



# Governing Body

340th Session, Geneva, October–November 2020

Programme, Financial and Administrative Section

PFA

Personnel Questions Segment

**Date:** 16 September 2020

**Original:** English

Thirteenth item on the agenda

## Matters relating to the Administrative Tribunal of the ILO

### Recognition of the Tribunal's jurisdiction by the Pacific Community

#### Purpose of the document

This document contains a proposal regarding the approval of the recognition of the Tribunal's jurisdiction by one international organization (see draft decision in paragraph 8).

**Relevant strategic objective:** None.

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

**Policy implications:** None.

**Legal implications:** Extended jurisdiction of the Administrative Tribunal.

**Financial implications:** None.

**Follow-up action required:** None.

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

**Related document:** GB.337/PFA/13/1.



1. Since the Governing Body last approved the recognition of the jurisdiction of the Administrative Tribunal of the International Labour Organization (hereinafter "the Tribunal") by two international organizations in October 2019,<sup>1</sup> the Director-General has received a declaration by a further international organization recognizing that jurisdiction.
2. According to article II(5) of the Tribunal's Statute, in order to be eligible for admission, an international organization must either be intergovernmental in character or fulfil the following conditions, set out in the Annex to the Statute:
  - (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.
3. By letter dated 17 July 2020, the Director-General of the Pacific Community (SPC) informed the Director-General that the SPC had decided to recognize the Tribunal's jurisdiction in accordance with article II(5) of the Tribunal's Statute. In his letter, the Director-General of the SPC asked that his request for recognition of the Tribunal's jurisdiction be transmitted to the Governing Body for its approval (see Appendix).
4. The SPC is the principal scientific and technical organization of the Pacific region and was established in 1947 with the signing of the Agreement Establishing the South Pacific Commission (Canberra Agreement) by the Governments of Australia, France, the Netherlands, New Zealand, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. At present, the SPC has 26 member States and territories, including 22 Pacific island countries and territories and four of the original founding members.
5. According to article IV of the Agreement establishing the Pacific Community, the SPC is the consultative and advisory body to the participating governments in matters affecting the economic and social development of the territories within the territorial scope of the Pacific Community and the welfare and advancement of their peoples. The main organs of the SPC are the Conference, the Committee of Representatives of Governments and Administrations, and the Secretariat headed by the Director-General.
6. The SPC's headquarters are located in Noumea, New Caledonia. Under articles 2 and 6 of the Headquarters Agreement between the Government of the French Republic and the Pacific Community signed in May 2003, the SPC has legal personality and enjoys immunity from legal process and from execution in the performance of its official activities. Article 14 of the Headquarters Agreement sets out the privileges and immunities enjoyed by SPC staff members, including immunity from legal process for acts performed by them in carrying out their duties and within the strict limits of their responsibilities. The SPC currently employs approximately 600 staff members.
7. Subject to the Governing Body's approval of the acceptance of the Tribunal's jurisdiction by the SPC, the Tribunal's jurisdiction will extend to 57 organizations other than the ILO. The recognition of the Tribunal's jurisdiction by other organizations entails no additional

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<sup>1</sup> GB.337/PFA/PV, para. 355.

cost to the ILO, since the organizations against which complaints are filed are required under the Statute to bear the expenses of sessions and hearings and pay any award of compensation made by the Tribunal. Those organizations also contribute, in amounts proportionate to the number of their staff, to most of the running costs of the Tribunal's registry.

## ▶ Draft decision

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8. **The Governing Body approved by correspondence the recognition of the Tribunal's jurisdiction by the Pacific Community (SPC) with effect from the date of such approval.**

▶ **Appendix**

Pacific  
Community  
Communauté  
du Pacifique

**SPC Headquarters**  
95 Promenade Roger Laroque  
BP D5, 98848 Noumea Cedex  
New Caledonia

Email: [spc@spc.int](mailto:spc@spc.int)  
Phone: +687 26 20 00  
Fax: +687 26 38 18

**Siège de la CPS**  
95 Promenade Roger Laroque  
BP D5, 98848 Nouméa Cedex  
Nouvelle-Calédonie

Email : [spc@spc.int](mailto:spc@spc.int)  
Tel : +687 26 20 00  
Fax : +687 26 38 18

17 July 2020

Mr Guy Ryder  
Director-General of the International Labour Organization  
4 route des Morillons  
Geneva 1211  
SWITZERLAND

Dear Mr Ryder,

**Recognition of the jurisdiction of the International Labour Organization Administrative Tribunal**

Greetings from the Pacific Community (SPC).

I have the honour to present the request of SPC to the Governing Body of the International Labour Organization (ILO) to extend the jurisdiction of the ILO Administrative Tribunal to SPC and its officials.

SPC is an intergovernmental organisation, established in 1947 by a treaty titled 'The Agreement Establishing the South Pacific Commission'. The name South Pacific Commission was changed to 'Pacific Community' in 1997 by a decision adopted by the organisation's governing body. It is owned and governed by 26 member States and territories. SPC has its headquarters in New Caledonia and offices in Fiji, France, Vanuatu and Federated States of Micronesia. SPC has approximately 600 officials working across these offices and in other member countries and territories.

SPC has a Headquarters Agreement in place with France for SPC's headquarters, and Host Country Agreements in place for its offices, which reaffirm each country's recognition of SPC's international juridical personality and confers on it privileges and immunities in accordance with international law. Accordingly, SPC is exempt from applying national law in its relations with its employees and enjoys immunity from legal process.

SPC employs its staff directly under its own regulations and policies. On 20 June 2019, SPC's governing body directed the Secretariat to take appropriate steps to recognise the jurisdiction of the ILO Administrative Tribunal. On 1 July 2020, SPC passed new *Staff Regulations* and a *Manual of Staff Policies* which was the first step to giving effect to the direction of SPC's governing body. Under Chapter XIII, Part B, section 8 of SPC's *Manual of Staff Policies*, once the ILO Administrative Tribunal extends its jurisdiction to SPC, SPC's staff members will be able to appeal a decision to the ILO Administrative Tribunal for non-observance, in substance or in form, of the terms of appointment, and of provisions of the *Staff Regulations* and *Manual of Staff Policies*.

Chapter XIII of SPC's *Manual of Staff Policies* is clear that the decisions of the ILO Administrative Tribunal will be binding on SPC. SPC is prepared for any awards rendered against SPC to be chargeable to its budget. Under this policy, a transitional arrangement is in place where appeals against SPC's review process shall be settled through international arbitration if the ILO Administrative Tribunal has not yet extended its jurisdiction to SPC.

As set out above, SPC:

- a. is international in character, having regard to its establishment, membership, structure and scope of activity;
- b. is a subject of international law and, as such, is not required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process; and
- c. has functions of a permanent nature at the international level and offers sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the ILO Administrative Tribunal's judgments.

Accordingly, SPC meets the requirements set out in the annex to the Statute of the Administrative Tribunal of the ILO. I attach SPC's *Governance Compendium, Staff Regulations and Manual of Staff Policies* to the present letter.

I would appreciate your assistance in transmitting SPC's declaration to request to recognise the jurisdiction of the ILO Administrative Tribunal and request for the ILO Administrative Tribunal to extend its jurisdiction to SPC to the Governing Body for its review and approval. If you have any further questions regarding SPC's governance and legal affairs, please contact SPC's Principal Legal Officer, Ms Georgia Ramsay at [georgiar@spc.int](mailto:georgiar@spc.int).

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.



Dr Stuart Minchin  
Director-General