefited from ILO development cooperation and to inform future programming. To increase the effectiveness of its development cooperation, the ILO needed a field office structure that coordinated with other UN agencies. Regarding Part II on labour inspection, projects should be tailored to conditions within each country. She requested further information in relation to the indicators of outcome 7. Regarding Part III, she was troubled that the overall performance in the Caribbean was only moderately satisfactory and that efficiency in the management and implementation of the Office's programmes was rated as somewhat unsatisfactory.

She welcomed the Office's positive response to the recommendations. The group supported the draft decision.

46. *A Government representative of Trinidad and Tobago* welcomed the document's recommendations and the Office response, and was encouraged by the measures proposed. Caribbean constituents continued to be well served by the ILO. The 2030 Agenda for Sustainable Development was of particular importance to the region. Trinidad and Tobago was pleased to host the ILO Decent Work Team and Office for the Caribbean and placed high value on the meeting of Caribbean ministers of labour. It would welcome a regional plan.
47. *A Government representative of Bangladesh* agreed with the observation of the Workers and Employers that making the allocation of national resources a prerequisite for project approval would negatively impact the ILO's capacity to serve its constituents, particularly in least developed and developing countries due to their limited ability to mobilize the required resources. Comparing the Office's policy to the policies of other UN specialized agencies would offer a clear direction to optimize programme support costs. Regarding reducing time lags in project start up, he highlighted the situation in Bangladesh where a two-stage process was in place. Instead of two agreements being signed, a single document could be signed jointly by the development partners, the ILO and the national Government. He supported the draft decision.
48. *A representative of the Director-General* (Director, Partnerships and Field Support Department) said that the evaluations and the comments made during the Governing Body session, would provide a clearer picture of what needed to be improved. It was crucial that the ILO consider the impact of its actions. There was an important connection between the institution's values and potential funding. The ILO was based on values that guided the direction and use of financing and of projects. Those values were connected in two ways: cooperation based on international standards and development cooperation based on tripartism. Workers and Employers needed to be able to actively participate in ILO's development cooperation proposals.
49. *A representative of the Director-General* (Director, Governance and Tripartism Department) said that significant efforts had been made by the Office to develop its labour inspection strategy and mobilize resources. It had made resources available for the creation of the Labour Administration, Labour Inspection and Occupational Safety and Health Branch and increased the number of labour inspection specialist posts in the regions and at headquarters. The Office's labour inspection strategy had increased its focus on occupational safety and health and it had increased its intervention capacities at country level. While he acknowledged the need to develop its work through regional programmes, the Office was already undertaking a considerable amount of work through its existing programmes.
50. *A representative of the Director-General* (Regional Director for Latin America and the Caribbean) said that, with a view to addressing concerns regarding coherence and strategy, the Office would use the opportunity of the new biennium to develop a subregional plan and better define country diagnosis as a basis to better design the corresponding country-specific workplans. Work had already begun on developing an ILO programme strategy for the region, building on the conclusions of the previous two G20 Labour and Employment Ministers Meetings and the DWCPs. There would be country and tripartite consultations. Inefficiencies resulted partly from the lack of more explicit and systematic efforts to take stock and analyse decent work issues. The Office was piloting a new decent work country diagnostic tool in Jamaica, with plans to use it in other countries. It would feed into the reformulated guidebook on DWCPs that was being prepared by the Strategic Programming and Management Department as part of the review of field operations. The

Office also continued to participate in the UN system's efforts to establish a common basis for policy dialogue through common multi-country assessments. It planned to develop a broader capacity-building approach for constituents, a clear documentation and communications strategy to enhance the visibility of the ILO's work, and to carry out assessments to identify gender mainstreaming opportunities. The Office was aware of the complexity and specificities of the Caribbean region, which required continued and intense consultation efforts, improved diagnosis and much work on policy coherence and strategy. However, such efforts also required a critical mass of resources, which meant rebalancing to invest more in diagnostic work and high-quality consultations with constituents.

Decision

- 51. *The Governing Body requested the Director-General to take into consideration the findings, lessons learned and recommendations (paragraphs 25–38, 75–82 and 117–126) of the three high-level independent evaluations presented in document GB.325/PFA/6 and to ensure their appropriate implementation.***

(GB.325/PFA/6, paragraph 135.)

Seventh item on the agenda

Matters relating to the Joint Inspection Unit (JIU): Reports of the JIU (GB.325/PFA/7)

- 52. *The Worker spokesperson*** said that his group supported the Office's position in relation to the four JIU reports. Concerning the selection and appointment process for United Nations Resident Coordinators, it was important for the ILO to contribute with its own staff to the recruitment process, to promote understanding of the benefits of tripartite work across the UN system. With regard to the review of the management of implementing partners, the group supported the Office's decision to maintain public-private partnerships in line with the previously approved strategic framework of development cooperation. In addition, it encouraged the Office to progress further with the analysis of the resource mobilization function. Lastly, in connection with capital, refurbishment and construction projects, it noted that the Office's rules and practices were aligned with the principles and practices set out in the report.
- 53. *The Employer spokesperson*** noted with appreciation that the Office was implementing most of the recommendations that were relevant to ILO action and welcomed the update on the implementation of all recommendations.
- 54. *Speaking on behalf of the Africa group***, a Government representative of Ethiopia requested the ILO to expedite the implementation of JIU recommendations. The group noted the JIU's observation that ILO country offices identified implementing partners in an ad hoc manner. It encouraged the ILO to reconsider its position on recommendation 3 (JIU/REP/2013/4), acceptance of which could avoid duplication of efforts and enhance the ILO's implementation capacity and its coordination with other UN agencies and implementing partners.
- 55. *Speaking on behalf of IMEC***, a Government representative of the Netherlands expressed the group's appreciation for the Office's continued work on implementing the JIU recommendations and the accessible way in which the information was presented to

the Governing Body. He noted that recommendation 5 (JIU/REP/2010/8) and recommendation 3 (JIU/REP/2011/7) remained under consideration, since 2010. IMEC considered recommendation 5 to be covered by the Office's recruitment, assignment and placement system, and wished to know when action to implement recommendation 3, on inter-agency mobility of investigative staff, would commence. It encouraged the Office to collaborate with other UN agencies to improve the selection and appointment process for UN resident coordinators, and to focus on posts in countries with key ILO programmes. Recommendations 3 and 9 (JIU/REP/2013/4) had been sufficiently captured by the ILO Development Cooperation Manual and the Office Procedure on implementation agreements. Regarding resource mobilization, contributions should ideally be predictable, long-term and in line with the core mandate of international organizations, and ILO resource mobilization should continue to be reviewed periodically. With respect to JIU's work programme for 2015, IMEC called on the JIU to make specific recommendations for the ILO.

- 56.** *A representative of the Director-General (Director, Strategic Programming and Management Department) informed the Governing Body that the Office encouraged ILO managers to express interest in Resident Coordinator positions, organized coaching and training activities for potential candidates, and worked with the UN system to suggest appointments of ILO officials in countries with ILO programmes. However, he reminded the Governing Body that the selection and appointment to a particular duty station remained the prerogative of the UN Secretary-General. Although the Office had not accepted the recommendation on the review of the management of implementing partners, it had developed a number of procedures and documents in that regard. In relation to the resource mobilization function, the current level of voluntary funding and the immediate outlook showed a relatively stable scenario. That reflected the considerable efforts made to strengthen the design of ILO interventions and to integrate work financed by voluntary funding under an integrated results framework. The Office's resource mobilization strategy was in line with its constituents' needs and presented in its Development Cooperation Strategy 2015–17. It was based on modest increases in, and an improved quality of, the funding in terms of flexibility and predictability. With respect to recommendation 5 (JIU/REP/2010/8) and recommendation 3 (JIU/REP/2011/7), the ILO's selection system was compliant with the recommendation on inter-agency staff mobility. The acceptance and implementation of recommendation 3 related to the investigation function and would require agreement and disciplined coordination across the UN system. Until that time, the ILO acting alone would not work effectively. Moreover, there were concerns regarding the impact of the recommendation on terms and conditions of employment, recruitment and staff development. The Office would continue to work with the JIU on the basis of discussion and exchange.*

Outcome

- 57.** *The Governing Body took note of the report and invited the Office to take into consideration the views expressed during its discussion.*

(GB.325/PFA/7.)

Personnel Segment

Eighth item on the agenda

Statement by the staff representative

58. The statement by the Staff Union representative is reproduced in the appendix.

Ninth item on the agenda

Matters relating to the Administrative Tribunal of the ILO

Workload and effectiveness of the Tribunal (GB.325/PFA/9/1(Rev.))

59. *The Worker spokesperson* said that his group attached great importance to the work of the Administrative Tribunal. Additional measures were necessary to address its increased caseload, which was largely owing to the significant number of complaints from a single organization, the European Patent Organisation (EPO). The problems encountered within the EPO appeared to be ongoing and substantial, with an increasing number of labour disputes that could not be solved through internal remedies. Government members of the Governing Body that were also members of the EPO should raise concerns within the governing structure of the EPO over the management of human resources and the need to establish good industrial relations. Alternative measures such as mediation could also be considered to address staff issues within the EPO. If those measures failed, the EPO should consider establishing its own internal judicial system. The Workers agreed on the need to find an urgent, practicable and time-bound solution to adjudicate all EPO complaints in a manner that allowed the Tribunal to fulfil its mandate and serve effectively the other organizations that had recognized its jurisdiction. The conditions for the acceptance of new organizations could be reviewed to ensure that they had effective internal remedies compatible with the role of the Tribunal as a final adjudicatory mechanism. The Tribunal was otherwise functioning well. Shortening delivery times and other means of maintaining the quality of judgments were matters for the Tribunal, not the Governing Body. He therefore proposed deleting subparagraph (b) of the draft decision. Furthermore, he proposed removing “the selection process of judges” from subparagraph (c), as the existing procedure for the appointment of judges was sound and transparent. Lastly, he agreed that Article XII of the Statute of the Administrative Tribunal should be amended in order to ensure the principle of equality of access to the review procedure and to remove the imbalance to the detriment of staff members. The Workers supported the draft decision, subject to the proposed amendments.

60. *The Employer spokesperson* said that, according to updated information provided by the Tribunal that day, almost 90 per cent of all complaints filed in 2015 came from the EPO, which pointed to a problem within the EPO rather than the Tribunal. Like the Workers’ group, the Employers’ group supported subparagraph (a) of the draft decision, the removal of subparagraph (b) and the proposed amendment to subparagraph (c). While he had taken note of the areas of the Tribunal’s operations that could be improved, he did not consider them to be within the strategic role of the Governing Body.

61. *Speaking on behalf of the Africa group*, a Government representative of Ghana noted that the workload of the Administrative Tribunal had steadily increased, without a corresponding increase in the output, leading to an increase in the number of pending cases. While other factors presented challenges, the main difficulty the Tribunal faced was not the number of new member organizations in the last decade, but the number of cases brought against the EPO by its staff. The group noted with concern that that was a serious impediment to the Tribunal's ability to deliver effectively on its mandate by providing redress to the many international employees who needed it, and encouraged the ILO to deploy its expertise in social dialogue to further assist the EPO in reducing litigation. The Africa group endorsed the draft decision and requested the Office to report to the Governing Body on progress.
62. *Speaking on behalf of IMEC*, a Government representative of the United States noted that the increasing caseload of the Tribunal was partly the result of a growing number of organizations that had accepted its jurisdiction, which itself was a positive development. However, the growing caseload, coupled with mitigating factors, had put a significant strain on the Tribunal's capacity to manage its workload effectively. Further steps were required to restore the efficiencies of the Tribunal and enable it to discharge its backlog. The group agreed with the principal findings of the report and the draft decision, and strongly endorsed the request for the Director-General to initiate discussions with the EPO without delay to identify a solution to reduce the number of complaints generated and enable the Tribunal to serve all member organizations efficiently and effectively.
63. *A Government representative of France* expressed concern at the Tribunal's increasing workload and invited the ILO and the EPO to find a solution as quickly as possible to allow the Tribunal to carry out its mandate effectively.
64. *A representative of the Director-General (Legal Adviser)* said that the selection process of judges had been included in subparagraph (c), not with a view to amending the selection criteria, but to increase transparency by including both the selection criteria and the selection process in the Tribunal's Statute. Concerning the proposed deletion of subparagraph (b), he sought clarification as to whether the Office should pursue consideration of the other possible improvements proposed.
65. *The Worker spokesperson* said that the wording of subparagraph (c) could be seen as going beyond a codification of the current selection process. The reason for the proposed deletion of subparagraph (b) was because the text implied that the Tribunal was not functioning properly, whereas the real cause of the current difficulties was specific to the situation in the EPO. The deletion of subparagraph (b) did not preclude consideration of possible improvements to the functioning of the Tribunal, but the responsibility for deciding any change in the Tribunal's rules lay with the Tribunal as an independent body.
66. *The Employer spokesperson* agreed with the Worker spokesperson that the language of subparagraph (c) was unclear. His group had no objection to publishing the existing selection process; however, there should be no suggestion that the selection process needed to change. Regarding subparagraph (b), the Office and the Tribunal did not require authorization from the Governing Body to consider and implement the proposed operational improvements such as the introduction of an e-filing system.

Decision

67. The Governing Body requested the Director-General:

- (a) *to initiate without delay discussions with the European Patent Organisation (EPO), in consultation with the Tribunal as required, in order to identify a*

solution to the difficulties caused by the number of complaints generated within the EPO and which threaten the ability of the Tribunal to serve all other member organizations, and to report to the Governing Body at its next session;

- (b) to prepare draft amendments to the Tribunal's Statute relating to Article XII and the conditions of admission of new organizations, for consideration by the Governing Body.*

(GB.325/PFA/9/1(Rev.), paragraph 33, as amended.)

Recognition of the Tribunal's jurisdiction by two international organizations (GB.325/PFA/9/2)

- 68.** *The Employer spokesperson supported the draft decision.*
- 69.** *The Worker spokesperson also supported the draft decision.*
- 70.** *Speaking on behalf of the Africa group, a Government representative of Ghana proposed, in the light of the discussion on the functioning of the Tribunal that, in addition to the eligibility criteria, the Director-General could in future scrutinize the internal remedies set out by applicant organizations to ensure that they were compatible with the Tribunal's role as a final adjudicatory mechanism. Her group supported the draft decision.*

Decision

- 71.** *In the light of the information presented in document GB.325/PFA/9/2, the Governing Body approved the recognition of the Tribunal's jurisdiction by the Global Community Engagement and Resilience Fund (GCERF) and the Center of Excellence in Finance (CEF), with effect from Monday, 2 November 2015.*

(GB.325/PFA/9/2, paragraph 18.)

Appendix

Statement by the Chairperson of the Staff Union Committee to the Programme, Financial and Administrative Section of the Governing Body (325th Session – 2 November 2015)

Madam Chairperson,

Ladies and gentlemen members of the Governing Body,

Dear colleagues present today,

I again have the honour and pleasure to address you today as Chairperson of the ILO Staff Union, which represents 70 per cent of the staff working at headquarters and in the field.

The purpose of my statement is, as usual, to inform you of the views or concerns of ILO staff members about the decisions that you, members of the Governing Body, will take in this or in other forums.

In the current month of November 2015, there are several concerns occupying the minds of ILO staff members.

The document on the workload and effectiveness of the Administrative Tribunal of the ILO (GB.325/PFA/9/1(Rev.)) first caught our attention. The Staff Union was consulted, along with other staff associations and unions, before the presentation of this document; the Union is grateful to the Office of the Legal Adviser for taking this approach as part of a healthy consultation process. First of all, the Staff Union would like to recall that this institution is a basic guarantee for ILO employees because their place of work enjoys immunity from legal process and they cannot turn to the national courts when disputes arise concerning their terms and conditions of employment. In fact, when members of staff are faced with a sense of injustice, unfair treatment, and possibly harassment, having exhausted all internal remedies available in their organization, they must be able to turn to a legal body with the level of effectiveness and quality of decision-making to reassure them that their case, their workplace problem, has received close attention, and that a decision will be made objectively by persons with unquestionable expertise in employment rights. What matters to ILO staff is that this Tribunal can today maintain this quality of decision-making, which has contributed significantly to its reputation, and improve its services in the future, when there will be an exponential increase in the number of appeals. Furthermore, looking to possible improvements, the employment stability of staff working in the Tribunal as an essential prerequisite for the independence of any judicial institution, and the possibility for complainants to take part in joint legal proceedings, are major priorities for the ILO Staff Union.

I am not going to comment on or analyse in any detail the current status of the Tribunal but, that said, I will make a general observation that the issue of social dialogue and collective bargaining in international organizations is at the very heart of the problem. If, in some organizations, social dialogue is absent, if consultation and collective bargaining are not in place, if the voices of staff are not heard in formal labour relations settings, then these members of staff will have no other option but to assert their rights through legal means, and in some cases to take mass action.

As for the ILO Staff Union, I repeat it will, of course, be willing to discuss when the time comes any possible future improvements that would not only help maintain the

quality of decision-making and independence of this Tribunal, but also to explore all possible solutions to ensure its effectiveness and continuity.

I would now like to report to you, from the staff's viewpoint, on the status of labour relations in the Organization since my statement in March, by raising a few key issues.

You have had the opportunity to familiarize yourself with the update on the internal reform set out in document GB.325/INS/15/1, including the aspects relating to the progress of the review of administrative processes carried out with support from external consultants, as well as with the field operations and structure review. If I had not been a staff representative in this Organization, I would have been pleased, when reading this document, to see how all those review stages appeared to have been completed with disconcerting ease, transparently, and in a consultative atmosphere that seemed to have unashamedly reached an ideal level of social dialogue.

Of course, the staff representatives note with satisfaction that, in effect, engaging in social dialogue on an almost daily basis has provided some favourable outcomes that have satisfied both parties. That was the case on certain subjects such as the transfer of the Abidjan Regional Office, the restructuring of some departments and technical cooperation programmes, individual conflict resolution, the progress of the building renovation and improved building security, as well as the working groups set up to improve our health insurance fund.

However, critical gaps remain in the labour relations institutional framework, which means that the staff representatives cannot show the same complacency that we see expressed in this document.

The reform has hardly been a bed of roses for staff members, as they have the unpleasant impression that they are now in a constant state of reform and that some reform-related decisions are far less anodyne than the impression given by the management when they were first proposed. A case in point is the review of administrative processes: while it was launched on the pretext of simplifying administrative work, it is now turning out to be a major organizational reform, which will undoubtedly have much more significant implications in terms of governance and will inevitably have an impact on staff.

In my statement in March 2015, I already referred to the absolute need for upstream consultation with staff representatives so that this exercise does not fall into the same traps that it has previously and so that it has a chance of success. I was optimistic and naively had the impression that I had been heard. Unfortunately, the first few months were chaotic in terms of social dialogue: to begin with, there was no formal upstream consultation with representatives to discuss the key steps that were planned, the final goals, the working methods and the potential impact of this exercise on the staff. Moreover, turning to external consultants, especially a notorious firm known above all for advising large companies on their social plans, has led to a communications policy that had been quite some distance from, if not the polar opposite of, the terminology traditionally used in our Organization. However, it would appear that, following a number of specific steps taken by the Union, a very recent change of attitude on the management side leaves room to hope for better days where communication is concerned. It is the kind of consultation that staff members will never take lightly, because it is about their duties and because they are best placed to discuss how to make improvements in that regard.

I must let you know that the field structure review featured in the same report has not been a model example of how to consult with staff either. Now that the review is more or less complete, it will be important for staff representatives once again to become closely involved – in advance rather than retrospectively – in the final stages of its

implementation. The post classification exercise currently taking place on the ground is part of this final phase and is already generating a large number of questions from our colleagues. They would like the process to remain true to the initial demands they made in 2010 during the staff engagement phase, and to respect the agreement signed by both management and the Staff Union.

In light of what has happened this year, the Staff Union notes that social dialogue has not been entirely successful and that significant progress still needs to be made, including through this formal dialogue, but also in terms of respecting previous agreements, acknowledging the need for consultation and ensuring equal access to the information needed for future negotiations. If we are to avoid needlessly wasting the Organization's time, then we must treat this as a matter of urgency. In their most recent message to staff, senior managers celebrated the benefits of social dialogue to mark the achievements of the winners of the Nobel Prize in the past two years. The Staff Union would say in response that it is also essential to practise more consistently and coherently within the Organization the things that we are proud to bring to those outside it. In fact, both sides have a responsibility and a historic opportunity to demonstrate to the world that any reform is possible, not in spite of social dialogue but because of it. Just two weeks ago, Staff Union members met at their global meeting and reaffirmed the vision that they should be driving the process of transforming the ILO into a better workplace, as well as representing all staff as an equal and robust social dialogue partner. The Union is ready to fulfil its side of that bargain.

Before turning to the wider issue of conditions of service in the international civil service, I would like to refer once again to the concept of a single ILO and the effective integration of the work of the Turin Centre into the ILO's broader strategies. The Staff Union would once again like to lend its support to the demands made by the Staff Union of the Turin Training Centre, so that the career development of staff at both organizations can be viewed without distinction in terms of recruitment, promotion and tenure. Achieving that would send a strong and encouraging signal.

I now turn to the major issue of concern facing staff at the Organization and all their colleagues from other United Nations organizations.

You are no doubt aware that, at the request of the Fifth Committee of the General Assembly of the United Nations, a review of remuneration packages within the international civil service has now been running for two years at the International Civil Service Commission. The General Assembly is shortly to take a decision on the basis of the Commission's recommendations; those recommendations have already had a very negative impact on all staff concerned.

Distinguished delegates, the proposals were made on the pretext of simplifying the remuneration system. But in fact, the final decisions made during the summer have proved, in the end, to be toxic in a number of ways for the organizations and staff they employ; those decisions are ultimately turning into a pay cut which, moreover, affects the different categories of staff most unfairly.

There have been more than two years of discussions with the management of those organizations and representatives of international federations speaking for all international civil servants;

All the specialized agencies including those with a strong presence in the field have been strongly encouraged to take drastic measures to promote staff mobility;

Incentives have been put in place to attract young people to work in humanitarian affairs;

And after all that, the Commission then proposes a remuneration and benefits package that equates to a 10 per cent pay cut.

Taken together, these proposals primarily affect our colleagues who want to work in hardship locations, who are in single-parent families – and so by implication, women; and they clearly target young staff members with family responsibilities.

What is most shocking is that one of the proposals involves a 6 per cent increase in salaries for directors who are mainly based at the headquarters duty stations.

All these measures have provoked an angry response from all United Nations staff and generated an unprecedented campaign, the culmination of which is to be held in New York in the coming weeks. More than 10,000 members of staff have signed a petition that staff federations will deliver by hand to the UN Secretary-General; they are determined to defend their conditions of service as they were legitimately defined when the United Nations was established.

Distinguished delegates, while the contributor countries which you come from are mostly aware of the challenges facing the United Nations and its specialized agencies, it is the agencies which have a duty to invest in their most valuable asset: the men and women who work there. Indeed, the agencies require committed staff around the world with the best skills; they must make it their duty to attract such people when young and retain them when they have become more experienced with a salary and benefits package and a level of job security commensurate with their qualifications and in line with the principles on which the organizations they serve were founded from the very beginning; that will allow those men and women to accomplish the tasks that contributor countries assign them during the sessions of their executive boards – tasks which, let us not forget, are sometimes done under life-threatening conditions.

Undermining the staff of the United Nations is certainly not a good way to celebrate with dignity the Organization's 70th anniversary that took place last week.

On the contrary, the anniversary should be an opportunity to acknowledge and recognize all the work that the staff members have done since the establishment of this noble institution of global governance, and to provide it with motivational incentives for the future that will allow it to best achieve its objectives.

Thank you for your attention.

Catherine Comte-Tiberghien
Chairperson
Staff Union Committee

BOURDON & FORESTIER

156 RUE DE RIVOLI – 75001 PARIS

WILLIAM BOURDON
LEA FORESTIER
AVOCATS ASSOCIES

SANDRINE RICHER
APOLLINE CAGNAT
AMELIE LEFEBVRE
BERTRAND REPOLT
AVOCATS AU BARREAU DE PARIS

TEL 01 42 60 32 60

FAX 01 42 60 19 43
01 42 60 25 17
PALAIS R 143

contact@bourdon-forestier.com

Bureau International du Travail**Monsieur Guy RIDER**

Directeur Général

Et Monsieur Georges OLITAKIS

Directeur des services juridiques

4 Route des Morillons

CH - 1211 Genève SUISSE

Paris, le 12 novembre 2015

Objet : USOEB**Votre réf. : TAOIT3.1**

Monsieur le Directeur Général, Monsieur le Directeur des Services Juridiques,

Je vous remercie pour votre réponse datée du 26 octobre 2015 que j'ai lue avec la plus grande attention.

L'attention que porte l'OIT aux problématiques très concrètes s'agissant de la situation sociale au sein des grandes organisations internationales qui structurellement, n'offrent aucun recours réel et impartial à leurs agents, est absolument indispensable.

Je prends bonne note du fait que ce sujet pourrait être évoqué lors de la prochaine session du Conseil d'Administration du BIT s'agissant des discussions sur le fonctionnement du Tribunal Administratif.

En effet, si les décisions du Tribunal Administratif sont individuelles, elles doivent nécessairement pouvoir avoir un effet positif sur la pratique générale au sein de ces organisations.

En d'autres termes, la décision s'agissant d'un cas individuel rendue par le Tribunal Administratif doit infuser les règles applicables à tous les autres salariés afin de promouvoir l'amélioration de l'action sociale offerte aux travailleurs tout en permettant un fonctionnement efficace et pragmatique de l'entité au sein de laquelle il travaille.

Ceci n'est pas le cas au sein de l'OEB où les agents sont contraints d'introduire chaque fois des recours individuels devant le Tribunal Administratif du fait de la situation sociale actuelle et de l'absence de réponse adéquate proposée par l'Office - sans parler des centaines de procédures qui sont actuellement en gestation au niveau interne à l'OEB et qui risquent fort d'arriver au TA-OIT sous peu - il devient donc urgent d'agir pour assurer le bon fonctionnement du Tribunal et le respect des décisions qu'il rend pour les 7000 agents de l'OEB.

Le rayonnement de ces décisions est une des façons d'anticiper sur le désamorçage de ces situations avant qu'elles deviennent contentieuses.

Dans cette perspective, ma cliente, l'Union Syndicale de l'Office Européen de Brevet, sollicite donc un rendez-vous avec vos services juridiques en ma présence afin d'évoquer très ouvertement la situation.

Nous sommes convaincu qu'une telle réunion de travail permettrait d'échanger constructivement quant aux actions concrètes qu'il est possible de mettre en place dans les meilleurs délais en vue de rectifier les carences du système actuel.

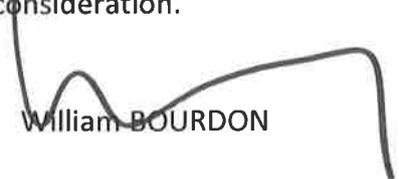
En particulier ma cliente voudrait partager avec vous certaines réflexions concernant les causes du grand nombre de recours venant de l'OEB, à savoir :

1. Dans le passé, l'OEB s'engageait à appliquer les décisions du TA-OIT non seulement aux requérants mais à tous les employés concernés quand le recours touchait un point de droit. La direction de l'OEB actuelle ne donne plus cette garantie ce qui conduit donc les agents concernés à déposer à leur tour, un recours individuel.
2. Les réformes introduites par la direction actuelle ne prévoient pas de mesures transitoires et contiennent un grand nombre de lacunes juridiques. Ceci conduit à une multiplication du nombre de griefs et donc de recours individuels.
3. Les moyens de redressement interne ne sont plus adéquats afin de garantir une justice suffisamment indépendante, sans interférences de la part de la direction de l'Office. De surcroît, le Président de l'OEB semble systématiquement ne pas suivre les recommandations de la commission de recours interne (même unanimes) lorsque ces dernières sont en faveur des employés. Ceci génère inévitablement de nouveaux recours auprès du TA-OIT.
4. Le changement de jurisprudence du TA-OIT (ces 2/3 dernières années) a limité les possibilités pour les représentants élus du personnel d'agir au nom de leurs collègues. Ceci incite les agents à introduire un recours à titre personnel et donc contribue à multiplier les procédures.

Sur ces points et compte tenu de la gravité de la situation sociale à l'OEB, il serait donc souhaitable et ce sans ignorer la charge de travail qui est déjà la vôtre, qu'un tel rendez-vous puisse se tenir dans les prochaines semaines.

Je reste à votre entière disposition pour toute question et vous pouvez me joindre à mon cabinet ou bien ma collaboratrice, Maître Amélie LEFEBVRE, qui suit avec moi ce dossier.

Dans l'attente de vous lire, je vous prie agréer, Monsieur le Directeur Général, Monsieur le Directeur juridique, l'expression de ma haute considération.



William BOURDON

INTERNATIONAL LABOUR OFFICE



Governing Body

326th Session, Geneva, 10-24 March 2016

GB.326/PFA/.../...

Programme, Financial and Administrative Section
Personnel Segment

PFA

Matters relating to the Administrative Tribunal of the ILO

Proposed amendments to the Statute of the Tribunal

Purpose of the document

As requested by the Governing Body at its 325th Session (November 2015), this paper contains proposals for amendments to the Tribunal's Statute and Annex relating to Article XII and the conditions of admission of new organizations. It also proposes additional amendments providing for the possibility of filing requests for interpretation, execution or review of judgments as well as the possibility for the Governing Body to withdraw under certain conditions its approval of the acceptance of the recognition of the Tribunal's jurisdiction by an international organization (see point for decision in paragraph 16).

Relevant strategic objective: None.

Policy implications: None.

Legal implications: Possible amendments to the Tribunal's Statute and Annex subject to adoption by the International Labour Conference.

Financial implications: None.

Follow-up action required: None.

Author unit: Office of the Legal Adviser (JUR).

Related documents: None.

-
1. At its 325th Session (November 2015), the Governing Body had before it a paper analyzing the workload and effectiveness of the ILO Administrative Tribunal in the light of the growing membership of the Tribunal and, in particular, the constant flow of complaints filed against the European Patent Organization. The paper also identified areas for possible improvements in the functioning of the Tribunal based on consultations with the judges of the Tribunal, member organizations and staff associations concerned. The Governing Body concluded inter alia that while the reasons for the ILO to open the jurisdiction of the Administrative Tribunal to other organizations remained valid today, the conditions in the Tribunal's Statute pertaining to the acceptance of new organizations could be reviewed in order to ensure that member organizations had effective internal remedies compatible with the Tribunal's role as a final adjudicatory mechanism. It also considered that urgent consideration should be given to repealing Article XII of the Statute - as being contrary to the present-day principle of equality of access to courts - along with the formalization of the procedure for the review of judgments developed in the Tribunal's case law. Accordingly, it requested the Director-General to prepare draft amendments to the Tribunal's Statute relating to Article XII and the conditions of admission of new organizations for consideration at its next session.¹

 2. In accordance with its Article XI, the Statute of the Tribunal may be amended by the International Labour Conference. Accordingly, a draft Conference resolution is proposed at the end of this document.

¹ GB.325/PFA/9/1(Rev.) and GB.325/PFA/PV/Draft. The Governing Body also requested the Director-General to initiate without delay discussions with the European Patent Organization, in consultation with the Tribunal as required, in order to identify a solution to the difficulties caused by the number of complaints generated within the EPO and which threaten the ability of the Tribunal to serve all other organizations, and to report to the Governing Body at its next session. This report on the progress of those discussions is in GB.323/PFA/...

Proposed repeal of common Article XII of the Statute and its Annex

3. In its current wording, Article XII of the Tribunal's Statute provides that the ILO Governing Body may challenge a decision of the Tribunal before the International Court of Justice - by way of request for an advisory opinion - on grounds that the Tribunal wrongly confirmed its jurisdiction or that its decision was vitiated by a fundamental procedural flaw. The same possibility is afforded by Article XII of the Annex to the Tribunal's Statute to the executive boards of 11 UN specialized agencies and the IAEA that have recognized the Tribunal's jurisdiction. Given that the review procedure is open only to defendant organizations and not to aggrieved staff members, it is generally recognized today that Article XII of the Statute and Article XII of the Annex fails to meet the overriding principle of equality of access to courts and tribunals. The proviso has been vividly criticized by the International Court of Justice as anachronistic in the last advisory opinion delivered following a request for review of a judgment of the ILO Administrative Tribunal² while the Tribunal expressed similar concerns in Judgment No. 3003 of 2011.
4. It is recalled that a similar provision was removed in 1995 from the Statute of the former United Nations Administrative Tribunal as it was not found to be "a constructive or useful element in the adjudication of staff disputes within the Organization".³
5. It is therefore considered that the Organization should take prompt action to repeal Article XII of the Tribunal's Statute and Article XII of the Annex with a view to bringing them up to date.

² *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*, Advisory Opinion of 1 February 2012, I.C.J. Reports 2012, para. 44, p.29.

³ A/RES/50/54.

Proposed amendment to Article VI of the Statute

6. With the exception of the review procedure under common Article XII of the Statute and the Annex, the Tribunal's Statute does not make provision for any appellate remedies. In fact, Article VI of the Tribunal's Statute specifically provides that judgments shall be final and without appeal. Consequently, as established by the Tribunal's case law, judgments are immediately operative (see, for instance, Judgment 82, para.6) and must be executed fully and correctly, as ruled (see Judgment No. 3394, paras.9, 10).
7. The Tribunal's jurisprudence has nevertheless recognized the ability of both parties to the proceedings to submit applications for interpretation, when the operative part of a judgment gives rise to uncertainty or ambiguity about its meaning or import (see, for instance, Judgment No. 802, para.4). Similarly, as confirmed by a constant line of precedent, any serious difficulty concerning the execution of a judgment can validly be brought before the Tribunal by means of an application for execution (see, in particular, Judgment 2178, para.4). In cases of persistent failure to execute a judgment, the Tribunal had also considered that it had the power to order the payment of penalties (see Judgments Nos. 3152 and 3394).
8. Furthermore, the Tribunal has accepted that the final and binding nature of judgments does not impede the exercise of a limited power of review, in order to allow for any "errors arising through accident or inadvertence" to be corrected (see, in particular, Judgment No. 570, para.1). Such power of review is exercised by the Tribunal only in exceptional circumstances and on strictly limited grounds, such as an omission to take account of particular facts, a material error, an omission to pass judgment on a claim and the discovery of a so-called "new" fact (see, in particular, Judgment No. 2021, para.3).

9. Consequently, in line with the statutes of several other international administrative tribunals,⁴ which specifically provide for the review of judgments and for application for their interpretation or execution, and also in view of the lack of review procedure resulting from the proposed repeal of Article XII of the Statute and its Annex, it is proposed to formalize the Tribunal's practice in this regard by introducing the following additional sentence into Article VI, paragraph 1, of the Statute:

“The Tribunal shall nevertheless consider applications for interpretation, execution or review of a judgment.”

It is understood that detailed modalities for the filing of such applications for interpretation, execution or review of judgments may be either specified in the Tribunal's Rules or further developed through the Tribunal's case law.

Proposed amendment to the Annex to the Statute

10. Article II.5 of the Tribunal's Statute allows for the recognition of the jurisdiction of the Tribunal by international organizations which meet the criteria set out in the Annex to the Statute and whose recognition is approved by the Governing Body. Concretely, in order to be able to recognize the jurisdiction of the Tribunal, an international organization must either be intergovernmental in character, or fulfil the following conditions:

- (a) it must be clearly international in character, having regard to its membership, structure and scope of activity;
- (b) it must not be required to apply any national law in its relations with its officials, and must enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and

⁴ See, for instance, International Monetary Fund (IMF) Administrative Tribunal, articles XVI and XVII; Statute of the World Bank Administrative Tribunal, article XIII; Statute of the African Development Bank Administrative Tribunal, article XII, paragraphs 3 and 4; Statute of the Asian Development Bank Administrative Tribunal, article XI.

(c) it must be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.

11. While these conditions for admission of international organizations remain valid, it is considered that they should be reviewed to ensure that such organizations have effective internal remedies compatible with the Tribunal's role as a final adjudicatory instance. The Tribunal has indeed considered that it was "ill-equipped to act as a trial court [of staff grievances] and its workload could, potentially, become intolerable or unmanageable if its role was not confined [to that of a final appellate tribunal] (see Judgment No. 3222, para. 10). In fact, the lack of internal means of redress in some organizations has been identified by the Tribunal as a contributing factor to its increasing workload. Moreover, the Tribunal's case law often stresses the desirability of internal appeal procedures which not only make the Tribunal's task easier but also substantially reduce its workload by bringing a satisfactory and less expensive resolution to many disputes at an early stage (see, for instance, Judgment No. 2312, para.5).

12. It is therefore proposed to insert the following new paragraph into the Annex to the Tribunal's Statute:

"The organization concerned must have effective means for dealing with internal appeals."

Proposed amendment to Article II(5) of the Statute

13. Whereas the ILO Governing Body may, under Article II of the Tribunal's Statute, approve the acceptance of the recognition of the jurisdiction of the Tribunal by an international organization, there is no provision explicitly permitting the Governing Body to withdraw such approval. The question of withdrawal of the Governing Body's approval would be particularly relevant in situations where a member organization fails

to fulfil the obligations arising from membership, for instance, its financial contributions, or their duty to timely execute judgments.

14. Accordingly, it is proposed that an additional sentence should be added at the end of Article II, paragraph 5, of the Tribunal's Statute to expressly provide that the Governing Body may withdraw its approval if it considers that an international organization which has previously recognized the jurisdiction of the Tribunal no longer meets the criteria, fails to comply with its original engagements, or threatens the continued operation of the Tribunal. This additional sentence would read as follows:

"Such approval may be withdrawn if in the opinion of the Governing Body the organization concerned no longer meets the standards set out in the Annex or fails to honour the commitments undertaken at the time of the recognition of the Tribunal's jurisdiction or if the inefficiency of its internal appeals system hinders in a lasting manner the proper functioning of the Tribunal."

Editorial amendments

15. Following consultations with the Tribunal, it is proposed to introduce several amendments of a purely editorial nature to the English and French text of the Statute of the Tribunal, with a view, in particular, to correcting errors, ensuring consistency in terminology and use of gender-inclusive language.

Draft decision

16. *The Governing Body approves the following draft resolution concerning amendments to the Tribunal's Statute and to its Annex, for possible adoption by the International Labour Conference at its 105th Session (June 2016):*

The General Conference of the International Labour Organization,

Conscious of the need to repeal Article XII of the Tribunal's Statute and Article XII of its Annex in order to ensure equality of access to justice for employing institutions and officials alike;

Mindful of the need to expressly provide for the possibility of filing applications for the interpretation, execution or review of judgments in accordance with the Tribunal's case law;

Considering that it is important that any future approval of the acceptance of the Tribunal's jurisdiction by international organizations be dependent on the existence of effective internal means of redress, and that any of the current member organizations which may not have such internal means of redress be requested to take prompt action in this regard and to report progress;

Recognizing that the Governing Body may withdraw its approval of the acceptance of the Tribunal's jurisdiction by an international organization in certain limited circumstances;

Noting that a series of editorial amendments should be introduced into the Statute with a view, in particular, to correcting errors, ensuring consistency in terminology and use of gender-inclusive language;

Noting that the Governing Body of the International Labour Organization has approved the text of the draft amendments to the Tribunal's Statute and to the Annex;

Adopts the following amendments to the Statute and to the Annex to the Statute of the Administrative Tribunal of the International Labour Organization:

Statute of the Administrative Tribunal of the International Labour Organization

Adopted by the International Labour Conference on 9 October 1946 and amended by the Conference on 29 June 1949, 17 June 1986, 19 June 1992, 16 June 1998, ~~and~~ 11 June 2008 and ...

Article I

There is established by the present Statute a Tribunal to be known as the International Labour Organization Administrative Tribunal.

Article II

1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.

2. The Tribunal shall be competent to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of her or his employment and to fix finally the amount of compensation, if any, which is to be paid.

3. The Tribunal shall be competent to hear any complaint of non-observance of the Staff Pensions Regulations or of rules made in virtue thereof in regard to an official or the ~~wife, husband-spouse~~ or children of an official, or in regard to any class of officials to which the said Regulations or the said rules apply.

4. The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution.

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure, and which is approved by the Governing Body. Such approval may be withdrawn if in the opinion of the Governing Body the organization concerned no longer meets the standards set out in the Annex or fails to honour the commitments undertaken at the time of the recognition of the Tribunal's jurisdiction or if the inefficiency of its internal means of appeal hinders in a lasting manner the proper functioning of the Tribunal.

6. The Tribunal shall be open:

(a) to the official, even if her or his employment has ceased, and to any person on whom the official's rights have devolved on her or his death;

(b) to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.

7. Any dispute as to the competence of the Tribunal shall be decided by it., ~~subject to the provisions of article XII.~~

Article III

1. The Tribunal shall consist of seven judges who shall all be of different nationalities.
2. The judges shall be appointed for a period of three years by the International Labour Conference. ~~of the International Labour Organization.~~
3. A meeting of the Tribunal shall be composed of three judges or, in exceptional circumstances, five, to be designated by the President, or all seven.

Article IV

The Tribunal shall hold ordinary sessions at dates to be fixed by ~~the its~~ Rules of Court, subject to there being cases on its list and to such cases being, in the opinion of the President, of a character to justify holding the session. An extraordinary session may be convened at the request of the ~~Chairman~~ person of the Governing Body of the International Labour Office.

Article V

The Tribunal, at its discretion, may decide or decline to hold oral proceedings, including upon request of a party. The Tribunal shall decide in each case whether the oral proceedings before it or any part of them shall be public or *in camera*.

Article VI

1. The Tribunal shall take decisions by a majority vote. ~~Judgments shall be final and without appeal. The Tribunal shall nevertheless consider applications for interpretation, execution or review of a judgment.~~
2. The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office and to the complainant.
3. Judgments shall be drawn up in a single copy, which shall be filed in the archives of the International Labour Office, where it shall be available for consultation by any person concerned.

Article VII

1. A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other internal means of ~~resisting appeal~~ as are open to her or him under the applicable Staff Regulations.
2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published.
3. Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and her or his

complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.

4. The filing of a complaint shall not involve suspension of the execution of the decision impugned.

Article VIII

In cases falling under article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to her or him.

Article IX

1. The administrative arrangements necessary for the operation of the Tribunal shall be made by the International Labour Office in consultation with the Tribunal.
2. Expenses occasioned by sessions of the Tribunal shall be borne by the International Labour Office.
3. Any compensation awarded by the Tribunal shall be chargeable to the budget of the International Labour Organization.

Article X

1. Subject to the provisions of the present Statute, the Tribunal shall draw up its Rules of Court covering:
 - (a) the election of the President and Vice-President;
 - (b) the convening and conduct of its sessions;
 - (c) the rules to be followed in presenting complaints and in the subsequent procedure including intervention in the proceedings before the Tribunal by persons whose rights as officials may be affected by the judgment;
 - (d) the procedure to be followed with regard to complaints and disputes submitted to the Tribunal by virtue of paragraphs 3 and 4 of article II ;
 - (e) and, generally, all matters relating to the operation of the Tribunal which are not settled by the present Statute.
2. The Tribunal may amend ~~the~~ its Rules of Court.

Article XI

The present Statute shall remain in force during the pleasure of the General International Labour Conference ~~of the International Labour Organization~~. It may be amended by the Conference or such other organ of the Organization as the Conference may determine.

Article XII

~~1. In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund 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 Governing Body, for an advisory opinion, to the International Court of Justice.~~

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

ANNEX TO THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION

To be entitled to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization in accordance with paragraph 5 of article II of its Statute, an international organization must either be intergovernmental in character, or fulfil the following conditions:

- a) it shall be clearly international in character, having regard to its membership, structure and scope of activity;
- b) it shall not be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
- c) it shall be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its ~~international~~ institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.

The organization concerned must have effective means for dealing with internal appeals.

The Statute of the Tribunal applies in its entirety to such international organizations subject to the following provisions which, in cases affecting any one of these organizations, are applicable as follows:

Article VI, paragraph 2

The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office, to the ~~Director-General~~ executive head of the international organization against which the complaint is filed, and to the complainant.

Article VI, paragraph 3

Judgements shall be drawn up in two copies, of which one shall be filed in the archives of the International Labour Office and the other in the archives of the international organization against which the complaint is filed, where they shall be available for consultation by any person concerned.

Article IX, paragraph 2

Expenses occasioned by the sessions ~~or hearings~~ of the Administrative Tribunal shall be borne by the international organization against which the complaint is filed.

Article IX, paragraph 3

Any compensation awarded by the Tribunal shall be chargeable to the budget of the international organization against which the complaint is filed.

Article XII, paragraph 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.~~

Geneva, ...February 2016

Point for decision: Paragraph 16.