



FIFTEENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO**Recognition of the Tribunal's jurisdiction by the International Plant Genetic Resources Institute (IPGRI)**

1. Under its Statute the Administrative Tribunal of the International Labour Organization is competent to hear complaints against intergovernmental organizations, and under certain conditions other international organizations, which recognize its jurisdiction and Rules of Procedure and have been approved by the Governing Body. The relevant provisions of the Statute (article II, paragraph 5, and the Annex) appear in Appendix I.
2. By a letter dated 12 October 2000 (see Appendix II), Mr. Geoffrey Hawtin, Director-General of the International Plant Genetic Resources Institute (IPGRI), acting on the authority delegated to him by a resolution adopted by the Board of Trustees of the IPGRI on 22 September 2000 (Appendix III), informed the Director-General of the ILO that the Institute recognizes, with effect from 1 January 2001, the jurisdiction of the Administrative Tribunal of the International Labour Organization as well as the Tribunal's Rules of Procedure.
3. The IPGRI was created on 9 October 1991 as an integral part of the Consultative Group on International Agricultural Research (CGIAR), through the signature by five States of the Agreement on the Establishment of the International Plant Genetic Resources Institute, to which the constitution of the Institute is appended. To date, 48 States and international organizations have signed and ratified the establishment agreement. The main purpose of the Institute is to assist developing countries to assess and meet their needs for plant genetic resources conservation, to strengthen international technical and scientific cooperation in the conservation and sustainable use of plant genetic resources, to develop and promote strategies and technologies for plant genetic resources conservation and to provide an international information service in that field. The Institute has two organs, the Board of Trustees – consisting of 12 elected members, four of whom are nominated by the CGIAR, one member appointed by the host country, one member appointed by the FAO, and the Director-General as member *ex officio* – and the Director-General. According to the constitution, the members of the Board of Trustees, except the Director-General, serve in a personal capacity and are not considered, nor do they act, as official representatives of governments or organizations. Its budget is funded by members of the CGIAR, which

include States, international organizations and foundations. The IPGRI has some 15 regional and subregional offices located in Africa, Asia, Europe and Latin America, and carries out activities and projects throughout the world. On 10 October 1991, the IPGRI concluded a headquarters agreement with Italy, ratified by the Italian Parliament on 15 January 1994, recognizing its international legal personality (article VI), its immunity from every form of national legal process (article V) and requiring the IPGRI to establish appropriate procedures for the settlement of disputes with its staff (article XVII). The headquarters agreement with Italy further contemplates for the IPGRI, as it does for the staff, other privileges and immunities which are normally recognized for international organizations and their officials. The Institute employs some 200 officials.

4. In order to be eligible for approval under article II, paragraph 5, of the Tribunal's Statute, the IPGRI must be considered either to be an intergovernmental organization (*organisation de caractère interétatique*) or to fulfil certain criteria set out in the Annex to the Statute. While the IPGRI does not have all the characteristics of an intergovernmental organization in that its main organ does not consist of representatives of governments, it has the main characteristic, which is to have been established by treaty between States or other subjects of international law. In the Office's view the IPGRI should therefore be regarded as sufficiently intergovernmental in character. In addition, it appears to meet the criteria referred to above, whereby:
 - (a) the organization 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";
 - (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".
5. The Tribunal's jurisdiction under article II, paragraph 5, of its Statute already extends to 38 organizations other than the ILO. The recognition of the Tribunal's jurisdiction by other organizations entails no additional cost to the ILO, since the organizations against which complaints are filed are required by the Statute to bear the expenses of sessions and hearings and to pay any award of compensation by the Tribunal. The other organizations also contribute in amounts proportionate to the number of their staff to much of the costs of the Tribunal's secretariat.
6. ***The Committee may accordingly wish to recommend that the Governing Body approve the recognition of the Tribunal's jurisdiction by the International Plant Genetic Resources Institute, effective 1 January 2001.***

Geneva, 26 October 2000.

Point for decision: Paragraph 6.

Appendix I

Excerpts from the Statute of the ILO Administrative Tribunal

ARTICLE II, PARAGRAPH 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.

ANNEX

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 institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.

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 of the international organization against which the complaint is filed, and to the complainant.

Article VI, paragraph 3

Judgments 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.

Appendix II

Communication from Mr. Geoffrey Hawtin, Director-General of the International Plant Genetic Resources Institute

Rome, 12 October 2000.

The Director-General,
The International Labour Office,
4 route des Morillons,
CH-1211 – Geneva 22.

IPGRI request for the recognition of the competence of the Administrative Tribunal

Dear Sir,

The International Plant Genetic Resources Institute (IPGRI) was established on 9 October 1991 through the signature of an Establishment Agreement by five sovereign countries. To date, the Establishment Agreement of the International Plant Genetic Resources Institute has been signed by 48 States and international organizations. Article 2 of the constitution (Appendix 1), deals with the “Headquarters Location”.

On 10 October 1991, in accordance with article 2 of the constitution, the International Plant Genetic Resources Institute (IPGRI) and the Italian Republic signed an Agreement regarding the Headquarters Seat of IPGRI. The Agreement was ratified by Parliament on 15 January 1994.

Article XVII of the Agreement between IPGRI and the Republic of Italy deals with the need for arbitration for the settlement of disputes with staff.

In its 14th meeting, the Board of Trustees of IPGRI adopted on 24 September 1999, the current version of the personnel policies. The personnel policies include in section 114 a formal procedure for grievance and appeals against administrative decisions and actions taken with regard to staff.

In accordance with article II, paragraph 5, of the Statute of the Administrative Tribunal of the International Labour Organization and with the appendix to that Statute, I have the honour to inform you that the Board of Trustees of IPGRI, in its 16th meeting, decided on 18 September 2000, subject to the approval by the Governing Body of the ILO, to recognize the competence of the Tribunal to hear appeals from a staff member or his/her duly authorized representative or heir, alleging non-observance of the terms of appointment including all pertinent Staff Regulations, under the conditions prescribed by the Statute of the Tribunal and that the Board likewise accepts the Rules of Procedure of the Tribunal.

I shall be grateful if you would submit the matter to the Governing Body of the International Labour Organization and invite it, in accordance with article II(5) of the Statute, to approve the attached declaration of the recognition by IPGRI’s Board of Trustees of the Tribunal’s jurisdiction with effect from 1 January 2001. As of that date IPGRI is expected to employ approximately 200 staff.

Copies of these relevant documents are attached for your perusal:

- (a) resolution of the Board of Trustees;
- (b) the Agreement establishing IPGRI and IPGRI’s constitution;
- (c) the Headquarters Agreement of IPGRI; and
- (d) the Personnel Policies Manual of IPGRI.

Yours sincerely,

Geoffrey Hawtin,
Director General.

Appendix III

Resolution of the Board of Trustees of the International Plant Genetic Resources Institute

The Board of Trustees,

Taking note of:

- (a) The Agreement on the Establishment of the International Plant Genetic Resources Institute, which was signed first on 9 October 1991, and has to date been signed by 48 States and international organizations, and in particular article 2 of the constitution (Appendix 1), which deals with the “Headquarters Location”;
- (b) The Agreement between the International Plant Genetic Resources Institute (IPGRI) and the Italian Republic regarding the Headquarters Seat of IPGRI, signed on 10 October 1991, ratified by Parliament on 15 January 1994, and in particular its article XVII, which deals with the need for arbitration for the settlement of disputes with staff;

Considering that in view of IPGRI’s immunity from jurisdiction and execution, an equitable protection of the rights of IPGRI staff members requires the jurisdiction of an independent administrative tribunal, to hear appeals of IPGRI staff members;

Being of the opinion that adherence to the Administrative Tribunal of the ILO would guarantee such equitable protection for the rights of staff members;

Decides that the International Plant Genetic Resources Institute should arrange to accept the jurisdiction of the Administrative Tribunal of the International Labour Organization for the purpose of hearing appeals of IPGRI staff members; and decides that the competence of the ILO Administrative Tribunal should cover complaints arising on or after 1 January 2001;

Requests the Director-General of IPGRI to take all actions required to implement the above decisions.

Rome, 22 September 2000.

(Signed) Geoffrey C. Hawtin,
Director-General.

Dr. Marcio de Miranda Santos,
Chairperson, Board of Trustees.