



## Governing Body

338th Session, Geneva, 12–26 March 2020

GB.338/PFA/11/1

Programme, Financial and Administrative Section  
Personnel Segment

PFA

Date: 25 February 2020  
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### ELEVENTH 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 contains proposals for amendments to the Statute of the ILO Administrative Tribunal and to its Annex relating to: (i) the procedure according to which an international organization that has recognized the jurisdiction of the Tribunal may revoke its declaration of acceptance; and (ii) the term of office of judges and the fair geographical and gender balance in the composition of the Tribunal. It also addresses the possibility of undertaking an independent review of its functioning further to the discussion at the 337th Session and after consultations with member organizations and staff associations (see the draft decision in paragraph 34).

**Relevant strategic objective:** None.

**Main relevant outcome:** Enabling outcome C: Efficient support services and effective use of ILO resources.

**Policy implications:** None.

**Legal implications:** Amendments to the Tribunal's Statute and its Annex, subject to adoption by the International Labour Conference.

**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; GB.337/PFA/13/2.



## Introduction

1. At its 337th Session (October–November 2019), the Governing Body had before it a paper concerning proposed amendments to the Statute of the Administrative Tribunal relating to the procedure according to which an organization that has recognized the jurisdiction of the Tribunal may revoke its declaration of acceptance.<sup>1</sup> The Governing Body discussed the importance of introducing a clear and transparent withdrawal procedure which would codify the current practice without creating any new legal obligations for withdrawing organizations. The Governing Body also considered the possibility to introduce a limit to the number of years judges may serve and also include provisions aiming at ensuring a fair geographical and gender composition of the Tribunal. There has also been an exchange of views on the advisability of commissioning an independent review of the functioning of the Tribunal. The Governing Body requested the Office to submit draft amendments to the Statute of the Tribunal at its 338th Session (March 2020), taking into account the guidance provided during the discussion.<sup>2</sup>
2. This paper contains proposed amendments to the Statute of the Tribunal and its Annex with respect to: (i) the procedure according to which an international organization that has recognized the jurisdiction of the Tribunal may revoke its declaration of acceptance; and (ii) the term of office of judges and the fair geographical and gender composition of the Tribunal.
3. In compliance with the need to consult the Tribunal on proposals to amend its Statute, the Office has invited the Tribunal to comment on an earlier draft of the paper. The Office has also consulted the organizations having recognized the jurisdiction of the Tribunal and their staff associations. All the responses received by 17 February 2020 are reflected in this paper.

## Withdrawal from the jurisdiction of the Tribunal

4. Amendments to article II and the Annex to the Tribunal's Statute were initially called for by the Governing Body at its 332nd Session (March 2018) as a consequence of the discontinuation by certain organizations of their declaration of acceptance of the Tribunal's jurisdiction since 2016 and the reaction of the judges of the Tribunal, who considered that such unilateral decisions might be perceived as "forum shopping" and emphasized the need for clear procedural rules for the termination of membership.<sup>3</sup> The matter was put before the Governing Body at its 334th Session (October–November 2018), but the discussion was deferred in order to allow time for further consultations with organizations that had expressed reservations with respect to some aspects of the proposed amendments.<sup>4</sup> At its 335th Session (March 2019), the Governing Body was unable to conclude its discussion on this matter for lack of time. At its 337th Session (October–November 2019), the Governing Body noted the initiative of the President of the Tribunal to give an opportunity to representatives of the organizations and staff that are subject to its jurisdiction to express their concerns on various aspects of its functioning and case law, and requested the Office

<sup>1</sup> [GB.337/PFA/13/2](#).

<sup>2</sup> [GB.337/PFA/13/2/decision](#).

<sup>3</sup> See [GB.332/PV](#), paras 780–784.

<sup>4</sup> [GB.334/PFA/12/1](#).

to keep it informed of the outcome of those consultations and to prepare proposed amendments for its consideration at its next session.

5. During its earlier discussions on the proposed amendments to the Statute, the Governing Body has considered that as there is 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. It has also accepted 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 confirm that this date, or any later date as may be agreed upon with the organization concerned, would be the effective date of withdrawal to be communicated to the Tribunal's Registry. Moreover, it has been generally accepted that it is important that the staff representatives of the withdrawing organization be duly consulted, and that the withdrawing organization provide information to the Governing Body in this regard.
6. Further, there has been support among Governing Body members that just as it is important to note that withdrawals based solely on disagreement with the Tribunal's case law undermine the independence and impartiality of the Tribunal, it is equally important to respect the prerogative of the governing bodies of organizations recognizing the Tribunal's jurisdiction to decide when and under what circumstances they would deem it appropriate to withdraw. The Governing Body took accordingly the view that any information communicated to the Governing Body by a withdrawing organization should be provided on a voluntary basis, and not as a matter of legal obligation, and that the notification of withdrawal would be submitted to the Governing Body at the session immediately following the date of receipt of that notification.
7. Based on the views expressed during the Governing Body discussions, and also taking into account views expressed by some ILOAT member organizations, further modifications to the draft amendments are proposed. In article II, paragraph 5, the word "conditions" is replaced by "procedure" to clarify that withdrawal is not subject to legally binding requirements. In paragraph 3 of the Annex, the words "and under conditions that safeguard the independence and the appearance of independence of the Tribunal" have been removed. Also in paragraph 3, the words "This communication should contain" and subparagraphs (a), (b) and (c) are replaced by the following: "This communication may contain relevant information such as the reasons for discontinuing the recognition of the Tribunal, the alternative means of employment dispute settlement envisaged and any consultations with the staff representative bodies prior to the withdrawal decision." This seeks to remove any doubt as to the non-obligatory character of the information that might be provided to the Governing Body while the reference to the full and faithful execution of judgments on pending cases is proposed to be deleted as redundant. Finally, in paragraph 4, the words "At its next Session following the notification of withdrawal," are inserted before the words "The Governing Body" to ensure that the withdrawal process may not be delayed.
8. By letter dated 13 January 2020, the Tribunal expressed the view that while it might be useful to assert the authority of the Governing Body in the withdrawal process by an express clause in the Statute, that is not strictly necessary. The Tribunal remains concerned, however, with the possibility of forum shopping and its impact on the independence of the international administrative tribunals. It considers that this concern might be addressed through non-normative initiatives, such as a discussion between the Director-General and other executive heads of organizations having administrative tribunals open to recognition by other organizations, or a code of conduct to be proposed by the Tribunal to other administrative tribunals establishing that when judges of the tribunals are consulted on new applications of international organizations, their view on acceptance should be negative if the application appears to be motivated by forum shopping. In sum, the Tribunal considers it would be

preferable to postpone any consideration of amendments to the Tribunal's Statute to a future session of the Governing Body.

9. By letter of 15 January 2020, UNESCO reiterated that the ILO may not unilaterally impose on other organizations conditions on the withdrawal of their acceptance of the Tribunal's jurisdiction through an amendment to the Statute and stressed that any agreement on this matter would require the approval of UNESCO's General Conference. By letter of 7 February 2020, 13 other organizations expressed the view that the withdrawal procedure should be contained in a separate document and indicated that they would have to consider carefully whether any eventual amendments to the Statute would meet with their express agreement. As for CERN, it wrote on 29 January 2020 to recall its earlier comment that the formulation of the revised article II, paragraph 5, was acceptable.
10. As for staff representative organizations, the Coordinating Committee of International Staff Unions and Associations (CCISUA) reiterated its previous position that a withdrawal notice period was essential, that withdrawing organizations should provide proof of an alternative mechanism already in place starting on the day following the effective date of withdrawal, that an exhaustive list of documents should be provided as a mandatory requirement to prevent a "race to the bottom" and that the use of the word "may" instead of "shall" was excessively soft. The CCISUA therefore concludes that the draft amendments do not sufficiently protect staff members and considers that the consideration of the amendments should be postponed until at least such a time as other safeguards could be put in place to ensure that organizations do not change forum without good and valid cause.
11. The CERN Staff Association reiterated the importance it attaches to the provision of the reasons motivating an organization to withdraw from the jurisdiction of the Tribunal, and reaffirmed its view that the Tribunal must remain competent in respect of any administrative decision which forms the subject of an internal redress procedure initiated prior to the effective date of withdrawal. As for the WIPO Staff Council, it concurred with the proposed amendments while stressing the importance for an organization of holding consultations with staff representatives prior to submitting any withdrawal.
12. The ILO's Staff Union Committee (SUC) noted with concern that the proposed amendments differ significantly from previous versions further diluting any initial proposed requirements, for instance by no longer requiring that the staff representatives' views be brought to the attention of the ILO Governing Body. The SUC is concerned that the amendments and lack of legal obligations therein, if adopted, would increase the risk of withdrawal of recognition of jurisdiction by organizations, which could ultimately threaten the Tribunal's existence. This concern is particularly exacerbated in light of the most recent UN General Assembly resolution 74/255B. The SUC considers that the discussion must be deferred to allow a full consultative process with all stakeholders to take place.

## **Fair geographical and gender composition of the Tribunal and limits to the term of office of judges**

13. The proposed amendments to article III of the Statute have been prepared in response to the discussions at the 335th and 337th Sessions (March and October–November 2019 respectively)<sup>5</sup> of the Governing Body concerning the need to ensure fair geographical and

<sup>5</sup> [GB.335/PV](#), paras 1072, 1082, 1096, 1099, 1101 and 1116–1119.

gender balance in the Tribunal's composition and to establish an overall limit on the number of years judges may serve on the Tribunal.

14. It is recalled that the current text of the Statute does not contain express provisions in this regard. 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, 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 prospecting for and selecting eligible judges. To date, judges of 20 different nationalities have served on the Tribunal.<sup>6</sup>
15. Under the current selection process, to be appointed at the ILO Administrative Tribunal, judges must be serving or must have served at the highest court of their country (for instance, Supreme Court, Federal Court, Conseil d'Etat etc.). Apart from outstanding professional credentials and long years of experience in labour and administrative law, judges are required to have special linguistic skills necessary for drafting judgments and deliberating over complex legal matters in plenary sessions. Every effort is also made so that the Tribunal's composition reflects fair geographical distribution (currently the Tribunal is composed of judges from all four regions) and gender balance (at present, two of the seven judges are women – see Appendix I). In view of the highly specialized profile and demanding eligibility criteria, prospecting for appointable judges is often challenging and time-consuming.
16. It is noted that, while the statutes of most international administrative tribunals provide that no two judges shall be of the same nationality, only the statute of the United Nations Dispute Tribunal (article 4(2)) and the UN Appeals Tribunal (article 3(2)) provide that “due regard shall be given to geographical distribution and gender balance” when appointing judges. No express provision for either gender balance or geographical representation is made in the statute of the other 12 administrative tribunals reviewed in preparing this paper (see Appendix II).
17. As to the overall number of years that judges may serve, 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. There is an understanding, however, 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. A list of the current judges, together with their nationality and years of service, appears in Appendix I.
18. The statutes of several international administrative tribunals establish a limit to the number of years judges may serve or to the number of times their term of office may be renewed. On one side, there are tribunals that provide for a non-renewable term of office, for instance, the Inter-American Development Bank Administrative Tribunal or the UN Dispute and Appeals Tribunals whose judges are appointed for a non-renewable term of six and seven years respectively. On the other side, there are tribunals that permit the reappointment of judges but only for a fixed number of terms. For example, 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, or nine years in total. Similarly, the judges of the of the World Bank Administrative Tribunal and of the North Atlantic Treaty Organization Administrative Tribunal are appointed for five years and may be reappointed for one additional five-year term (ten years in total) while those of the

<sup>6</sup> See [GB.337/PFA/13/2](#), appendix.

International Monetary Fund Administrative Tribunal are appointed for four years and may be reappointed for a maximum of two additional terms (12 years in total).

- 19.** In contrast, the Statutes of the Administrative Tribunal of the Council of Europe, the European Bank for Reconstruction and Development, the African Development Bank and the Organisation for Economic Co-operation and Development, provide that judges are appointed for renewable terms of three years, without any specific limit. In the same vein, the judges of the First instance and Appeals Tribunals of the Organisation Internationale de la Francophonie and those of the Administrative Tribunal of the European Stability Mechanism are appointed for renewable terms of four and five years respectively. As regards the judges of the Administrative Tribunal of the Bank for International Settlements, they are appointed for a term of four years renewable until the age of 75 whereas the judges of the Administrative Tribunal of the Organization of American States are appointed for a term of six years on the understanding that they may serve for no more than two consecutive terms. A comparative table of the term limitations of the judges of the different administrative tribunals is provided in Appendix II.
- 20.** It is noted that two opposing considerations may guide the Governing Body's deliberations on this matter; on the one hand, providing for a single, non-renewable term of office of a limited number of years appears to offer the best guarantee against any risk, real or perceived, of favouritism. On the other hand, allowing judges to be reappointed and thus serve for longer periods contributes to preserving and promoting the consistency, stability and quality of case law.
- 21.** Should the Governing Body decide to amend article III, one possible option would be to align the Statute of the ILO Administrative Tribunal with that of the UN Dispute and Appeals Tribunals and provide for a non-renewable term of seven years. It is recalled, in this connection that when reviewing the status of the judges of the ILO Administrative Tribunal at its 334th Session (October–November 2018), the Governing Body considered it appropriate to align their status with that of the judges of the UN Dispute and Appeals Tribunals <sup>7</sup>, and therefore the proposed alignment would be in the interest of further uniformity between the two justice systems. Another possible option would consist in maintaining the current wording of the Statute and simply introducing a limit on the number of times the term of office of judges may be renewed. In this sense, a term of office of five years renewable once – or a maximum of ten years – would seem to generally reflect the practice of other administrative tribunals. Irrespective of which option the Governing Body could possibly retain, the proposed draft Conference resolution includes transitional measures with a view to ensuring the stability of the Tribunal's functioning and the continuity of service of the currently serving judges.
- 22.** In its comments communicated on 13 January 2020, the Tribunal expressed the view that fair geographical and gender composition had always been taken into consideration by the International Labour Conference in nominating judges and therefore the need to refer expressly to these criteria is questionable. In addition, including only gender and geographical representation criteria may undermine the long-standing practice of the ILO which insists on the experience and quality of judges. As for the term of office of judges, the judges cannot see any compelling reason for changing the current situation. The act that the judges themselves decide when to finish their mandate is perceived as a guarantee of their independence. A simple comparative table of other administrative tribunals is not really helpful as there are many differences in the profile of judges and the caseload of those tribunals. With respect to the proposed transitional provisions, the judges consider that any limitation to the term of office cannot be applied retroactively and change conditions of

<sup>7</sup> [GB.334/PFA/12/3\(Rev.\)](#).

current judges during their tenure as the present judges accepted appointment and reappointment on the understanding that the term of appointment was three years and that they would be offered reappointment for a further three years at the expiry of any given three-year term.

23. As for the 13 organizations that communicated their comments on 7 February, they did not express any view on the proposed amendments to article III. Similarly, UNESCO and CERN in their respective communications of 15 January and 29 January did not address at all the issues of fair gender and geographical composition or the possible limitations to the term of office of judges. Likewise, the WIPO Staff Council, the CERN Staff Association, the CCISUA and the SUC submitted no observations in this matter.
24. In light of the preceding, the Governing Body may wish to consider either of the two variants contained in the proposed amendments, or decide that article III of the Statute, as it currently reads, and the Office arrangements for its implementation in practice, continue to ensure the exceptional stature and authority of the Tribunal and therefore do not warrant any formal amendment.
25. In accordance with article XI of the Statute of the Tribunal, the Statute may be amended by the International Labour Conference after consultation with the Tribunal. Accordingly, a draft Conference resolution is proposed in Appendix III.

## **Review of the functioning of the Tribunal**

26. During the discussions at the 335th and 337th Sessions of the Governing Body, diverging views were expressed with regard to the advisability of conducting a 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. Special reference was made, in this regard, to the standard of proof for sexual harassment cases and the requirement for reinstatement instead of financial compensation, as currently applied by the Tribunal. On the other hand, doubts were expressed as to the need to review the functioning of the Tribunal which enjoyed high esteem and was working well, and as to the appropriateness for the ILO as one of the Tribunal's "client" organizations to commission a review of its functioning, as this might undermine the Tribunal's independence and integrity. It was also noted that the need for any such a review could be further assessed in light of the outcome of the consultation meeting recently organized by the Tribunal with the legal advisers and staff representative bodies of its member organizations. With regard to the scope and financial implications of a possible review, it was clarified that it would not, in any event, be as far-reaching and costly as the redesigning of the UN internal justice system. It was further clarified that the estimated cost would depend on the composition of the panel and exact terms of reference that the Governing Body should adopt prior to commissioning any such review.
27. With regard to the meeting that was held in October 2019 at the initiative of the President of the Tribunal, it is noted that this permitted an exchange of views on various procedural matters and issues related to the Tribunal's case law, such as the advisability of hearing witnesses, ordering penalties for frivolous complaints, the cause for action of staff representatives and the standard of proof applied by the Tribunal, which continues to raise controversy among the organizations under the Tribunal's jurisdiction. The meeting did not address the question of withdrawal of organizations while the President of the Tribunal announced his intention to hold similar consultation meetings in the future.

28. Another question that was briefly addressed at the 335th and 337th Sessions of the Governing Body was the process for the selection and appointment of judges. It is recalled that this question was last discussed by the Governing Body at its 325th Session (October–November 2015).<sup>8</sup> At the time, the Governing Body considered that the manner in which the judges are selected and appointed is fully satisfactory and does not call for any change.
29. For all useful purposes, it is recalled that the selection process is not explicitly set out in any statutory text but is based on long and consistent Office practice. In order to fill a vacant position, the Office undertakes a prospection of potential candidates based on criteria such as professional qualifications, geographical diversity and gender balance. The prospection is effected through multiple means and may involve formal communications with national judicial authorities, recommendations of currently serving judges and contacts through field offices. The curricula vitae and other relevant information of suitable candidates are then submitted to the Director-General for consideration. The Director-General transmits to the Governing Body through the Officers a shortlist of appointable candidates and makes an informed proposal. If approved, this proposal becomes the Governing Body's recommendation to the Conference, which ultimately appoints the Tribunal's judges.
30. Closely linked to the appointment of highly qualified judges, having regard to balanced geographical distribution and the smooth and efficient functioning of the Tribunal, is the question of the possible increase to the number of judges (possibly from seven to nine). While subject to the same stringent eligibility criteria, the new judges could help the Tribunal cope with the heavy workload and delays in judgment delivery. The Governing Body may wish to provide its guidance as to whether any of the above should be included in the scope of any future review of the functioning of the Tribunal that could be mandated to formulate proposals for possible improvements.
31. In addition to commenting on the proposed amendments to its Statute, the Tribunal expressed concern that the nature and the scope of any review of its functioning remains unclear and could potentially affect the independence of the Tribunal. However, the Tribunal indicated that it remains open to dialogue with all the parties concerned.
32. As for the replies received from member organizations, there have been no views expressed either in favour or against the possibility of undertaking a review of the functioning of the Tribunal.
33. In another related development, the UN General Assembly adopted on 27 December 2019 resolution 74/255B which inter alia requests the Secretary-General in his capacity as Chairperson of the Chief Executives Board for Coordination to conduct a review of the jurisdictional set up of the United Nations common system, submit information on findings and proffer recommendations to the General Assembly as soon as practicable. The Office therefore expects to fully engage in the coming months in the review of the administrative justice system across the UN common system. Accordingly, the Governing Body may wish to take this recent development into account when considering whether to commission an independent review of the functioning of the Tribunal.

<sup>8</sup> GB.325/PFA/9/1(Rev.) and GB.325/PV, paras 696, 702–703.

## Draft decision

34. *The Governing Body, taking into account the guidance provided during the Governing Body discussions at the 335th, 337th and 338th Sessions on the proposed amendments to the Statute of the ILO Administrative Tribunal as well as the views expressed on the same by the Tribunal, the organizations having recognized its jurisdiction and their staff associations, decided to:*

- (a) approve the draft resolution appended to document GB.338/PFA/11/1, as amended, concerning amendments to the Tribunal's Statute and to its Annex, for possible adoption by the International Labour Conference at its 109th Session (2020) [or] defer consideration of the proposed amendments to the Tribunal's Statute appended to document GB.338/PFA/11/1; and*
- (b) defer consideration of an independent review of the functioning of the Tribunal pending the review of the jurisdictional set up of the United Nations common system as called for in UN General Assembly resolution 74/255B.*

## Appendix I

### Current composition of the Tribunal

	Initial appointment	Current term
Mr Patrick Frydman (France), President	2007	5th (2019–22)
Ms Dolores M. Hansen (Canada), Vice-President	2006	5th (2018–21)
Mr Giuseppe Barbagallo (Italy)	2006	5th (2018–21)
Ms Fatoumata Diakité (Côte d'Ivoire)	2015	2nd (2018–21)
Mr Yves Kreins (Belgium)	2017	1st (2017–20)
Mr Michael F. Moore (Australia)	2012	3rd (2018–21)
Sir Hugh A. Rawlins (Saint Kitts and Nevis)	2012	3rd (2018–21)

## Appendix II

### Fair geographical and gender composition of administrative tribunals and limits to the term of office of judges – Comparative Table

Administrative tribunal	Gender balance	Geographical distribution	Term of office
Inter-American Development Bank	x	x	6 yrs non-renewable
United Nations Dispute Tribunal	✓	✓	7 yrs non-renewable
United Nations Appeals Tribunal	✓	✓	7 yrs non-renewable
Asian Development Bank	x	x	3 yrs renewable twice
World Bank	x	x	5 yrs renewable once
North Atlantic Treaty Organization	x	x	5 yrs renewable once
International Monetary Fund	x	x	4 yrs renewable twice
Council of Europe	x	x	3 yrs renewable
European Bank for Reconstruction and Development	x	x	3 yrs renewable
African Development Bank	x	x	3 yrs renewable
Organisation for Economic Co-operation and Development	x	x	3 yrs renewable
Organisation Internationale de la Francophonie First Instance and Appeals Tribunal	x	x	4 yrs renewable
European Stability Mechanism	x	x	5 yrs renewable
Bank for International Settlements	x	x	4 yrs renewable until age of 75
Organization of American States	x	x	6 yrs renewable no more than 2 consecutive terms

## Appendix III

### Draft Conference resolution

The General Conference of the International Labour Organization,

Conscious of the need to amend article II of the Tribunal's Statute and its Annex in order to set out the procedure pursuant to which a member organization may unilaterally revoke its declaration of acceptance of the Tribunal's jurisdiction;

Desirous to align article III of the Tribunal's Statute with best practices regarding fair geographical and gender composition of the Tribunal and limitation of the judges' term of office;

Noting that the Governing Body of the International Labour Office has reviewed and endorsed the text of the draft amendments to the Tribunal's Statute and to the Annex as well as the transitional measures;

adopts the following amendments to the Statute and to the Annex to the Statute of the Administrative Tribunal of the International Labour Organization, as well as the transitional measures for the implementation of amended article III of the Statute:

#### STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION

Adopted by the International Labour Conference on 9 October 1946 and amended by the Conference on 29 June 1949, 17 June 1986, 19 June 1992, 16 June 1998, 11 June 2008, ~~and~~ 7 June 2016 and ... June 2020.

[...]

#### ARTICLE II

[...]

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules, and which is approved by the Governing Body. An organization may withdraw its declaration recognizing the jurisdiction of the Tribunal in accordance with the procedure set out in the Annex.

[...]

#### ARTICLE III

1. The Tribunal shall consist of seven judges who shall all be of different nationalities. Due regard shall be given to geographical distribution and gender balance. The judges shall be considered officials of the International Labour Organization other than officials of the International Labour Office under the Convention on the Privileges and Immunities of the Specialized Agencies.

2. The judges shall be appointed for ~~a period of three years~~ [VARIANT 1] [one non-renewable term of seven years] OR [VARIANT 2] [a period of five years, renewable once] by the International Labour Conference.

[...]

ANNEX TO THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL  
OF THE INTERNATIONAL LABOUR ORGANIZATION

1. To be entitled to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization in accordance with paragraph 5 of article II of its Statute, an international organization must either be intergovernmental in character, or fulfil the following conditions:

- (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.

2. The Statute of the Tribunal applies in its entirety to such international organizations subject to the following provisions which, in cases affecting any one of these organizations, are applicable as follows:

*Article VI, paragraph 2*

The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office, to the executive head of the international organization against which the complaint is filed, and to the complainant.

*Article VI, paragraph 3*

Judgments shall be drawn up in two copies, of which one shall be filed in the archives of the International Labour Office and the other in the archives of the international organization against which the complaint is filed, where they shall be available for consultation by any person concerned.

*Article IX, paragraph 2*

Expenses occasioned by the sessions or hearings of the Tribunal shall be borne by the international organization against which the complaint is filed.

*Article IX, paragraph 3*

Any compensation awarded by the Tribunal shall be chargeable to the budget of the international organization against which the complaint is filed.

3. An international organization may withdraw its declaration recognizing the jurisdiction of the Tribunal in accordance with the principles of good faith and transparency. The organization shall address to the Director-General an official communication notifying the relevant decision which should emanate from the same organ which decided to recognize the Tribunal's jurisdiction or the organ currently competent to take such a decision. This

communication may contain relevant information such as the reasons for withdrawing the recognition of the Tribunal's jurisdiction, the alternative means of employment dispute settlement envisaged and any consultations with the staff representative bodies prior to the withdrawal decision.

4. At its next Session following the notification of withdrawal, the Governing Body, after consultation with the Tribunal, shall take note of the withdrawal of the organization concerned, and shall confirm that as of that date, or any other later date as may be agreed upon with the organization concerned, the organization shall no longer be subject to the competence of the Tribunal. No complaint filed against the organization after the effective date of the withdrawal shall be entertained by the Tribunal.

#### TRANSITIONAL MEASURES

The provisions on the term of office of judges set out in Article III, paragraph 2, of the Statute, shall apply to new judges appointed after June 2020.

#### OR

As a transitional measure, the judges appointed prior to June 2020 may, upon completing their present terms, be reappointed for one further non-renewable term of [seven] [five] years].