

Governing Body

337th Session, Geneva, 24 October–7 November 2019

GB.337/PFA/13/2

Programme, Financial and Administrative Section
Personnel Segment

PFA

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THIRTEENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO

Proposed amendments to the Statute of the Tribunal

Purpose of the document

This document follows up on the discussion at the 335th Session on proposed amendments to the Statute of the ILO Administrative Tribunal for an orderly withdrawal process of any of the organizations having recognized its jurisdiction. It also provides up-to-date information on the geographical and gender balance of the Tribunal's composition and the possible review of its functioning further to the discussion at the 335th Session (see the draft decision in paragraph 17).

Relevant strategic objective: None.

Main relevant outcome/cross-cutting policy driver: Enabling outcome C: Efficient support services and effective use of ILO resources.

Policy implications: None.

Legal implications: None at this stage.

Financial implications: None.

Follow-up action required: Depending on the Governing Body's decision.

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

Related documents: GB.325/PFA/9/1(Rev.); GB.332/PFA/12/1(Rev.); GB.334/PFA/12/2(Rev.); GB.335/PFA/12/1.

Introduction

1. At its 335th Session (March 2019), the Governing Body considered proposed amendments to the Statute of the Administrative Tribunal of the International Labour Organization (ILO) relating to the procedure according to which an organization that has recognized the jurisdiction of the Tribunal may revoke its declaration of acceptance.¹
2. These amendments were drafted following the recent withdrawal of four organizations from the Tribunal's jurisdiction and the reaction of the judges of the Tribunal, who considered that such unilateral decisions might be perceived as a kind of "forum shopping" and who emphasized the need for clear procedural rules for the termination of membership. The proposed amendments had also been the subject of consultations with member organizations and their staff associations and were subsequently revised to address the main points of concern raised during those consultations.
3. The Governing Body was unable to conclude its discussion for lack of time and in addition to some specific changes to the proposed amendments on which no final agreement could be reached, two other issues were raised during the discussion and eventually led the Governing Body to defer its final decision on this matter. First, attention was drawn to the need to ensure balanced geographical distribution and gender composition of judges and to establish an overall limit on the number of years a judge could serve on the Tribunal. Secondly, consideration was given to the possibility of commissioning a report on the functioning of the Tribunal.
4. The Governing Body decided to defer consideration of this item to its 337th Session and requested the Office to take into account the guidance provided during the discussion in the preparation of the document that would be submitted for its consideration.²

Withdrawal from the jurisdiction of the Tribunal

5. Although the previous discussion on the proposed amendments to the Statute of the Tribunal was inconclusive, it provided the Governing Body with a clearer understanding of the main thrust and spirit of those amendments. It was acknowledged that as there was a formal process for the approval of the recognition of the jurisdiction of the Tribunal by an international organization, there should also be a formal and transparent process for orderly withdrawal from the Tribunal membership, that any decision to withdraw from the Tribunal should be promptly brought before the Governing Body so that it could take note of the decision, and that this date would be the effective date of withdrawal to be communicated to the Tribunal's Registry. Moreover, it was generally accepted that it was important for the staff representatives of the withdrawing organization to be duly consulted, and that the Governing Body should receive information in this regard.
6. There was also support among Governing Body members that just as it was important to note that withdrawals based solely on disagreement with the Tribunal's case law undermined the independence and impartiality of the Tribunal, it was also important to respect the prerogative of the governing bodies of organizations recognizing the Tribunal's jurisdiction to decide when and under what circumstances it would be appropriate to withdraw. Therefore, any information communicated to the Governing Body by a withdrawing

¹ [GB.335/PFA/12/1](#).

² [GB.335/PFA/PV](#), para. 318.

organization should be provided on a voluntary basis and not as a matter of legal obligation, and the notification of withdrawal would be submitted to the Governing Body at the session immediately following the date of receipt of the notification.

Review of the functioning of the Tribunal

7. It is recalled that divergent views were expressed with regard to the advisability of conducting such review of the functioning of the Tribunal. On one hand, it was proposed that an independent review would lead to a better understanding of the reasons why organizations were withdrawing from the Tribunal's jurisdiction, as well as the identification of areas for improvement and possible alignment with best practices. On the other hand, doubts were expressed as to the appropriateness of one of the Tribunal's "client" organizations commissioning a review of its functioning, as this might undermine the Tribunal's independence and integrity.

Fair geographical representation and gender composition of judges

8. It is recalled that the current text of the Statute of the Tribunal does not expressly refer to fair geographical representation or gender equality among the eligibility criteria for judges. The only statutory requirement set out in article III, paragraph 1, of the Statute is that all the judges must be of different nationalities. In practice, however, other factors, such as ensuring a balance between various legal systems, regional distribution, linguistic abilities based on the Tribunal's caseload and working languages have always been taken into consideration when seeking and selecting eligible judges. Records show that, over the years, the Tribunal has had judges from every geographical region, with 28 different nationalities. A list of all judges who have served in the Tribunal, together with their nationality and years of service, appears in the appendix.
9. As to the statutes of other administrative tribunals, it is noted that the Statute of the United Nations (UN) Dispute Tribunal and the UN Appeals Tribunal provide that "due regard shall be given to geographical distribution and gender balance" when appointing judges. In contrast, the statutes of the administrative tribunals of the World Bank, the International Monetary Fund, the North Atlantic Treaty Organization (NATO), the Asian Development Bank and the African Development Bank do not make any reference to fair geographical representation or gender balance among the criteria to be taken into account for the appointment of judges.
10. As to the overall number of years that judges may serve on the Tribunal, article III, paragraph 2, of the Statute provides that judges are appointed for a period of three years, but does not establish a limit on the number of times their term of office may be renewed. In practice, however, there is an understanding among judges that they should not seek to renew their term of office beyond the age of 75. Many judges have agreed to remain on the Tribunal for several terms to ensure the continuity and stability of its case law.
11. The statutes of most other administrative tribunals establish a maximum number of terms of office for judges. For instance, the judges of the Administrative Tribunal of the International Monetary Fund are appointed for four years and may be reappointed for a maximum of two additional terms. Similarly, the judges of the Administrative Tribunal of the Asian Development Bank are appointed for a period of three years and may be reappointed for a maximum of two additional three-year terms. The judges of the Administrative Tribunal of the World Bank and the Administrative Tribunal of NATO are appointed for five years and may be reappointed for one additional five-year term. In the case of the UN Dispute and

Appeals Tribunals, judges are appointed for a non-renewable term of seven years. As to the Statutes of the Administrative Tribunal of the Council of Europe and of the African Development Bank, they provide that judges are appointed for renewable terms of three years, without any specific limit.

12. It should also be noted that most statutes, in addition to limiting the term of office of judges and referring to geographical diversity and gender balance in the composition of tribunals, also include other eligibility criteria, such as “high moral character”, “qualifications required for appointment to high judicial office” and “fluency, both orally and in writing, in at least one of the working languages”. In the case of the UN Dispute and Appeals Tribunals, the respective statutes specify the minimum number of years of judicial experience required to be eligible for appointment as a judge. Many of the statutes of other administrative tribunals also provide that “judges shall be completely independent and shall not receive any instructions or be subject to any constraint”; that judges shall not be selected from current or former staff members of the host organization, nor shall they become staff members of the host organization after the end of their service on the respective tribunal; and that judges who have a conflict of interest in a case shall recuse themselves.
13. All the above considerations have been informally taken into account by the ILO in selecting and appointing judges, who are judges at the national level, and no problem of any nature has ever arisen in relation to such requirements. However, should the Governing Body decide that any of the above considerations should be reflected in the Statute of the ILO Administrative Tribunal, the Office could prepare proposals for the amendment of article III of the Statute, which could be considered by the Governing Body at one of its upcoming sessions.

Recent developments

14. There have been two developments while this document was under preparation. First, by letter of 9 August 2019, the President of the Tribunal invited the legal advisers and staff representative bodies of all member organizations to a meeting scheduled for the first day of the Tribunal’s 129th Session in October. The purpose of the meeting is to give the legal advisers and bodies an opportunity to express their views and to make suggestions directly to the Tribunal in relation to its functioning or its case law.
15. In another recent development, by letter of 19 September 2019, 27 international organizations having accepted the jurisdiction of the Tribunal reiterated their firm view that any procedure for an orderly withdrawal process should be established outside the Statute through a separate document to be agreed upon by the organizations concerned. In addition, they welcomed the timely opportunity to exchange views with the Tribunal directly and indicated that some organizations may take advantage of the meeting to also raise the point of the proposed amendments to the Statute.
16. In view of the fact that the Tribunal has thus initiated a broad consultation process with all relevant stakeholders on its working methods, and also considering the continued objection of several member organizations to the draft amendments to the Statute, it is proposed that the Governing Body defer its consideration pending the outcome of the abovementioned meeting. The Office shall keep the Governing Body informed of any agreed next steps of this consultation process, with a view to facilitating the Governing Body’s future consideration of the proposed amendments to the Statute and the need for undertaking an independent review of the functioning of the Tribunal.

Draft decision

17. *The Governing Body decided to defer its consideration of the proposed amendments to the Statute of the Tribunal pending the outcome of the broad consultation process undertaken by the President of the Tribunal in relation to its functioning and case law.*

Appendix

Former judges and deputy judges of the Tribunal

	Term of office	Served as President
Claude Rouiller (<i>Switzerland</i>)	2004–17	2015–17
Suzie d'Auvergne (<i>Saint-Lucia</i>)	2011	
Agustín Gordillo (<i>Argentina</i>)	2004–10	
Mary G. Gaudron (<i>Australia</i>)	2003–12	2009–11
Hildegard Rondón de Sansó (<i>Bolivarian Republic of Venezuela</i>)	2000–03	
Flerida Ruth P. Romero (<i>Philippines</i>)	2000–05	
Ruma Pal (<i>India</i>)	1999	
James K. Hugessen (<i>Canada</i>)	1997–2006	
Seydou Ba (<i>Senegal</i>)	1997–2015	2007–09 and 2011–13
Jean-François Egli (<i>Switzerland</i>)	1995–2004	
Julio Barberis (<i>Argentina</i>)	1995–2000	
Michel Gentot (<i>France</i>)	1992–2007	1997–2007
Mark Fernando (<i>Sri Lanka</i>)	1992–99	
José Maria Ruda (<i>Argentina</i>)	1991–94	1993–94
Mella Carroll (<i>Ireland</i>)	1987–2002	
Pierre Pescatore (<i>Luxembourg</i>)	1986–95	
Tun Mohammed Suffian (<i>Malaysia</i>)	1986–92	
William Douglas (<i>Barbados</i>)	1982–97	1994–97
Edilbert Razafindralambo (<i>Madagascar</i>)	1982–97	
Jacques Ducoux (<i>France</i>)	1981–92	1987–92
Hector Gros Espiell (<i>Uruguay</i>)	1981–90	
Mohammed Bedjaoui (<i>Algeria</i>)	1979–82	
Charles E. Wyzanski (<i>United States</i>)	1947–53	
Patrick Devlin (Lord Devlin) (<i>United Kingdom</i>)	1964–86	
William Henry Hastie (<i>United States</i>)	1969–76	
André Grisél (<i>Switzerland</i>)	1960–87	1981–87