



FIFTEENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO**Recognition of the Tribunal's jurisdiction by the Global Fund to Fight AIDS, Tuberculosis and Malaria**

1. By a letter dated 20 October 2008 (see appendix), Mr Michel Kazatchkine, Executive Director, the Global Fund to Fight AIDS, Tuberculosis and Malaria (the "Global Fund"), informed the Director-General of the International Labour Office that the Global Fund Board, the Global Fund's supreme governing body, decided on 19 October 2008 to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization (the "Tribunal") in accordance with Article II, paragraph 5, of the Tribunal's Statute. In his letter, the Executive Director of the Global Fund asked that his request for recognition of the Tribunal's jurisdiction be transmitted to the Governing Body of the International Labour Office for its approval.
2. The Global Fund is not an inter-governmental organization. It is an international public-private development finance organization established following calls in 2001 by the Secretary-General and the General Assembly of the United Nations for the establishment of such a fund. The Global Fund was registered on 24 January 2002 as a non-profit foundation in the "Registre du commerce" in Geneva, Switzerland, with activities regulated by its by-laws and applicable provisions of Swiss law.
3. The main organs of the Global Fund are the Partnership Forum, the Board, the secretariat and the Technical Review Panel. The Board comprises, within its 22 members, representatives of States, international organizations, civil society (including communities living with the diseases) and the private sector.
4. Pursuant to article 2 of the by-laws, the Global Fund's purpose is to attract, manage and disburse resources that will make a sustainable and significant contribution to the reduction of infections, illness and death as a result of HIV/AIDS, tuberculosis and malaria in countries in need. As such, the Global Fund aims to contribute to poverty reduction as part of the Millennium Development Goals.
5. Article 4 of the by-laws states that the Global Fund will remain in operation indefinitely.

6. The financing of the Global Fund is ensured through voluntary contributions held in a trust account at the International Bank for Reconstruction and Development (the World Bank). The Global Fund Executive Director emphasized in his letter that the Global Fund has so far received US\$21 billion in contributions and pledges (95 per cent from 44 States) and has approved US\$11 billion to finance programmes to combat HIV/AIDS, tuberculosis and malaria in 136 countries. The Executive Director also stated that the Global Fund Board explicitly acknowledged that any awards rendered against the Global Fund by the Tribunal will be chargeable to its budget.
7. On 13 December 2004, the Global Fund concluded with the Swiss Government an agreement in view of determining the legal status of the Global Fund in Switzerland. The agreement confers on the Global Fund privileges and immunities equivalent to those of international organizations in Switzerland. Article 1 of the agreement stipulates that the Global Fund has international juridical personality and legal capacity in Switzerland. Pursuant to article 5 of the agreement, the Global Fund enjoys immunity from every form of legal process and enforcement unless formally waived by it or in case of a limited number of other exceptions not relevant to the relationship between the Global Fund and its staff members.
8. Pursuant to an Administrative Services Agreement between the Global Fund and the World Health Organization (WHO) the Global Fund's secretariat is composed by WHO officials. These officials can address complaints alleging the non-observance of their terms of appointment to the Tribunal, which has jurisdiction with regard to appeals of WHO staff members.
9. The Administrative Service Agreement with WHO will be terminated on 31 December 2008, and, the Global Fund will employ its staff directly under its own policies, regulations and procedures as from 1 January 2009. In order to ensure continuity of the protection that the current staff enjoys, both the management and staff members expressed their support for the Global Fund's request to recognize the jurisdiction of the Tribunal.
10. The Global Fund will have, on 1 January 2009, approximately 400 staff members. Their conditions of employment are set forth in recently adopted Human Resources Policies, which will become effective as of 1 January 2009. Subject to the approval of the ILO Governing Body, these rules provide for the possibility of referring applications alleging non-observance of staff members' terms of employment to the Tribunal.
11. In order to be eligible for approval under Article II, paragraph 5, of the Tribunal's Statute, the Global Fund must be considered either to be an intergovernmental organization or to fulfil certain criteria set out in the annex to the Statute. While the first condition is not satisfied, as the Global Fund is not established by an international treaty, it would appear to the Office that the Global Fund satisfies the criteria for the second condition set out in the annex to the Statute of the Tribunal. These criteria are:
 - (a) to be clearly international in character, having regard to its membership, structure and scope of activity;
 - (b) 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.

12. The membership in the Global Fund's organs is clearly international in character and its activities correspond to declared objectives of the international community. As mentioned above, the Global Fund is not required to apply any national law in its relations with its officials and enjoys immunity from legal process in its host country. Although one can hope that AIDS, tuberculosis and malaria will be eliminated one day, the duration of the Global Fund is not limited. Its way of financing guarantees institutional capacity to carry out its functions and a specific commitment has been made to guarantee compliance with the Tribunal's judgments.
13. In particular, the jurisdiction of the Tribunal would guarantee that the rights of Global Fund staff members would continue to be adequately protected following their separation from the WHO.
14. The Tribunal's jurisdiction under Article II, paragraph 5, of its Statute already extends to 55 organizations other than the ILO. The recognition of the Tribunal's jurisdiction by other organizations entails no additional costs to the ILO. Each organization contributes, in amounts proportionate to the number of its staff, to the running costs of the Tribunal's secretariat. Furthermore, the Statute requires organizations against which complaints are filed to bear the expenses of sessions and hearings and to pay any award of compensation made by the Tribunal.
15. ***In light of the above, the Committee may wish to recommend that the Governing Body approve the recognition of the Tribunal's jurisdiction by the Global Fund to Fight AIDS, Tuberculosis and Malaria, with effect from the date of such approval.***

Geneva, 31 October 2008.

Point for decision: Paragraph 15.

Appendix

20 October 2008

Dear Mr Somavia,

I am writing to you to request your assistance in bringing the application of the Global Fund to Fight AIDS, Tuberculosis and Malaria to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization to the attention of the Governing Body of the International Labour Organization.

The Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund) was established in 2002 following calls in 2001 by the Secretary-General and the General Assembly of the United Nations (UN) for the establishment of such a fund. The Global Fund is an international public-private development finance organization with privileges and immunities equivalent to those of an international organization in Switzerland and with the status of an international organization in the United States. The Global Fund is based in Geneva. The Global Fund By-Laws and Board Operating Procedures guiding its operations are attached as Annex 1 and 2, respectively.

The Global Fund's purpose is to attract, manage and disburse resources that will make a sustainable and significant contribution to the reduction of infections, illness and death as a result of HIV/AIDS, tuberculosis and malaria in countries in need. As such, the Global Fund aims to contribute to poverty reduction.

As of 1 January 2009, the Global Fund will have approximately 400 employees and it is expected to grow over the coming years to about 600 employees.

While the Global Fund was originally established as a foundation under the laws of Switzerland, it concluded an Administrative Services Agreement (ASA) with the World Health Organization (WHO) pursuant to which Global Fund staff members are WHO employees exclusively assigned to serve the Global Fund Secretariat. As WHO employees, Global Fund staff members may address complaints alleging the non-observance of their terms of appointment to the Administrative Tribunal of the International Labour Organization (ILOAT).

On 31 December 2008, the ASA between the Global Fund and WHO will terminate and, as from 1 January 2009, the Global Fund will employ its staff directly under its own policies, regulations and procedures. On 19 October 2008, the Global Fund Board, the Global Fund's supreme governing body, decided to recognize the jurisdiction of the ILOAT to hear complaints of non-observance of their terms and conditions of appointment by Global Fund employees. By approving the Global Fund Human Resources Policies (attached as Annex 3) the Global Fund Board explicitly acknowledged that any awards rendered against the Global Fund will be chargeable to its budget (Section XI, paragraph 3 of the HR Policies). Global Fund staff members expressed support for the use of the ILOAT as it is the dispute settlement mechanism employees are already familiar with and trust. Equally, Global Fund management was in favor of applying to use the ILOAT for the resolution of any employment disputes.

The Global Fund and the Federal Council of Switzerland concluded a Headquarters Agreement on 13 December 2004 (attached as Annex 3). The Headquarters Agreement recognizes the Global Fund's international juridical personality for the purposes of that agreement and confers on it privileges and immunities equivalent to those of international organizations in Switzerland. Accordingly, the Global Fund is exempt from applying national law in its relations with its employees and enjoys immunity from legal process.

The Global Fund has so far received US\$21 billion in contributions and pledges and has approved US\$11 billion to combat HIV/AIDS, tuberculosis and malaria in 136 countries. A total of 44 States have contributed financial resources to the Global Fund making up approximately 95 per cent of the total contributions. The Global Fund has an open-ended mandate.

As set out above, the Global Fund is international in character and, as a result of its Headquarters Agreement, is not required to apply national law in its relations with Global Fund employees. Given the nature of the three pandemics, the Global Fund will continue to attract, manage and disburse resources for the foreseeable future. The Global Fund has a permanent governance structure and its Board explicitly accepted that awards rendered by the ILOAT are chargeable to the Global Fund budget, ensuring compliance with such awards. Accordingly, the Global Fund meets the requirements set out in the annex to the Statute of the ILOAT.

I would appreciate your assistance in transmitting the Global Fund's declaration to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization to the Governing Body for its review and approval. I am available for any clarifications the Governing Body or you may have and am grateful for your assistance with this matter.

Yours sincerely,

Michel Kazatchkine
Executive Director