



Governing Body

332nd Session, Geneva, 8–22 March 2018

GB.332/PFA/12/1 (Rev.)

Programme, Financial and Administrative Section
Personnel Segment

PFA

Date: 28 February 2018

Original: English

TWELFTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO

Withdrawal of the recognition of the Tribunal's jurisdiction by one organization and cessation of activities of another organization

Purpose of the document

This paper provides information about changes in the membership of the ILO Administrative Tribunal following the cessation of activities of the Agency for International Trade Information and Cooperation (AITIC) and the withdrawal of the recognition of the Tribunal's jurisdiction by the Intergovernmental Organisation for International Carriage by Rail (OTIF). The Governing Body is invited to take note of the termination of the membership of these organizations and confirm that they will no longer be subject to the Tribunal's competence as from the date of the Governing Body decision (see the draft decision in paragraph 8).

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: Changes in the membership of the ILO Administrative Tribunal.

Financial implications: ILO share of the AITIC's outstanding financial obligations.

Follow-up action required: None.

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

Related documents: GB.212/PFA/13/11, GB.292/PFA/20/3 and GB.331/PFA/15.

Agency for International Trade Information and Cooperation

1. By letter dated 10 January 2018 (see Appendix I), the Permanent Mission of Switzerland to the United Nations and to the other international organizations in Geneva informed the Office that the Agency for International Trade Information and Cooperation (AITIC), a Geneva-based international intergovernmental organization, which was established in 2004 and had recognized the Tribunal's jurisdiction in 2005,¹ definitively ceased its activities effective 1 January 2011. While the organization has not been formally liquidated due to lack of quorum in its Council of Representatives who – in accordance with the Agreement establishing the AITIC – has the sole power to denounce the organization's founding treaty, the Office has been informed that the AITIC has ceased to employ any staff since 31 December 2010 and that the lease agreement for its premises has been terminated since 31 March 2011.
2. In its 12 years of Tribunal membership, the AITIC has been the subject of four judgments rendered by the Tribunal. There are currently no complaints against the AITIC pending before the Tribunal.
3. The AITIC's outstanding financial dues amount to US\$49,331 representing the AITIC's participation in the session costs of the 113th Session of the Tribunal (2012) where two judgments involving that organization were rendered, as well as its annual share of the Tribunal's overhead costs for the period 2011–17. Given that the attempts made by the Office to obtain the payment of the amounts due have proven unsuccessful and that the AITIC has now definitively ceased its activities, these amounts will be shared between participating organizations in the same manner as all other administrative costs.

Intergovernmental Organisation for International Carriage by Rail

4. By letter dated 17 January 2018 (see Appendix II), the Secretary-General of the Intergovernmental Organisation for International Carriage by Rail (OTIF) informed the Director-General that by a decision of its Administrative Committee adopted at its 127th Session (27–28 June 2017), the OTIF had decided to discontinue its recognition of the jurisdiction of the ILO Administrative Tribunal. This decision took effect on 11 December 2017. In his letter, the Secretary-General indicated that while there is at present no outstanding appeal under the procedures foreseen in the Staff Regulations which were in effect until 10 December 2017, there are two complaints concerning the OTIF currently pending before the Tribunal (AT 5-4347 and AT 5-4680). The Secretary-General confirmed, in this connection, the intention of the OTIF to execute promptly and in good faith any Tribunal judgment rendered under such residual jurisdiction, to pay the corresponding session costs and its minimum share of the Tribunal's running costs for 2018.
5. The OTIF recognized the jurisdiction of the Tribunal in 1980² and currently employs 18 people. In the 37 years of Tribunal membership, the OTIF has been the subject of seven judgments rendered by the Tribunal. The OTIF's revised Staff Regulations now provide for

¹ [GB.292/PFA/20/3](#).

² [GB.212/PFA/13/11](#).

an optional conciliation procedure and for the right of appeal to the Administrative Tribunal of the Council of Europe.

6. The Statute of the Tribunal in its article II(5) and the Annex sets out the conditions for admission of an international organization but is silent on the conditions of withdrawal and is also silent on the possibility for the Governing Body to withdraw its approval of the recognition. This latter question is currently the subject of consultations among the member organizations and possible amendments to the Statute and the Annex could be prepared in due course if requested.
7. While the recognition of the Tribunal's jurisdiction is in essence a unilateral declaration by an international organization which can be unilaterally revoked, a withdrawal from the Tribunal's membership needs to be however confirmed by the Governing Body to become effective. Following the decision of the OTIF to withdraw its recognition of the Tribunal's jurisdiction, the President of the Tribunal addressed a letter (see Appendix III) to the Director-General expressing the view that any unilateral decision by an international organization to withdraw from a tribunal's jurisdiction raises important legal and policy issues, as such a decision may be perceived as a kind of "forum shopping", and requested that this be drawn to the attention of the Governing Body.

Draft decision

8. *The Governing Body:*

- (a) *takes note of the cessation of activities of the Agency for International Trade Information and Cooperation (AITIC) and accordingly confirms that the AITIC will no longer be subject to the competence of the Tribunal with effect from the date of this decision;*
- (b) *takes note of the intention of the Intergovernmental Organisation for International Carriage by Rail (OTIF) to discontinue its recognition of the jurisdiction of the Administrative Tribunal, and accordingly confirms that the OTIF will no longer be subject to the competence of the Tribunal with effect from the date of this decision except as regards the complaints AT 5-4347 and AT 5-4680 currently pending before the Tribunal; and*
- (c) *requests the Director-General to follow up with the Secretary-General of the OTIF regarding the payment of any outstanding costs.*

Appendix I

Schweizerische
Eidgenossenschaft
Confederation suisse
Confederazione Svizzera
Confederaziun svizra

**Permanent Mission of Switzerland to the United Nations Office
and to the other international organizations in Geneva**

Mr Georges Politakis
Legal Adviser
International Labour Organization (ILO)
Route des Morillons 4
CH-1211 Geneva 22

Reference: 41.50.0 (ACICI) – WD/TIF
Geneva, 10 January 2018

Agency for International Trade Information and Cooperation (AITIC)

Dear Sir,

I have the honour to submit the following information in response to your request.

At the end of 2010, the AITIC sought a decision from the Council of Representatives of its Member States to liquidate the organization. In the absence of a quorum, a decision could not be taken. At the start of 2011, a postal vote, which is permitted by the regulations, took place, but once again, no quorum was achieved. The majority of Member States nevertheless agreed to a liquidation.

Since 31 December 2010, the AITIC has employed no staff. The lease agreement for its premises has been terminated since 31 March 2011. As at 1 January 2011, the AITIC had ceased its activities. It has not denounced its founding treaty, which is therefore still in force.

I hope that this information meets your requirements and invite you to accept, Sir, the assurances of my highest consideration.

The Permanent Representative of Switzerland
Host Country Division, Privileges and Immunities Department

(Signed) Danielle Werthmüller
Head of Section

Appendix II

Sécrétaire general
Generalsekretär
Secretary General

Mr Guy Ryder
Director-General of the International
Labour Office
4, Route des Morillons
CH-1211 Geneva 22

Votre référence
Ihr Zeichen
Your Reference

Notre référence SAF-18001
Unser Zeichen
Our Reference

Affaire suivie par Ghousebasha Gaffar
Sachbearbeiter +41 (0) 31 359 1022
Being dealt with by

Gryphenhllbellweg 30 17 January 2018
CH-3006 Beme/Bern

Dear Director-General,

I have the honour to inform you that, following the revision of the Staff Regulations of the Intergovernmental Organisation for International Carriage by Rail (OTIF) by a decision of its Administrative Committee at its 127th Session, on 27 and 28 June 2017, the OTIF discontinued its recognition of the jurisdiction of the ILO Administrative Tribunal. This decision took effect on 11 December 2017 and Chapter XI of the Staff Regulations (a copy of which is annexed hereto) now provides for a new conciliation procedure and for the right of appeal to the Administrative Tribunal of the Council of Europe.

The new procedure establishes rules that are more appropriate for an organization that employs around 20 officials.

I confirm that the OTIF currently has no outstanding complaints under the procedures foreseen in the Staff Regulations that were in effect until 10 December 2017 which could ultimately fall within the jurisdiction of the ILO Administrative Tribunal. However, two complaints concerning the OTIF are currently pending before the Tribunal: cases AT 5-4347 and AT 5-4680. The OTIF confirms its intention to execute promptly and in good faith any judgment rendered by the Tribunal in the framework of this residual jurisdiction, and to pay the corresponding session costs and its minimum share of the Tribunal's running costs for 2018.

Please accept, Director-General, the assurances of my highest consideration.

Yours sincerely,

(Signed) François Davenne
Secretary-General

Enc: Staff Regulations of the Secretariat of the Intergovernmental Organisation for International Carriage by Rail of 11 December 2017.

Appendix III

ORGANISATION INTERNATIONALE DU TRAVAIL
TRIBUNAL ADMINISTRATIF

INTERNATIONAL LABOUR ORGANIZATION
ADMINISTRATIVE TRIBUNAL

Received in Cabinet

25 JAN 2018

39906

25 January 2018

Dear Director-General,

Further to the decision of the Intergovernmental Organisation for International Carriage by Rail (known under the French acronym "OTIF") to withdraw its recognition of the Tribunal's jurisdiction, the Tribunal has been invited to comment on the draft document dealing with this matter which is being prepared for the next session of the ILO Governing Body in March.

I note that the decision of OTIF follows similar decisions by the Permanent Court of Arbitration (PCA) and the World Meteorological Organization (WMO).

The Tribunal considers that any unilateral decision by an international organization to withdraw from a tribunal's jurisdiction raises important legal and policy issues. To mention but one, such a decision may be perceived as a kind of "forum shopping".

The ILO may therefore wish to examine this issue further and to consider, in particular, whether it would be appropriate to amend the Statute of the Tribunal so as to establish a formal procedure governing the situation where an organization decides to withdraw from its jurisdiction, as well as the possibility mentioned in paragraph 6 of the draft Governing Body document, namely that the Governing Body itself might withdraw its acceptance of an organization's recognition of jurisdiction.

The formal procedure could address, amongst other things, the following issues:

- the role of the Governing Body in the withdrawal process;
- consultation with staff representative bodies of the organisation concerned;
- consultation with this Tribunal and/or the judicial body to which the organisation intends to submit its disputes in future;
- the problem of parallel or concurrent jurisdiction during the change from one jurisdiction to another.

I thank you for your attention to this matter.

Yours sincerely,

Giuseppe Barbagallo

Giuseppe Barbagallo

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