



EIGHTEENTH ITEM ON THE AGENDA

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

1. At the 292nd (March 2005) Session of the Governing Body, the Committee had before it a document¹ concerning four proposals relating to the Statute of the ILO Administrative Tribunal (ILOAT) reflecting the results of further discussions pursued with the ILO Administrative Tribunal and the organizations which have accepted its jurisdiction since its last review² of the matter.
2. Three of the proposals sought to explicitly define the scope of access to the Tribunal by staff unions and associations. The first two addressed the possibility for staff unions and associations to defend their own rights at the Tribunal by recognizing: (1) a direct right of action by representative staff associations in cases affecting their own rights recognized by applicable staff regulations or rules; and (2) in such cases, a right of intervention by any other association with identical interests which is recognized as a representative staff association by the same organization. Draft amendments to articles II and VII of the Statute were presented³ which would implement the first two proposals, if accepted.
3. The third proposal concerned the possibility for the Tribunal to receive, at its discretion, observations submitted by representative staff associations similar to those submitted by *amici curiae* in matters involving decisions of a regulatory nature which may affect the staff as a whole or a specific category thereof. Indeed, the Tribunal has already indicated its willingness in practice to accept such observations. If this proposal were accepted, the Tribunal at its own discretion could modify its Rules in order to clarify the procedure governing such submissions for all parties concerned. In this regard, the Office would

¹ GB.292/PFA/20/2.

² GB.289/PFA/20/2 and GB.289/10/2(& Corr.).

³ Appendix to GB.292/PFA/20/2.

communicate to the Tribunal the views expressed by the organizations concerned on the various procedural issues involved.⁴

4. The fourth proposal considered the possibility of an amendment to article V and is appended hereto. That proposal sought to clarify that the Tribunal has the competence to decide, at its own discretion, whether to hold oral proceedings upon the request of one of the parties.
5. The matter for decision was postponed by the Committee⁵ to allow for further examination of the proposed amendments and additional views by concerned organizations that have accepted the jurisdiction of the Tribunal.
6. In all, the responses now received bring the total representation of views expressed on these questions by organizations which have accepted the jurisdiction of the Tribunal to approximately 85 per cent of the Tribunal's registry of cases.⁶ On the basis of these responses and dialogue among the organizations concerned, the third proposal permitting observations in certain matters involving decisions of a regulatory nature appears to be generally acceptable. Whether the Tribunal should modify its Rules to clarify the operation of such a procedure may be left to the Tribunal to decide.
7. In like fashion, consultations with other organizations have revealed general concurrence with the fourth proposal to clarify article V to the effect that the Tribunal has the competence to decide, at its own discretion, whether to hold oral proceedings upon the request of one of the parties.
8. However, the views of certain organizations raised an additional question relating to the first and, as a consequence, second proposals involving amendments to articles II and VII. They questioned whether the proposals should be considered concurrently with an amendment to article IX contemplating a sharing of costs by the staff associations in complaints brought by them. These organizations consider that the issue of sharing costs directly flows from recognizing a right of action by representative staff associations, and have proposed amending article IX to the effect that the expenses occasioned in connection with complaints filed under article II be shared between the staff association and the defendant organization in the proportion that the Tribunal deems appropriate.
9. *Accordingly, the Committee may wish to:*
 - (1) *approve the draft resolution concerning an amendment to article V 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 95th Session (May-June 2006);*
 - (2) *recommend to the Governing Body that it support the proposal for the Tribunal to receive, at its discretion, observations in the nature of amicus curiae submitted by representative staff associations in matters involving*

⁴ See GB.292/PFA/20/2, paras. 9-11.

⁵ GB.292/9/2(Rev.), para. 63.

⁶ In response to its renewed request, the Office received written supplementary views from UNIDO and UNESCO. The Office also discussed further clarifications with certain organizations that represent a significant number of cases at the Tribunal.

decisions of a regulatory nature which may affect the staff as a whole or a specific category thereto; and

(3) make its views known on the proposals to amend articles II, VII and IX.

Geneva, 30 September 2005.

Point for decision: Paragraph 9.

Appendix I

Draft resolution concerning the amendment to article V of the Statute of the Administrative Tribunal of the International Labour Organization

The General Conference of the International Labour 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 the draft amendment to article V of the Statute;

Adopts the amendment to article V of the Statute of the Administrative Tribunal of the International Labour Organization, as appended hereto.

Appendix II

Annex to the draft resolution concerning the amendment to article V of the Statute of the Administrative Tribunal of the International Labour Organization

Article V

New sentence:

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