



NINETEENTH ITEM ON THE AGENDA

Other personnel questions**Matters relating to the Administrative Tribunal of the ILO****Recognition of the Tribunal's jurisdiction by the Permanent Court of Arbitration (PCA)**

1. By a letter dated 29 June 2007 (see appendix), Mr Tjaco van den Hout, Secretary-General of the Permanent Court of Arbitration (PCA), informed the Director-General of the International Labour Office that on 24 May 2007 the PCA's Administrative Council had endorsed the PCA's new Staff Rules and Directives which recognize the jurisdiction of the Administrative Tribunal of the International Labour Office (Tribunal) in accordance with Article II, paragraph 5, of its Statute. In his letter, the Secretary-General of the PCA asked that his request for recognition of the Tribunal's jurisdiction be transmitted to the Governing Body of the ILO for its approval.
2. The PCA was established under the 1899 Convention for the Pacific Settlement of International Disputes, which was revised in 1907. The PCA currently has 107 member States. The PCA's budget is funded in part by contributions from member States, the amount of which is based on a system of units as applicable in the International Bureau of the Universal Postal Union. Pursuant to Article 49 of the 1907 Convention for the Pacific Settlement of International Disputes (1907 Convention), the PCA Administrative Council, consisting of member States' diplomatic representatives accredited to the Netherlands, supervises the PCA's administration, budget and expenditure. The PCA's Secretariat – the International Bureau, headed by its Secretary-General – provides registry services and administrative support to tribunals and commissions.
3. The PCA was established to facilitate arbitration and other forms of dispute resolution. Its founding Conventions establish procedures for arbitrating disputes between States. Subsequently, the PCA's activities extended to the provision of services for the resolution of disputes involving various combinations of States, state entities, international organizations and private parties. The PCA administers arbitration, conciliation and fact-finding in disputes involving the aforementioned parties. It also offers hearing facilities and ancillary administrative services to tribunals operating ad hoc or under the auspices of another institution. Under the United Nations Commission on International Trade Law

Arbitration Rules, the PCA Secretary-General is charged with designating “appointing authorities” upon the request of a party to arbitral proceedings. The PCA also compiles and edits scholarly works on issues of international law and dispute resolution.

4. The PCA is an inter-governmental organization. In accordance with Article 22 of the 1899 Convention and Article 43 of the 1907 Convention, the seat of the PCA is The Hague, the Netherlands. Article 2 of the 1999 Agreement Concerning the Headquarters of the Permanent Court of Arbitration between the Netherlands and the PCA (“Headquarters Agreement”) acknowledges that the PCA possesses full legal personality, including the capacity to contract, to acquire and dispose of immovable and movable property; and to institute legal proceedings. Pursuant to Article 3 of the Headquarters Agreement, the PCA enjoys immunity from every form of legal process unless it expressly waives its immunity.
5. Pursuant to the widening of the PCA’s scope of activities and its increased case load in recent years, the PCA now has more than 20 staff members. Their conditions of employment are set forth in the Staff Rules and Directives of the International Bureau which came into effect on 29 June 2007. The Staff Rules provide, subject to the approval of the ILO Governing Body, for the possibility of referring to the Tribunal applications alleging non-observance of staff members’ terms of employment, including all pertinent rules and directives.
6. In order to be eligible for approval under Article II, paragraph 5, of the Tribunal’s Statute, the PCA must be considered either to be an inter-governmental organization or to fulfil certain criteria set out in the annex to the Statute. According to the available information, the PCA is an international inter-governmental organization established by treaty. Furthermore, the PCA has objectives that respond to the general interest of the international community and its functions are of an ongoing nature. In addition, the PCA is not required to apply any national law in its relations with its officials and enjoys immunity from legal process in its host country. The financial contributions from its members guarantee the stability of the PCA’s budgetary resources.
7. The Tribunal’s jurisdiction under Article II, paragraph 5, of its Statute already extends to 50 organizations other than the ILO. The recognition of the Tribunal’s jurisdiction by other organizations entails no additional cost to the ILO. Each organization contributes, in amounts proportionate to the number of its staff, to much of the running costs of the Tribunal’s secretariat. In addition, 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.
8. ***In light of the above, the Committee may wish to recommend that the Governing Body approve the recognition of the Tribunal’s jurisdiction by the PCA, with effect from the date of such approval.***

Geneva, 2 October 2007.

Point for decision: Paragraph 8.

Appendix



PERMANENT COURT OF ARBITRATION

cc RE OFF
JUAUP
CABINET

H.E. Mr. Juan Somavia
 Director-General
 International Labour Organisation
 4, route des Morillons
 CH-1211 Geneva 22
 Switzerland

BIT REGISTRY

- 2 JUL 2007

June 29, 2007

BI 50,274

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REF:

RE: RECOGNITION OF THE JURISDICTION OF THE ILO ADMINISTRATIVE TRIBUNAL

Dear Mr. Somavia,

The Permanent Court of Arbitration (PCA) is an intergovernmental organization with its headquarters in The Hague, The Netherlands. The PCA was established as the first global mechanism for the settlement of disputes between States by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Peace Conference. The 1899 Hague Convention was revised at the second Hague Peace Conference held in 1907. The PCA currently comprises 107 Member States that have acceded to one or both of the founding conventions. The PCA's Secretariat, the International Bureau, is headed by its Secretary-General.

I have the honor to request that the Governing Body of the ILO approve the PCA's recognition of the jurisdiction of the ILO Administrative Tribunal with regard to the appeal procedure provided for in Rule 11.2 of our Staff Rules. This request follows endorsement of the Staff Rules on May 24, 2007 by the PCA's Administrative Council (its governing body, consisting of representatives of its Member States) at its meeting. The Staff Directives, which supplement the Staff Rules where necessary, came into effect on June 29, 2007.

Please find attached copies of the following documents:

- 1899 Hague Convention on the Pacific Settlement of Disputes;
- 1907 Hague Convention on the Pacific Settlement of Disputes;
- Headquarters Agreement with the Royal Kingdom of The Netherlands;
- list of Member States;
- consolidated Staff Rules and Directives of the International Bureau dated June 29, 2007.

I am at your disposal for any additional information that you may require.

I take this opportunity to assure you of my highest consideration.

Yours sincerely,

Tjaco T. van den Hout
 Secretary-General

Encl.

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