INTERNATIONAL LABOUR OFFICE

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

GB.325/PFA/9/2

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

Recognition of the Tribunal's jurisdiction by two international organizations

Purpose of the document

This paper contains proposals regarding the approval of the recognition of the Tribunal's jurisdiction by two international organizations (see draft decision in paragraph 18).

Relevant strategic objective: None.

Policy implications: None.

Legal implications: Extended jurisdiction of the Tribunal.

Financial implications: None.

Follow-up action required: None.

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

Related documents: None.

1. Since the Governing Body last approved the recognition of the jurisdiction of the Administrative Tribunal (hereinafter the Tribunal) of the International Labour Organization (ILO) by two international organizations in March 2015, [1] the Director-General has received declarations by two more international organizations recognizing that jurisdiction.

2. According to article II, paragraph 5, of the Tribunal's Statute, in order to be eligible for approval, an international organization must either be intergovernmental in character or fulfil the following conditions, set out in the Annex to the Statute:

(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.

Global Community Engagement and Resilience Fund

3. By a letter dated 1 October 2015 (see Appendix I), the Executive Director of the Global Community Engagement and Resilience Fund (GCERF) informed the Director-General that the GCERF had decided to recognize the Tribunal's jurisdiction in accordance with article II, paragraph 5, of the Tribunal's Statute. In his letter, the Executive Director asks that the GCERF's request for recognition of the Tribunal's jurisdiction be submitted to the Governing Body for its approval.

4. The GCERF is not an intergovernmental organization. It is an international financing institution, registered on 9 September 2014 in the commercial register of the Canton of Geneva, Switzerland as a non-profit foundation. The GCERF is governed by its statutes and by-laws and by the relevant provisions of the Swiss Civil Code.

5. Pursuant to articles 1 and 2 of its statutes, the GCERF is of unlimited duration and its purpose is to "attract, manage and disburse resources aimed at supporting the efforts of local, community-based NGOs and sub-national government organizations in countering violent extremism and radicalization in all its forms". As a public–private partnership, the GCERF aims to make an important contribution to the implementation of the United Nations (UN) Global Counter-Terrorism Strategy.

6. In accordance with article 7 of its statutes, the Governing Board of the GCERF comprises a maximum of 21 members, including representatives of donor countries and supranational organizations, representatives of other donors, representatives of recipient countries, representatives of non-governmental organizations and foundations, and a Swiss national as representative of the host State. The secretariat is responsible for the day-to-day management of the GCERF and is headed by an Executive Director, elected by the Governing Board.

[1] GB.323/PFA/11/2.

7. The GCERF's resources include voluntary contributions from governmental and non-governmental donors, as well as the returns from its property and the income resulting from its activities.

8. On 26 May 2015, the GCERF concluded an agreement with the Swiss Federal Council concerning its legal status in Switzerland. The agreement confers privileges and immunities on the GCERF equivalent to those conferred on international organizations in Switzerland. Under article 1 of the agreement, the Swiss Federal Council recognizes the international juridical personality and legal capacity of the GCERF in Switzerland. Pursuant to article 5 of the agreement, in the conduct of its business, the GCERF enjoys immunity from legal process and enforcement unless that immunity is formally waived by its Executive Director or in case of a limited number of other exceptions not linked to the employment relationship between the GCERF and its staff. The host country agreement further provides for tax exemption, the inviolability of GCERF's premises and activities and the free transfer of funds and facilities in respect of official communications. Additional information about the GCERF may be found at http://www.gcerf.org/.

9. Currently, the secretariat of the GCERF employs eight staff members. Pursuant to article 15 of the abovementioned host country agreement, GCERF officials enjoy immunity from legal process for acts committed in their official capacity, irrespective of their nationality. The GCERF human resources policy, revised in September 2015, sets out the conditions of employment of staff and in article 12.3 provides – subject to the approval of the Governing Body of the ILO – for the possibility of filing an appeal against a final decision of the Executive Director with the ILO Administrative Tribunal.

Center of Excellence in Finance

10. By a letter dated 30 September 2015 (see Appendix II), the Director of the Center of Excellence in Finance (CEF) informed the Director-General that the CEF had decided to recognize the Tribunal's jurisdiction in accordance with article II, paragraph 5, of the Tribunal's Statute. In her letter, the Director asks that the CEF's request for recognition of the Tribunal's jurisdiction be submitted to the Governing Body for its approval.

11. The CEF is an international intergovernmental organization established in 2014. To date, the Agreement on Establishing the Center of Excellence in Finance has been ratified by five States, namely, Bulgaria, Republic of Moldova, Montenegro, Slovenia and the former Yugoslav Republic of Macedonia. According to articles 6 and 7 of the Agreement, membership is open to any State and international organization which is willing and able to act in accordance with the purposes of the organization.

12. Article 3 of the Agreement provides that the purpose of the CEF is to "promote knowledge exchange, deliver training and facilitate technical assistance in public financial management, central banking and other areas of public administration".

13. Pursuant to articles 2 and 4 of the Agreement, the CEF possesses international legal personality and such legal capacity as is necessary for the exercise of its functions, including the capacity to contract, acquire and dispose of movable and immovable property, enter into and respond to legal proceedings and take such other actions as may be necessary or useful for its purposes and activities.

14. The principal bodies of the CEF are the Governing Board, the Advisory Board and the secretariat. The Governing Board comprises representatives of the CEF member States, representatives of member international organizations and three representatives of the Advisory Board. The role of the Advisory Board, which is composed of donors active in the region and other institutions collaborating with the CEF, is to assist with the design and coordination of the delivery of the CEF's activities. The secretariat is headed by a director, elected by the Governing Board.

15. According to article 23 of the Agreement, the CEF's financial resources include, among other sources of income, a financial contribution from the host country, voluntary contributions from donors, income accruing from such contributions and revenue from operations.

16. The headquarters of the CEF is in Ljubljana, Slovenia. The Headquarters Agreement between the CEF and the Government of Slovenia, concluded on 18 December 2014, specifically provides that the CEF has legal personality and enjoys privileges and immunities in Slovenia. Article 2 thereof recognizes the capacity of the CEF to contract, acquire and dispose of property, and to enter into, and respond to, legal proceedings and take such other actions as may be necessary or useful for its purposes and activities. Additional information about the CEF may be found at http://www.cef-see.org/.

17. At present, the CEF secretariat employs 26 staff members. Pursuant to article 20 of the Agreement on Establishing the Center of Excellence in Finance and article 12 of the Headquarters Agreement, CEF staff enjoy immunity from legal process for acts undertaken in their official capacity. The CEF Rules of Employment, adopted in March 2015, set out the fundamental principles of the human resources policy for the staffing and administration of the organization and provide – subject to the approval of the ILO Governing Body – that staff members alleging non-observance of their employment contracts or terms of appointment, including the Rules of Employment and any other internal rules established in the CEF Staff Manual, may file an appeal with the ILO Administrative Tribunal, provided that the available internal remedies have been exhausted.

Draft decision

18. ***In the light of the above, the Governing Body approves 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 the date of such approval.***

Appendix I

Letter of 1 October 2015 from the Executive Director of the Global Community Engagement and Resilience Fund (GCERF) to the Director-General of the ILO

1 October 2015

Mr Guy Ryder
Director-General
International Labour Office
4 route des Morillons
CH-1211 Genève 22
Switzerland

Dear Mr Ryder,

I am writing to request your assistance in bringing the application of Global Community Engagement and Resilience Fund ("GCERF") to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization ("ILOAT") to the attention of the Governing Body of the International Labour Organization.

GCERF was established in September 2014, following a series of steering group meetings held in 2013 and 2014, where representatives from governments, international organizations, including the United Nations, civil society organizations and the private sector discussed the need to establish a public–private partnership and international financing mechanism to address the issue of countering violent extremism in developing countries. At such meetings, the Government of Switzerland offered to host GCERF as a Swiss foundation, with its headquarters to be established in Geneva, and to provide GCERF with privileges and immunities in Switzerland equivalent to that of international organizations.

On 9 September 2014 the formal deed, including the Statutes for the foundation, was signed in Geneva, establishing GCERF as a legal entity. A copy of GCERF's Statutes is attached as **Annex 1**.

GCERF's Statutes state that the purpose of GCERF is to attract, manage and disburse resources aimed at supporting the efforts of local, community-based non-governmental organizations and sub-national government organizations in countering violent extremism and radicalization in all its forms. As a public–private partnership, GCERF makes an important contribution to the implementation of the UN Global Counter-Terrorism Strategy.

At a meeting in November 2014, an international Governing Board for GCERF was established as its supreme governing body, which included the governments of Australia, Bangladesh, Canada, Mali, Morocco, Nigeria, Qatar, Switzerland, the United Kingdom and the United States of America, as well as representatives of the European Union, members of civil society, foundations, the private sector and research institutions/think tanks. At that meeting, the newly-established Governing Board approved GCERF Bylaws, attached as **Annex 2**.

The Governing Board approved GCERF's Human Resources Policy in February 2015 (amended in September 2015 and attached as **Annex 3**), and at that time decided to recognize the jurisdiction of the ILOAT to hear complaints of non-observance of their terms and conditions of appointment by GCERF employees after exhaustion of internal remedies. It also explicitly acknowledged that awards rendered against GCERF will be chargeable to its budget (See Board decision on 26 February 2015, attached as **Annex 4**). The Human Resources Policy was to come into effect upon execution of a Headquarters Agreement with the Swiss Federal Council.

GCERF and the Swiss Federal Council concluded the Headquarters Agreement on 26 May 2015 (original French version attached as **Annex 5**; unofficial English translation is also attached). The Headquarters Agreement recognizes GCERF'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, GCERF is exempt from applying national law in its relations with its employees and enjoys immunity from legal process in Switzerland.

As of September 2015, GCERF has eight employees and has received approximately US$24 million in contributions and pledges from ten countries. It plans on approving its first grants to counter violent extremism in three countries (Bangladesh, Mali and Nigeria) at its next Governing Board meeting in December 2015. GCERF has an open-ended mandate.

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

I would appreciate your assistance in transmitting GCERF's declaration to recognize the jurisdiction of the ILOAT 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 in this matter.

Yours sincerely,

(Signed)

Dr Khalid Koser
Executive Director

Appendix II

Letter of 30 September 2015 from the Director of the Center of Excellence in Finance to the Director-General of the ILO

Reference: 217/2015 30 September 2015

His Excellency Guy Ryder
Director-General
International Labour Organization
4 route de Morillons
CH-1211 Genève 22
Switzerland

Excellency,

Subject: Recognition of the jurisdiction of the ILO Administrative Tribunal by the Center of Excellence in Finance

I have the honor to present a request by the Center of Excellence in Finance (hereinafter "*the CEF*") to the Governing Body of the International Labour Organization to extend the jurisdiction of its Administrative Tribunal to staff members of the CEF. Having considered the Statute and Rules of Procedures of the Administrative Tribunal, the CEF undertakes to recognize the Tribunal's jurisdiction.

The CEF is an international organization established by the Agreement on Establishing the Center of Excellence in Finance (hereinafter "*the Agreement*"), which entered into force on 28 December 2014. The CEF is open to admission to any state and international organization which has particular interest in the mandate of the CEF. To date, five states are parties to the agreement (Bulgaria, Macedonia, Moldova, Montenegro, and Slovenia – hereinafter "*CEF Members*"). Article 2 of the Agreement provides that the CEF "shall possess international legal personality". The headquarters of the CEF are located in Ljubljana, Slovenia. The headquarters agreement between the Government of the Republic of Slovenia and the CEF was signed on 18 December 2014 and became effective on 14 April 2015.

The CEF's mandate is to promote knowledge exchange, deliver training and facilitate technical assistance in public financial management, central banking and other areas of public administration. The CEF delivers its activities through focused and practically oriented tailor-made and demand-driven training, technical assistance, and support of cooperation in the South East European region.

In furtherance of this mandate the CEF's financial resources, in addition to in-kind contribution in the form of office space to be used by the CEF for the performance of its activities made available by the host country, include (a) a financial contribution from the host country to finance CEF operations in a reasonable amount; (b) voluntary contributions by donors; (c) income accruing from such contributions; (d) revenue from operations; and (e) other sources of income. An audited statement of the CEF's accounts is each year presented in the CEF's Annual Report.

The CEF and its staff enjoy such privileges and immunities as is required for the proper discharge of the CEF's mandate as described in the headquarters agreement concluded with the Government of the Republic of Slovenia. The CEF is not required to apply national law in its relations with its staff members.

The organizational structure of the CEF consists of the Governing Board composed of CEF Members, the Advisory Board and the Secretariat. Each CEF Member which is a state has up to two representatives on the Governing Board, each with one alternate. Each CEF Member which is an international organization shall have one representative and one alternate in the Governing Board. The Advisory Board comprises representatives of donors active in the region and other institutions collaborating with the CEF. Up to three members of the Advisory Board sit on the Governing Board. Each Member on the Governing Board has one vote. The Secretariat consists of the Director and a current total of 25 staff members.

I would like to confirm that the CEF Governing Board guarantees compliance with the Tribunal's judgements and is committed to be bound by awards of the Tribunal and to meet all financial requirements stemming from membership. In this regard, the CEF Governing Board at its 1st session on 31 March 2015 confirmed that it wished to recognize the jurisdiction of the ILO Administrative Tribunal in the event of applications from staff members alleging non-observance of their employment contracts or terms of appointment; and authorized me to address a formal request for recognition of the jurisdiction of the Tribunal and approval of that request by the Governing Body of the International Labour Organization.

The terms of appointment and the rights and duties of staff members are set out in the CEF Rules of Employment and the CEF Staff Manual. Article 9 of the Rules of Employment provides that: *"The International Labour Organization Administrative Tribunal (ILOAT) shall, under conditions prescribed in its statute, hear and pass judgment upon applications from staff members alleging non-observance of their employment contracts or terms of appointment, including the Rules of Employment and any other internal rules established in the CEF Staff Manual, provided the internal means of resolving the dispute available to the staff members has first been exhausted."*

I would be grateful if you would submit the matter to the International Labour Organization's Governing Body and invite it, in accordance with article II paragraph 5 of the Statute of the Tribunal, to approve at its next 325th session in November 2015 the CEF's declaration of recognition of the Tribunal's jurisdiction and acceptance of its Rules of Procedures.

I enclose for your information (1) the Agreement on Establishing the CEF; (2) the Headquarters Agreement between the Government of Slovenia and the CEF; (3) Rules of Procedure on the Governance of the CEF; (4) Rules of Employment of the CEF; (5) CEF Staff Manual; (6) Confirmation of CEF's immunity from jurisdiction and enforcement in Slovenia; (7) 1st CEF Governing Board meeting: Agenda and proposed decisions; (8) 1st CEF Governing Board meeting: Signed decisions; (9) CEF Annual Report 2014.

I remain at your disposal should you need any further information, and avail myself of this opportunity to give you the assurance of my highest consideration.

(Signed)

Mira Dobovišek
Director