Introduction of CA/94/09 by the chairman of the Central Staff Committee during the 118. meeting of the Administrative Council on 24 June 2009

To begin I would like to quote the President of France. This quotation in French is taken from his speech on the occasion of the 90th anniversary of the founding of the International Labour Organisation:

Je voudrais proposer une autre révolution dans la gouvernance mondiale pour que les normes qui sont inscrites dans les accords internationaux soient effectivement appliquées. A quoi servent des normes qui n'ont aucun caractère obligatoire?

Although the President of the "Grande Nation" which has contributed so much to the idea of universal rights, is referring here to much more serious problems than those which arise within the European Patent Organisation, one can nonetheless apply the principle of his question to the EPO.

Why are international treaties, which have a binding effect for all Member States, like for example the ILO Conventions or human rights, not applied within the Office?

Some of you will no doubt say: we certainly have no problems with torture or child labour at the EPO. However, to reduce our understanding of these rights to these sort of shocking cases is to ignore the extent to which national legal systems are built on fundamental rights. Although their impact is often not visible in practice, the influence of fundamental rights on national law is considerable.

The Tribunal of the International Labour Organisation applies only explicitly recognised law in EPO cases and, in so doing, applies neither the conventions of the International Labour Organisation, nor the Convention on Human Rights.

To cite just one example from the jurisprudence:

Judgement 2611 ILOAT: *So far as concerns the Universal Declaration of Human Rights and the European Convention on Human Rights, they apply, according to their terms, to Member States not to international organisations.*

The Administrative Council attempted to address this deficit by means of a statement in the preamble of the Service Regulations in which is written:

The Administrative Council and the President of the Office note that when reviewing the law applied to the EPO staff the ILO Tribunal considers not only the legal provisions in force at the European Patent Organisation but also general legal principles, including ***human rights****. The Administrative Council also noted with approval the President's declaration that the Office adheres to the said legal provisions and principles.*

Many of you are lawyers who will therefore see more easily than me that this statement is of no legal consequence because it is merely an acknowledgement of alleged facts, without any verification thereof. In addition, the applicable legal

framework is not defined with the result that this statement has no consequences for the law to be applied by Tribunal of the ILO.
Some of you may now ask yourselves if, in removing this deficit, you will not be bestowing numerous additional rights on European Patent Office staff. This, however, would be the case only if an employee of the European Patent Office were to have lost these rights, which he has as a citizen of a Member State, upon commencement of employment at the Office. And I think that we agree that this should not be the case.

If the EPO were to establish explicitly those legal norms applicable in all Member States, then the Tribunal of the International Labour Organisation would be obliged to treat these norms as applicable law.

The EU saw itself confronted with the same problem, and it referred explicitly in article 6(2) of the Treaty of Amsterdam to the legal provisions of the European Convention on Human Rights. There it states:

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms …

This statement removed all doubt as to whether the Convention on Human Rights was applicable law for cases before the ECJ. This is a view shared also in the "International Organization Law Review" of 2004 on the topic of *"Accountability of International Organisations".*

The next question to be asked is: do we need this, or are would it not be like using a sledgehammer to crack a nut? Our answer is a clear: yes, we need fundamental rights. I provide you with a short example:

Let us take the, unfortunately not hypothetical, case of a handicapped job candidate to the EPO. The Office rejected this job applicant on the grounds that he is handicapped.

The human rights of this job applicant are infringed twice in this case. First, he is discriminated against on the grounds of his handicap and, second, he does not get the opportunity to challenge this discrimination. As a job applicant, he has no access to the EPO's internal appeal procedure, and the German courts have also disclaimed competence in view of the immunity of the EPO. This leaves him without any legal recourse other than the Court of Human Rights in Strasburg, where he has filed a complaint regarding infringement of Articles 6 and 13 ECHR.

I believe that the Office and the Organisation should seek to avoid a scandal and rapidly clarify in a legally binding manner once and for all that fundamental rights are applicable in the Office.

Why are we presenting this request under the heading of "Social Partnership"? Any partnership can function only if there exists a consensus about the basic principles on which it is built. Among the sovereign states of Europe such a consensus is built on a few fundamental conventions, such as the Convention on Human Rights, the European Social Charter, and the 8 core conventions of the ILO. For the staff of the EPO, the explicit, legally-binding establishment of this consensus is therefore a precondition for long-term stable partnership in the EPO.

The same applies for the second topic of our document - the representation rights for non-permanent staff at the Office. The national law of our Member States foresees representation rights for the worker's council of any firm taking on temporary workers, such as agency staff. These laws are not applied within the EPO, leaving these colleagues, whose contracts clearly fall under national law, in a legal vacuum. This too is a fact that is incompatible with social partnership.

This concerns a not insignificant number of staff. According to our estimates it involves over 1000 people. Although under national law there exists a duty of information of the employer towards the worker's council, we do not have the exact figures for non-permanent staff in the Office.

To conclude: We are not talking about a revolution as proposed by M. Sarkozy. Rather, we are requesting that the EPO catches up and establishes the fundamental legal framework which has long been taken for granted elsewhere in Europe. We are not requesting that the European Patent Organisation sign the Convention on Human Rights. We are not asking for additional rights. We merely wish to clarify, once and for all, that these fundamental rights are part of the applicable law in the Office. And that must happen in a way which leaves no doubt that this law is binding on the Office, such that it must be applied by the ILOAT. What we therefore request of you here today is a mandate for the Office to seek solutions which bring the needed clarification, together with the staff representation.

Thank you