

UNION SYNDICALE FEDERALE

des Services publics européens et internationaux

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Brussels, 25 January 2016

Mr G. RYDER
Director General ILO

Subject: Reform of Art.XII ILOAT Statute,

Claim: ILOAT competence to submit questions of international law to the ICJ (The Hague)

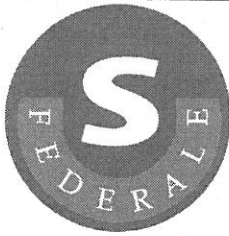
Dear Mr Ryder, dear Guy,

Union Syndicale Federale (USF) herewith submits a claim to the Director General of ILO aiming at a specific aspect of the functioning of the Administrative Tribunal of the International Labour Organisation. USF is a Federation of Unions of the European and International public services. We have been an EPSU and PSI affiliate for the last five decades. For five of USF's twenty branches, ILOAT is the competent court for labour and administrative disputes.

USF is aware of the many requests filed by unions of the international public services, as well as of the many publications of academics on the shortcomings of the legal systems which consist if an international organisation and ILOAT. USF strongly supports the suggestions and claims filed by these unions. We also welcome the mandate given by the ILO Governing Board to the ILO Director General (325th Session, Geneva, 29 October–12 November, document 2015GB.325/PFA/9/1 Rev., dated 15th October 2015) to examine the current situation of the ILOAT system.

On top of supporting the other unions' suggestions, USF submits to the ILO Director General and the experts who will carry out the ILOAT system examination a specific suggestion for reviewing Art.XII of the ILOAT Statute. Our suggestion goes beyond a removal of the asymmetry that currently leads to an inequality of arms in justice. USF's suggestion refers to the International Court of Justice case (2012 on ILOAT 2867) in which the ICJ judges issued generally negative comments on Art.XII of the ILOAT Statute.

USF's suggestion is that the International Organisations' Governing Bodies' competence to challenge the scope of jurisdiction of the ILOAT would be replaced with a new ILOAT competence under revised Art.XII to submit questions of international law to the ICJ.



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There are two options for extending this ILOAT competence.

A first option would be to enable the ILOAT judges to directly interrogate the ICJ on all issues already under the authority of the ICJ. This option may also require a revision of the ICJ Statute.

A second option would be that the ILO Governing Board's competence of putting a question to the ICJ would be extended to submissions of ILOAT. A possible wording of Art.XII including this second judicial path would be: "... if a question on the interpretation of law the ICJ is competent for is raised by the ILOAT Judges, the Governing Board shall submit the ILOAT request to the ICJ." This second option requires a revision of Art.XII ILOAT Statute / Art.XII of the Annex only.

The advantages of this revised procedure under new Art.XII ILOAT Statute would be manifold:

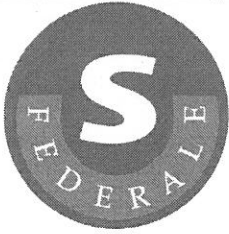
Firstly, the civil servants in the international public service would thus be put in a situation that approximates that of normal workers who benefit from the protection of the Constitutional laws of their country as well as from all ratified ILO and UN Conventions. Currently, international public service workers are still deprived of this protection, although the Member States have never decided to deprive international public service workers of such protection.

Secondly, this kind of judicial cooperation is well-known in a number of national constitutional and international legal systems and has a proven long-term record of efficiency, coherence and transparency.

In contrast with the application of national legislation to International Organisations which happens to be a delicate matter, the application of legislation approved and shared by these very Member states cannot introduce a distortion inside the legal order of an international organisation.

International Organisations and their many Human Resources departments would then get the support that is currently lacking on which kind of internal legislation is appropriate. A clear progress on sustainability and transparency of the work of International Organisations may be achieved beyond staff matters.

The ILOAT Judges would not anymore be left in limbo as they have been in quite some of their most important cases. An ICJ ruling would clarify to them what the Member States' intentions actually were, beyond the mere wording of the internal legislation, which may carry contradictions with higher levels of legislation and/or other international legislation shared by the same Member States.



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Harmonisation with higher levels of international legislation would be achieved without the creation of new courts and without embarking on complex amalgamations of legal systems, be it on the issue of *locus standi* or applicable law.

The procedure provided by the new Art.XII of the ILOAT Statute would prevent the ICJ from being swamped with individual cases. Only ILOAT judges would have the competence to analyse and apply the criteria to be met before the ICJ may be seized.

As a thorough review of the ILOAT functioning may now be considered, USF would appreciate a review of Art.XII ILOAT Statute in this sense, creating a new cooperation system with ILOAT and ICJ, involving the ICJ to the benefit of all actors.

Yours sincerely,

Dr. Bernd LOESCHER
President

Cc: Rosa, Pavanelli, Secretary General PSI
Cc: Jan Willem Goudriaan, Secretary General EPSU
Cc: FICSA