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United Nations common system

Initial review of the jurisdictional set-up of the United Nations common system

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the initial review of the jurisdictional set-up of the United Nations common system ([A/75/690](#)). During its consideration of the report, the Advisory Committee met online with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses dated 16 February 2021.

2. The report of the Secretary-General is submitted pursuant to paragraph 8 of resolution [74/255](#) B, in which the General Assembly requested the Secretary-General, in his capacity as Chair of the United Nations System Chief Executives Board for Coordination, to conduct a review of the jurisdictional set-up of the common system and submit the findings of the review and recommendations to the Assembly as soon as practicable. The Secretary-General indicates that his report sets out the preliminary findings of the initial review conducted pursuant to that resolution ([A/75/690](#), para. 1).

II. General observations

A. Background and context

3. In its resolution [74/255](#) B, the General Assembly noted with concern that the organizations of the United Nations common system face the challenge of having two independent administrative tribunal systems, namely the International Labour Organization Administrative Tribunal (ILOAT) and the United Nations Tribunals,



with concurrent jurisdiction among the organizations of the common system¹ (resolution 74/255 B, para. 8).

4. The Secretary-General indicates in his report that similar concerns, in particular that the divergence in the jurisprudence of the two tribunal systems on matters relating to the International Civil Service Commission (ICSC) could undermine the coherence of the common system, began to emerge soon after the establishment of the Commission in 1975 and gave rise to extensive discussions and proposals over time (A/75/690, para. 43; see also *ibid.*, sect. II for an overview of previous efforts to address the challenges of having two tribunal systems for the common system). A survey of the jurisprudence from 1975 to 2016 undertaken by the Secretary-General (*ibid.*, sect. III) shows, however, that during that period the coexistence of the two tribunal systems did not result in divergent jurisprudence: the same ICSC matter was challenged in both ILOAT and a United Nations Tribunal in only three instances and, in each instance, both tribunals reached the same conclusions (*ibid.*, para. 83; see also paras. 8 and 15 below).

5. The Secretary-General nonetheless indicates that, even without divergent jurisprudence, having two tribunals can result in an inconsistent implementation of decisions and recommendations of ICSC across the United Nations common system, when one tribunal issues a judgment that does not bind all the organizations of the common system (A/75/690, para. 87). The report notes that such inconsistent implementation had occurred following the issuance of ILOAT judgments, also on three occasions up to 2016 (*ibid.*, para. 86; see also para. 8 below).

6. Furthermore, the Advisory Committee was informed, upon enquiry, that organizations are bound to execute the judgments of the tribunal whose jurisdiction they have accepted, even where they entail an adjustment of the implementation of an ICSC decision or recommendation in a manner not originally envisaged by ICSC. At the same time, organizations that have joined the United Nations common system

¹ According to information provided by the Secretariat, the United Nations common system organizations that have accepted the jurisdiction of the International Labour Organization Administrative Tribunal (ILOAT) are the following: Comprehensive Nuclear-Test-Ban Treaty Organization, Food and Agriculture Organization of the United Nations (FAO), International Atomic Energy Agency (IAEA), International Labour Organization (ILO), International Telecommunication Union (ITU), Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), Universal Postal Union (UPU), World Food Programme (WFP), World Health Organization (WHO), World Intellectual Property Organization (WIPO) and World Tourism Organization (UNWTO). The common system organizations that have accepted the jurisdiction of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal are the following: United Nations, International Trade Centre (ITC), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), United Nations Development Programme (UNDP), United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), United Nations Population Fund (UNFPA), United Nations Office for Project Services (UNOPS) and World Meteorological Organization (WMO). In addition, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat) and the United Nations Office on Drugs and Crime (UNODC), which are not listed separately in the common system, have also accepted the jurisdiction of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. The following common system organizations have only accepted the jurisdiction of the United Nations Appeals Tribunal: International Civil Aviation Organization (ICAO), International Fund for Agricultural Development (IFAD), International Maritime Organization (IMO), International Seabed Authority, International Tribunal for the Law of the Sea and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

have accepted the statute of ICSC, which, in article 1, sets out the authority and mandate of the Commission.²

7. The Advisory Committee notes that the concerns regarding potential divergent jurisprudence on ICSC-related matters and the inconsistent implementation of the Commission's decisions and recommendations in the context of the two tribunal systems are epitomized in the ongoing application of two concurrent post adjustment multipliers in the United Nations common system at the Geneva duty station, over which the General Assembly expressed concern (resolution 74/255 B, para. 7) and which prompted its request for a review of the jurisdictional set-up of the common system.

8. Specifically, in 2019, ILOAT issued a series of final judgments³ which set aside the payment of post adjustment amounts calculated in accordance with post adjustment multipliers established by ICSC for Geneva in 2017. The International Labour Organization Administrative Tribunal reached this outcome principally "on the ground that under its statute, the Commission had authority only to issue recommendations and not binding decisions on post adjustment multipliers" (A/75/690, para. 2; see also A/75/30, para. 151, and A/74/30, paras. 17–19). The Advisory Committee was informed, upon enquiry, that the organizations party to the litigation (International Labour Organization (ILO), International Organization for Migration, International Telecommunication Union, World Health Organization and World Intellectual Property Organization) executed the judgments and applied, retroactively, post adjustment multipliers different from those officially promulgated by ICSC. Other organizations under the jurisdiction of ILOAT (Food and Agriculture Organization of the United Nations, International Atomic Energy Agency, Joint United Nations Programme on HIV/AIDS, United Nations Educational, Scientific and Cultural Organization, Universal Postal Union, World Food Programme and World Tourism Organization) also decided to follow ILOAT judgments so as to avoid similar challenges by their staff. This created a situation of different payments of post adjustment among the organizations in the common system at the same duty station, depending on whether they had accepted the jurisdiction of ILOAT. Moreover, the Committee was informed that in July 2020, the United Nations Dispute Tribunal issued 19 judgments on the Geneva post adjustment multipliers and reached a different conclusion from ILOAT. It is expected that the resulting appeals will be considered by the United Nations Appeals Tribunal in its session scheduled from 8 to 19 March 2021.

9. The Advisory Committee recalls that in its resolution 74/255 A, the General Assembly, inter alia, reaffirmed the authority of ICSC to continue to establish post adjustment multipliers for duty stations in the United Nations common system, under article 11 (c) of the statute of the Commission, and urged the member organizations of the common system to cooperate fully with the Commission in line with its statute

² According to article 1 of the statute, the International Civil Service Commission was established for the regulation and coordination of the conditions of service of the United Nations common system. The Commission performs these functions in respect of the United Nations and those specialized agencies and other international organizations which participate in the United Nations common system and which accept the statute of the Commission. Acceptance of the statute of the Commission is effected through written notification by the executive head of an agency or organization to the Secretary-General.

³ Decisions of ILOAT are taken by a majority vote and are without appeal (A/75/690, para. 21). In contrast, under the two-tiered administration of justice system established by the General Assembly in 2007, the United Nations Appeals Tribunal is competent to hear appeals against judgments issued by the United Nations Dispute Tribunal as well as decisions of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund (*ibid.*, paras. 33–35).

to restore consistency and unity of the post adjustment system as a matter of priority and as early as practicable (resolution 74/255 A, para. 3). The Assembly reiterated its request to the Commission to recommend measures to address non-compliance with ICSC decisions and recommendations and to report thereon to the Assembly at its seventy-fifth session (resolution 74/255 B, para. 6; see also paras. 2 and 3 above). The Assembly also invited the Secretary-General, in his capacity as Chair of the United Nations System Chief Executives Board for Coordination, to make every effort to ensure that decisions of the Assembly are implemented in full and without undue delay across the United Nations common system (resolution 74/255 B, para. 9). Furthermore, the Assembly, in its resolution 75/245, reiterated that failure to fully respect decisions taken by the Commission under article 11 (c) of its statute could prejudice claims to enjoy the benefits of participation in the common system and jeopardize organizations' participation in the United Nations Joint Staff Pension Fund (resolution 75/245, para. 7; see also *ibid.*, para. 10). The Assembly also requested the Secretary-General to consult with the United Nations Joint Staff Pension Board to review whether all participating organizations are observing the common system of salaries, allowances and other conditions of service and include the results of this review in his next report to the Assembly (*ibid.*, para. 8).

B. Purpose, scope and methodology of the report of the Secretary-General

10. The Secretary-General indicates that his initial review of the jurisdictional set-up is focused on how the coexistence of two tribunal systems affects consistency in the implementation of ICSC decisions and recommendations (A/75/690, para. 3), and he presents a range of possible options to address the issue (*ibid.*, sect. IV). Upon enquiry, the Advisory Committee was informed that the purpose of the report was, foremost, to convey the complexity of the jurisdictional set-up of the United Nations common system and the multitude of stakeholders that would be affected by any changes.

11. In paragraphs 4 to 7 of the report, the Secretary-General describes the consultations that informed the review, which included, among others: members of the United Nations System Chief Executives Board for Coordination and other organizations of the United Nations common system; the three staff federations; ILOAT and the United Nations Tribunals and their registrars; the Internal Justice Council and the Office of Administration of Justice. The Secretary-General states that the International Civil Service Commission was invited to provide observations on the report, but did not do so given the preliminary stage of the review (*ibid.*, para. 8). The Advisory Committee was further informed, upon enquiry, that the Commission would discuss the review at its next session, tentatively scheduled for May 2021, and issue its views shortly thereafter. **The Advisory Committee notes that the report of the Secretary-General does not contain the views of the International Civil Service Commission. The Committee trusts that the Commission will provide its views on the review of the jurisdictional set-up of the common system in line with General Assembly resolution 75/245 (see resolution 75/245, para. 9; see also para. 32 below).**

12. In his report, the Secretary-General indicates that the preliminary exchanges conducted among the administrations of the organizations of the United Nations common system reveal stark differences of opinion on the gravity of the issue of inconsistent implementation of ICSC decisions or recommendations, and on suitable options for addressing it. The Secretary-General further indicates that it is for the Member States, through the General Assembly and the governing bodies of the organizations of the United Nations common system, to assess the gravity of the

problem of inconsistent implementation of ICSC decisions or recommendations and to determine the necessity of preventing or mitigating the risks of inconsistency, as well as the appropriate degree of mitigation (A/75/690, para. 89). The Advisory Committee was informed, upon enquiry, that no single option has attracted widespread support, and organizations provided only preliminary views as to whether proposed options should be explored further (ibid., annex III; see also para. 18 below).

13. **The Advisory Committee stresses the importance of preserving a single, unified and coherent United Nations common system (see also resolutions 75/245, preamble and 74/255, preamble), and recalls the respective roles of the General Assembly and ICSC in approving, regulating and coordinating conditions of service and entitlements for all staff serving in the organizations of the United Nations common system, as reaffirmed in resolution 74/255 B (paras. 3 and 4). The Committee considers therefore that issues which may undermine the unity and coherence of the common system must be addressed appropriately, also taking into account that the collaboration among the organizations of the common system has increased over time (see also para. 6 above).**

14. **In this connection, the Advisory Committee notes the stark difference of opinion, among the consulted stakeholders, regarding the gravity of the issue itself. The Committee recommends therefore that the General Assembly request the Secretary-General to provide, in his next report, a more comprehensive and in-depth analysis of the implications of divergent jurisprudence along with the inconsistent implementation of ICSC recommendations and decisions on the unity of the common system, as a basis for identifying suitable, practical and proportionate options to resolve the issue.**

15. The Advisory Committee was informed, upon enquiry, that the jurisprudential review does not examine judgments that are subject to ongoing litigation, so as to avoid the perception of any undue pressure on the United Nations Appeals Tribunal and the potential risk of prejudging the outcome of ongoing proceedings. The Committee notes that in the report, the Secretary-General provides a survey of jurisprudence of the two tribunal systems on matters related to ICSC only up to 2016, and does not discuss ILOAT judgments of 2019, nor the related cases decided by the United Nations Dispute Tribunal in 2020 and the resulting appeals before the United Nations Appeals Tribunal, which are expected to be considered in March 2021 (A/75/690, para. 72; see also paras. 8 above and para. 32 below). **The Advisory Committee trusts that updated information will be provided to the General Assembly during the consideration of the present report.**

16. The Advisory Committee was also informed, upon enquiry, that, according to the Secretariat, it could be expected that, as the request for the review of the jurisdictional set-up of the common system was made in a General Assembly resolution on the United Nations common system, the Fifth Committee would be involved in the review of the report, and, that, as the subject matter of the report relates to administrative tribunals, the Sixth Committee may also be involved in the review of these issues at an appropriate stage to be determined by the Fifth Committee. **The Advisory Committee notes that legal matters discussed in the report of the Secretary-General are outside its purview and may need to be addressed, as the General Assembly may deem appropriate.**

III. Observations on options

17. In section IV of his report, the Secretary-General presents an overview of four sets of options: the maintenance of the status quo; measures unrelated to the structure or jurisdiction of the tribunals; measures involving universal changes to the tribunals;

and measures related to changes to the adjudication of cases involving ICSC matters. The options are not presented for a decision by the General Assembly at the present stage, but are intended to facilitate a discussion of possible avenues to explore in the future (A/75/690, paras. 91 and 93; see also para. 28 below).

18. The Advisory Committee was informed, upon enquiry, that the options entail varying degrees of disruption and risks. In terms of cost, time and changes to the legal framework, universal changes to the tribunal system would be the most complex; the establishment of a joint chamber would require additional costs, time for consultation and revision of the legal framework; measures unrelated to the structure or jurisdiction of the tribunals would entail additional costs and time; and maintaining the status quo would present minimal complexity. The Committee was also informed that, at this stage, the Secretariat does not have information about financial implications, specific time frames and the likelihood of acceptance by staff associations and organizations of the various options, as the views they provided are only preliminary and not indicative of the strength of support for each option (see also A/75/690, annex III). The Secretariat, however, considers that progress in the discussions among stakeholders would be made as options are developed further.

Maintenance of the status quo

19. The option of maintaining the status quo is described in paragraphs 94 and 95 of the report. The Advisory Committee was informed, upon enquiry about the views of the Secretariat, that the Secretariat does not favour this option, as even one single incident of divergence or inconsistency can have significant financial implications and undermine the confidence of staff members in how ICSC and management exercise their functions.

Measures unrelated to the structure or jurisdiction of the tribunals

20. Options unrelated to the structures or jurisdiction of the tribunals presented in the report encompass measures directly involving ICSC (ibid., paras. 97–104) and the encouragement of increased exchanges between the two tribunal systems (ibid., para. 105).

21. One option relates to the review of the functioning of the Commission (ibid., paras. 97–100). In the report, the Secretary-General recalls that ICSC initiated in 2018 a review of the consultative process and its working arrangements, which is also considering any possible non-compliance or difficulties encountered with the implementation of the Commission's decisions and related resolutions of the General Assembly, and that this review remains ongoing (ibid., para. 99). The Advisory Committee notes that the report of the Secretary-General does not address how a potential review of the functioning of ICSC would prevent the occurrence of divergent jurisprudence, given the independence of the tribunals.

22. A further proposed option relates to the establishment of a process to facilitate the prompt review of judgments and the issuance of guidance from ICSC, which could include, inter alia, revising its recommendations and decisions in a manner that is applicable to all organizations of the common system (ibid. paras. 101–104). While noting that this option may be problematic in cases of concurrent litigation (ibid., para. 103), it is indicated in the report that the Secretariat would support its further development (see ibid., annex III), mindful that the concurrence of ICSC would be required, given that the development of any process envisaged under this option would require action by ICSC and its secretariat (ibid., para. 104). **The Advisory Committee recalls that the General Assembly reiterated its request that the executive heads of organizations of the common system consult with ICSC in**

cases involving its recommendations and decisions before the tribunals in the United Nations system (resolution 74/255 A, para. 5).

23. The Advisory Committee was informed, upon enquiry, that the rules of procedure of the two tribunal systems already provide a basis for ICSC to provide details and expertise in the course of litigation. **The Advisory Committee recalls that the General Assembly invited ICSC to carry out a needs assessment of its communication and legal expertise functions within its secretariat (resolution 74/255 B, para. 10; see also resolution 75/245 D, para. 1, A/75/7/Add.21, para. 8 and A/75/30, chap. VI).**

24. Regarding the encouragement of increased exchanges between ILOAT and the United Nations Tribunals, the Secretary-General indicates in the report that this option would contribute to greater awareness of the jurisprudence of the other tribunal, but would not address the problem of inconsistent implementation of ICSC decisions and recommendations, and that care should be taken to avoid a perception of encroachment on the independence of the judges. **While noting the limitations of this option, the Advisory Committee is of the view that, in general, greater exchanges between the tribunals, as appropriate, would be beneficial (see also para. 32 below).**

Universal changes to the tribunals

25. In paragraphs 106 to 124 of his report, the Secretary-General discusses options involving universal changes to the tribunals. These options include: (a) the abolition of the current tribunals and the establishment of a new single tribunal to serve the entire United Nations common system; (b) the establishment of a single appellate mechanism, which could be undertaken with the United Nations Appeals Tribunal serving as an appellate mechanism for both the United Nations Dispute Tribunal and ILOAT; through a single review mechanism; or with the replacement of the United Nations Appeals Tribunal by an appellate tribunal that would have jurisdiction over both ILOAT and the United Nations Dispute Tribunal (*ibid.*, para. 113); (c) the harmonization of the statutes of ILOAT and the United Nations Tribunals; (d) the issuance of advisory opinions by one tribunal after consultation with the other tribunal; and (e) recourse to the International Court of Justice. Upon enquiry, the Advisory Committee was informed that these options would fundamentally alter the structure and jurisdiction of the two tribunal systems in all cases, and not only those pertaining to the adjudication of ICSC matters. In response to a query regarding its views, the Secretariat indicated that it disfavours this category of options as, in its opinion, they: (a) would not be warranted nor proportionate to addressing the problem of inconsistent implementation of the Commission's decisions and recommendations; (b) would have a destabilizing effect and cause disruption; and (c) would entail significant logistical and financial implications, including lengthy consultations and a substantial transition period.

Changes limited to the adjudication of cases involving International Civil Service Commission matters

26. With respect to changes limited to the adjudication of cases involving ICSC matters, which would leave all other functions of the tribunal systems unchanged, in the report, the Secretary-General identifies the option of establishing a joint chamber composed of ILOAT and United Nations Appeals Tribunal judges, which would be exclusively responsible for reviewing ICSC matters (A/75/690, para. 126). According to the report, the joint chamber could potentially: (a) issue interpretative rulings, which would review the legality of ICSC decisions and recommendations before they are adopted; (b) issue preliminary rulings to provide authoritative guidance in the adjudication of a contentious case; (c) fully adjudicate any case involving the legality

of an ICSC decision or recommendation; or (d) issue appellate rulings which would review divergent judgments of ILOAT and the United Nations Appeals Tribunal on the implementation of ICSC decisions and recommendations (ibid., para. 128).

27. In paragraphs 130 to 132 of the report, the Secretary-General outlines possible weaknesses of the various sub-options, ranging from the effectiveness of advisory rulings in ensuring consistency of implementation of ICSC decisions, to concerns related to costs and extended litigation timeframes.

28. The Advisory Committee was informed, upon enquiry, that an assessment of the effectiveness of each sub-option was considered premature, as operational elements of the joint chamber, and related costs, were yet to be elaborated. An expansion of the scope of the joint chamber beyond ICSC matters, or other possible options related to the adjudication of ICSC matters in addition to the envisaged joint chamber, such as an approach similar to the appeals procedure of the United Nations Joint Staff Pension Fund, were not discussed in the report.

IV. Conclusion

29. The Secretary-General requests the General Assembly to take note of his report and to provide any observations or guidance on the further development of any of the options discussed in section IV of the report (ibid., para. 133). Upon enquiry, the Advisory Committee was informed that this approach was adopted so as not to expend resources on the elaboration of options that would not be considered viable. The Committee was also informed that the Secretariat considered that while it would not be constructive to develop fully all proposed options, it would be preferable to examine more than one option in greater detail.

30. The Advisory Committee acknowledges the efforts undertaken by the Secretary-General to engage with multiple stakeholders in the preparation of his report. It also notes the intention of the Secretary-General to present a broad range of options to the General Assembly for guidance and to avoid expending resources unnecessarily.

31. The Advisory Committee considers, however, that at this stage, the report is too preliminary to enable the provision of guidance on the further development of any of the options, as it does not reflect the most recent and ongoing litigation on the issue that prompted the request of the General Assembly for the Secretary-General's review of the jurisdictional set-up (see para. 15 above), and the options provided are still too general and do not sufficiently address the problem, without creating other issues or mitigating the risks they would entail.

32. The Advisory Committee considers that setting the overall direction of the jurisdictional set-up is a policy matter for the General Assembly to determine. The Committee therefore recommends that the Assembly request the Secretary-General to develop practical options, not necessarily limited to those included in the report under consideration, reflecting also an updated review of relevant jurisprudence, in consultation with all stakeholders and taking duly into account the views of ICSC, and to submit a refined proposal for the consideration of the Assembly as soon as practicable (see also paras. 11 and 14 above). The Committee trusts that the Secretary-General will minimize additional costs in the preparation of the refined report and that, should any financial implications arise, the relevant rules and procedures will be adhered to.

33. Subject to its recommendations and observations in the present report, the Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General.