



## TWENTIETH ITEM ON THE AGENDA

**Matters relating to the Administrative Tribunal of the ILO****(b) Statute of the Tribunal**

1. The Committee will recall that, at the 289th (March 2004) Session of the Governing Body, the Office reported on its continuing consultations with the ILO Administrative Tribunal (ILOAT) and the organizations which have accepted its jurisdiction, in relation to proposed amendments to the Tribunal's Statute, including the possibility of permitting staff unions and associations *locus standi* in certain limited cases.<sup>1</sup>
2. Given the degree of reluctance on the part of the majority of organizations to proceed with certain of its earlier proposals, the Office pursued further discussions during 2004, with a view to considering options that could more effectively address all the interests at stake and ultimately achieve the greatest possible support among all concerned. The approach included informal discussions with other organizations in an open working group to explore in greater detail the scope and consequences of possible amendments, and written consultations with the Tribunal and the organizations which have accepted the Tribunal's jurisdiction on the basis of proposed amendment texts.
3. The current proposals would provide for three specific options relating to staff associations: (1) a direct right of action by representative staff associations in cases affecting their own rights recognized by applicable staff regulations or rules; (2) a right of intervention by representative staff associations with identical interests in cases of direct right of action by any other association recognized as a representative staff association by the same organization; (3) a possibility for the Tribunal to receive, at its discretion, observations in the nature of *amicus curiae*, submitted by representative staff associations in matters involving decisions of a regulatory nature which may affect the staff as a whole or a specific category thereof.<sup>2</sup> The first two options, if accepted, would involve amendments to articles II and VII of the Statute and the third could involve, at the Tribunal's discretion, modification to its Rules.

<sup>1</sup> GB.289/PFA/20/2.

<sup>2</sup> Notably, in its last session, the Tribunal indicated its receptivity in practice to accepting observations from representative recognized staff associations.

4. The proposals also include an amendment to article V, suggested by the Tribunal for clarification purposes, to the effect that the Tribunal may hold oral proceedings subject to its discretion and if so requested by one of the parties. A majority of the organizations would seem to have no objection in principle to such an amendment, so long as it clearly provided for the Tribunal's discretion to decide whether to hold an oral proceeding. Nonetheless, concerns were expressed by a number of the organizations that oral proceedings would cause delay and increase costs, both for the parties and the Tribunal.
5. In response to the consultative initiative, the Tribunal saw no difficulties with the latest proposals, including the suggestions relating to specific amendments to articles II and VII of the Statute of the Tribunal which, if accepted by the ILO Governing Body, would be submitted to the International Labour Conference for decision. The Tribunal further recalled its view that it would be desirable to clarify article V by explicitly stating that the Tribunal is competent to decide whether to hold a hearing if so requested by one of the parties.
6. Overall, the organizations which responded<sup>3</sup> did not object to the newly developed proposals, notwithstanding certain divergences of perspective and reservations. While the ILO Staff Union and other staff associations had expressed clear support for the set of earlier proposals, the current proposals nevertheless take up considerable aspects of those proposals and appear to establish common ground to all concerned. In addition, they have been designed bearing in mind the need for a greater harmonization of the ILOAT and the United Nations Administrative Tribunal (UNAT) systems, which has been recently reaffirmed in the Joint Inspection Unit report on the subject.<sup>4</sup>
7. Consistent with earlier indications, a majority of the organizations which responded in the recent consultations expressed no objections in principle to the substance of the first option above – that is, a proposed direct right of action by representative staff associations in cases affecting their own rights recognized by applicable staff regulations or rules.<sup>5</sup> A few would have preferred the status quo but appeared receptive if the majority supported the change. Several emphasized that the wording of such an amendment should clearly define the actionable rights as those belonging to the staff association itself. Some organizations noted that the proposed amendments as drafted would preserve the right of each organization to adapt its internal rules appropriately. This approach appeared to balance the impact across organizations within the United Nations common system more effectively than the earlier proposals, and could avoid unnecessary tension with internal approaches to remedies that included reconciliation or friendly settlement efforts. However, several other organizations expressed concern at variations in practice that in their view could result from such a system.

<sup>3</sup> To date, the Office has received responses to its letter of inquiry from 12 organizations that have accepted the jurisdiction of the Tribunal, namely, the European Free Trade Association, the European Organization for Nuclear Research, the European Organization for the Safety of Air Navigation, the European Patent Organization, the International Atomic Energy Agency, the International Fund for Agricultural Development, the International Olive Oil Council, the United Nations Educational, Scientific and Cultural Organization, the Universal Postal Union, the World Health Organization, the World Intellectual Property Organization, and the World Trade Organization.

<sup>4</sup> JIU/REP/2004/3.

<sup>5</sup> A second part of the earlier proposal, which contemplated a right of action for representative staff associations in cases involving decisions of a regulatory nature affecting all or a certain category or categories of staff members, raised difficulties for a majority of the organizations concerned.

8. The second proposal for a right of intervention would be one of the consequences of granting the right of action as defined in the first option, as it is intended to prevent repetitive cases by representative staff associations with identical interests in cases of direct right of action by any other association recognized by the same organization. While the Tribunal's jurisprudence already clearly specifies conditions for receivability of requests for intervention, it would seem desirable, for the purposes of all concerned, to define explicitly the scope of such a right of intervention by representative staff associations, namely, intervention would be possible only in cases filed by a representative staff organization that is recognized as such by the same defendant organization and, as with all interventions, this type of intervention would be limited to situations where the interests of the potential intervenor which stand to be affected by the resolution of the dispute are identical to those of the complainant.
9. The third option above has been suggested as one in which representative staff associations might play a useful role in submitting observations in relation to decisions of a regulatory nature. This role, in the nature of *amicus curiae*, has been recognized in some common law systems as well as in certain international administrative tribunals.<sup>6</sup> While the Tribunal might consider that its Rules implicitly contemplate the possibility that a representative staff organization could submit observations in a case to which it is not a party, an explicit recognition of this role in the Rules could be appropriate in view of the differences between such a role and that already provided for in the Rules.<sup>7</sup> While a majority of the organizations appear to have no objection in principle to the proposal for such a course of action, further consultations are needed on the specific factors to take into account in designing such a procedure to gain the most support among all concerned.
10. Under the third option, requests to submit observations on relevant matters of a legal nature would be limited to representative staff associations in cases concerning decisions that may affect the entire staff or a specific category thereof, and would be granted at the discretion of the Tribunal. Other issues to be determined would involve, for example: who could initiate such requests other than the Tribunal; at which stage of the procedure such a request would be made and the observations submitted; what form such observations would take; how the parties to the case would express their views; and what the role of the Registrar of the Tribunal would be in relation to communication among all concerned.
11. The Office intends to communicate the views expressed on these issues to the Tribunal in view of possible modifications to the Rules for the purpose of permitting requests for observations under such circumstances. Its communication would include, among other issues, the question of sharing of costs raised by a number of organizations in the context of the first proposal above for a direct right of action. These organizations have suggested the possibility of having representative staff associations share a part of the expenses of the Tribunal when they are parties to a dispute in their own names, and of reflecting this possibility in article IX of the Statute of the Tribunal or by any other appropriate means.

<sup>6</sup> For *amicus curiae* submissions which include references to staff associations, see, for example: Rules of the Asian Development Bank Administrative Tribunal, rule 21, paragraph 2; Rules of Procedure of the Administrative Tribunal of the International Monetary Fund, rule XV; Rules of the World Bank Administrative Tribunal, rule 25, paragraph 2. For provisions permitting observations or comments of staff associations, see, for example: Rules of the Administrative Tribunal of the United Nations, article 23, paragraph 2; Rules of Procedure of the Administrative Tribunal of the Organization of American States, article 52; resolution of the Council on the Statute and Operation of the Administrative Tribunal of the Organization for Economic Cooperation and Development, article 5(c) (upon request of the applicant).

<sup>7</sup> See, for example, article 13, paragraph 3, of the Rules of the Tribunal. See also article 11 of the Rules (investigation).

- 12. *The Committee may wish to recommend to the Governing Body that it approve the draft resolution concerning amendments to articles II, V and VII of the Statute of the Administrative Tribunal of the International Labour Organization, to be duly submitted for decision by the International Labour Conference at its 93rd Session (May-June 2005).***

Geneva, 1 March 2005.

*Point for decision:* Paragraph 12.

## Appendix

### **Draft resolution concerning amendments to articles II, V and VII of the Statute of the Administrative Tribunal of the International Labour Organization**

The General Conference of the International Labour Organization,

Mindful of the desirability of permitting representative staff associations a direct right of action in cases affecting their own rights recognized by applicable staff regulations or rules,

Desirous, as a result, to recognize a right of intervention by representative staff associations with identical interests in cases of direct right of action by any other association recognized as representative by the same organization,

Aware of the value of clarifying, in article V of the Statute of the Administrative Tribunal of the International Labour Organization (“Statute”), that the Tribunal is competent to decide whether to hold a hearing if so requested by one of the parties,

Noting that the Governing Body of the International Labour Organization has approved the text of draft amendments to articles II, V and VII of the Statute;

Adopts the amendments to articles II, V and VII of the Statute of the Administrative Tribunal of the International Labour Organization, appended hereto.

### **Annex to draft International Labour Conference resolution**

#### ***Amendments to the Statute of the Administrative Tribunal of the International Labour Organization***

##### Article II

###### *New paragraph 6*

The Tribunal shall be competent to hear complaints against a decision on the ground that it directly infringes a right which is recognized by an applicable staff regulation or rule as being held by a recognized staff association of the International Labour Organization or any other international organization within the meaning of paragraph 5 (hereinafter “defendant organization”), in so far as the right to file such complaints is expressly provided for in the staff regulations or rules of the defendant organization and within the time limits established by said regulations or rules.

###### *New paragraph 7 (former paragraph 6)*

The Tribunal shall be open:

- (a) to the official ...
- (b) to any other person ...
- (c) for the purpose of complaints brought under article II, paragraph 6, to any duly authorized representative of a recognized staff association whose name has been communicated to the Tribunal by the defendant organization.

Article VII

*Revised paragraph 3*

Subject to paragraph 5 below, where ...

*New paragraph 5*

Paragraph 3 above will apply to decisions mentioned in article II, paragraph 6, only to the extent so provided in the staff regulations or rules of the defendant organization.

Article V

*Revised article*

The Tribunal, at its discretion, may hold oral proceedings upon the request of one of the parties. The Tribunal shall decide ...