



SEVENTEENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO**(c) Recognition of the Tribunal's jurisdiction by the International Criminal Court (ICC)**

1. Under article II, paragraph 5, and the Annex to its Statute, the Administrative Tribunal of the International Labour Organization is competent to hear complaints against intergovernmental organizations, and under certain conditions other international organizations, which recognize its jurisdiction and Rules of Procedure and have been approved by the Governing Body.
2. By a letter dated 15 January 2003 (Appendix I) the Director of Common Services of the International Criminal Court (ICC), under the authority vested to him by the Assembly of States Parties to the Rome Statute of the ICC, informed the Director-General of the ILO that the ICC had decided to recognize the Tribunal's jurisdiction in accordance with article II, paragraph 5, of its Statute.
3. The ICC is an independent judicial body established by the Rome Statute adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court ("the Statute"). The Statute entered into force on 1 July 2002 and to date there are 87 States Parties to it.
4. The ICC is a permanent institution having the power to exercise its jurisdiction over persons for the most serious crimes of concern to the international community as a whole. These crimes include the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. In its proceedings, the ICC reflects the highest standards of fair and impartial trial. Due to its *sui generis* mission in international law, the International Criminal Court provided for competences of the Assembly of States Parties to the Statute on administrative and financial issues, including budget, while it has also classical judicial organs: (a) the Presidency; (b) an Appeals Division, a Trial Division and a Pre-Trial Division; (c) the Office of the Prosecutor; and (d) the Registry. The Statute also provides that the ICC has its own staff reflecting the highest standards of efficiency, competency and integrity, with regard to equitable geographical and gender representation. The Statute provides explicitly that the ICC has international legal personality, and establishes a legal base for agreements with the United Nations, currently under consideration, and its host State, the Netherlands.

5. In order to be eligible for approval under article II, paragraph 5, of the Tribunal's Statute, the ICC must be considered either to be an intergovernmental organization (*organisation de caractère interétatique*) or to fulfil certain criteria set out in the Annex to the Statute. It is obvious that the ICC satisfies the required criteria since it has been established by an international treaty, its objectives respond to a general interest of the international community as a whole, and it is of a permanent nature. In addition, it enjoys privileges and immunities in international law, pursuant to both its Statute and a special detailed agreement that has been prepared, equivalent to any other international organization. The ICC is not required to apply any national law in its relations with its officials and enjoys immunity from legal process in all States Parties, including the host country. A headquarters agreement concluded with the Netherlands provides for privileges and immunities equivalent to those of the United Nations. Given its judicial nature, there should be no doubt about sufficient guarantees as to institutional capacity of the ICC to carry out functions assigned to it as well as guarantees of compliance with the Tribunal's judgments.
6. The Tribunal's jurisdiction under article II, paragraph 5, of its Statute already extends to 41 organizations other than the ILO. The recognition of the Tribunal's jurisdiction by other organizations entails no additional cost to the ILO, since the organizations against which complaints are filed are required by the Statute to bear the expenses of sessions and hearings and to pay any award of compensation made by the Tribunal. Those organizations also contribute in amounts proportionate to the number of their staff to much of the running costs of the Tribunal's secretariat.
7. ***In the light of the above, the Committee may wish to recommend that the Governing Body approve the recognition of the Tribunal's jurisdiction by the ICC, with effect from the date of such approval.***

Geneva, 31 January 2003.

Point for decision: Paragraph 7.

Appendix

Request by the International Criminal Court concerning recognition of the jurisdiction of the ILO Administrative Tribunal

Letter of 15 January 2003 from the Director of Common Services of the International Criminal Court to the Director-General of the ILO

Dear Sir,

I have the honour to present a request by the International Criminal Court (ICC) to the Governing Body of the International Labour Office to extend the jurisdiction of its Administrative Tribunal to the staff of the Court. After having considered the Statute and Rules of Procedure of the Administrative Tribunal of the International Labour Organization, the ICC undertakes to recognize the Tribunal's jurisdiction.

The Court was established by the Rome Statute of the International Criminal Court which was adopted on 17 July 1998. The seat of the Court is in the Hague, Netherlands and to date 87 countries are parties to the Statute.

Pending the finalization of its Staff Regulations, the Court is provisionally applying the UN Staff Regulations with necessary adaptations to comply with the Statute (copy attached). The UN Staff Rules also apply *mutatis mutandis* to the staff of the Court.

You will note from Provisional Staff Regulation 11.2 that ILOAT has been designated as the body that will hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules.

I would be grateful if you would submit this matter to the Governing Body of the International Labour Organization and invite it, in accordance with article II, paragraph 5, of its Statute, to approve the Court's declaration of recognition of the Tribunal's jurisdiction and acceptance of its Rules of procedure.

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

(signed) Bruno Cathala,

Director of Common Services

Mr. Somavia,
Director-General,
International Labour Organization
4, route des Morillons
CH-1211 Geneva 22