



FIFTEENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO**Recognition of the Tribunal's jurisdiction by the ITER International Fusion Energy Organization (ITER Organization)**

1. By a letter dated 1 August 2008 (see appendix), Mr Kaname Ikeda, Director-General of the ITER Organization, informed the Director-General of the International Labour Office that the ITER Council in June 2008 had endorsed the Organization's new Staff Regulations, which recognize the jurisdiction of the Administrative Tribunal of the ILO ("Tribunal") in accordance with article II, paragraph 5, of the Tribunal's Statute. In his letter, the Director-General of the ITER Organization 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 ITER Organization was created pursuant to the 21 November 2006 *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project* ("the Agreement"). The initial duration of the Agreement is 35 years and it can be extended by unanimous decision of the ITER Council.
3. The current members are six States and one international organization, the European Atomic Energy Community (EURATOM), and the ITER Organization is open to applications for membership by other States and international organizations. Its headquarters are established in St Paul lez Durance, Bouches du Rhône, France.
4. The ITER Organization was established to provide for and to promote cooperation among its members on the ITER project, an international project which aims to demonstrate the scientific and technological feasibility of fusion as an energy source for peaceful purposes. The purpose of the ITER Organization is, inter alia, to construct, operate, exploit and deactivate ITER research facilities and to promote public understanding and acceptance of fusion energy.
5. The ITER Organization comprises two elements: (1) the Council, composed of representatives of all members; and (2) the Director-General and the staff. The responsibilities of the staff are exclusively international in character. The financing of the ITER Organization is ensured through contributions in kind and in cash to the budget, determined in accordance with the document *Value Estimates for ITER Phases of*

Construction, Operation, Deactivation and Decommissioning and Form of Party Contributions. These contributions may be updated by unanimous decision of the ITER Council.

6. Article 5 of the Agreement stipulates that the ITER Organization has international legal personality. It also has the capacity to conclude contracts, acquire, hold and dispose of property, obtain licences and institute legal proceedings. Pursuant to article 12 of the Agreement, a special *Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project* ensures that the ITER Organization enjoys the privileges and immunities normally granted to intergovernmental organizations in all of its member States. In addition, on 7 November 2007, it concluded with the Government of France the *Agreement regarding the Headquarters of the ITER Organization and the Privileges and Immunities of the ITER Organization on French Territory*. This Agreement stipulates that the ITER Organization enjoys immunity of jurisdiction and action unless the latter are formally waived by it, or in the event of a limited number of other exceptions not relevant to the relationship between the ITER Organization and its staff.
7. The ITER Organization currently has 276 staff members. Their conditions of employment are set out in the Staff Regulations as initially adopted by the ITER Council on 28 November 2007 and revised in June 2008. Subject to the approval of the ILO Governing Body, the staff regulations provide for the possibility of referring applications alleging non-observance of staff members' terms of employment to the Tribunal.
8. In order to be eligible for approval under article II, paragraph 5, of the Tribunal's Statute, the ITER Organization must be considered either to be an intergovernmental organization or to fulfil certain criteria set out in the annex to the Statute. According to the available information, the ITER Organization is indeed an international intergovernmental organization established by an international treaty. Although this treaty has a limited duration, its extension is not excluded, which implies that its functions are of an ongoing nature. In addition, as indicated above, the ITER Organization 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 method of financing will ensure the stability of its budgetary resources.
9. The Tribunal's jurisdiction under article II, paragraph 5, of its Statute already extends to 55 organizations other than the ILO. Recognition of the Tribunal's jurisdiction by other organizations entails no additional costs to the ILO. Each organization contributes, in amounts proportionate to the number of its staff, to the running costs of the Tribunal's secretariat. Furthermore, the Statute requires organizations against which complaints are filed to bear the expenses of sessions and hearings and to pay any award of compensation made by the Tribunal.
10. ***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 ITER International Fusion Energy Organization, with effect from the date of such approval.***

Geneva, 21 October 2008.

Point for decision: Paragraph 10.

Appendix

Letter addressed to the Director-General of the ILO by the Director-General of the ITER Organization

Re: Recognition of the jurisdiction of the ILO Administrative Tribunal
by the ITER Organization

Dear Sir,

I have the honour to present a request by the ITER International Fusion Energy Organization (hereinafter "ITER Organization") to extend the jurisdiction of its Administrative Tribunal to the staff of the ITER Organization. Having considered the Statute and Rules of Procedure, the ITER Organization undertakes to recognize the Tribunal's jurisdiction.

The ITER Organization is established by international agreement concluded by EURATOM, China, India, Japan, Republic of Korea, Russian Federation and the United States of America, which are the Members of the Organization. The Depositary of the Agreement is the Director-General of the International Atomic Energy Agency.

The purpose of the ITER Organization is to provide for and to promote cooperation among the Members on the ITER Project, an international project that aims to demonstrate the scientific and technological feasibility of fusion energy for peaceful purposes.

The Seat of the ITER Organization is in Saint Paul lez Durance, Bouches du Rhône, France.

The responsibilities of the Director-General and the staff are exclusively international in character, and in the discharge of their duties they will not seek or receive instructions from any government or from any authority external to the ITER Organization.

The ITER Organization, its property and assets, and the Director-General and its staff, within the territory of each Member, enjoy such privileges and immunities as are necessary for the exercise of their functions. These privileges and immunities are detailed in the Headquarters Agreement that has been concluded with France.

The ITER Organization is established for 35 years. The ITER Council is the principal organ of the Organization and is composed of representatives of all the Members. The Director-General is the chief executive officer and the representative of the ITER Organization in the exercise of its legal capacity.

The Staff Regulations of the ITER Organization have been modified to provide for the competency of the International Labour Organization, pending approval by the Governing Body of the International Labour Office.

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

I enclose for your information the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project, the Agreement on Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project, the Agreement between the ITER International Fusion Energy Organization and the Government of the French Republic regarding the Headquarters of the ITER Organization and the Privileges and Immunities of the ITER Organization on French Territory, and the Staff Regulations of the ITER International Fusion Energy Organization.

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) Kaname Ikeda
Director-General
ITER Organization