



Governing Body

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Programme, Financial and Administrative Section

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Matters relating to the Administrative Tribunal of the ILO

Amendments to the Statute of the International Civil Service Commission and update on the review of the jurisdictional set-up of the United Nations common system

Summary: This paper provides updated information on two particular decisions adopted at the 77th Session of the United Nations General Assembly, namely the amendment to the Statute of the International Civil Service Commission (ICSC) and the follow-up to the United Nations (UN) Secretary-General's second report on the review of the jurisdictional set-up of the UN common system.

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Related documents: [GB.346/PFA/13\(Rev.1\)](#); [GB.346/PFA/12\(Rev.1\)](#); [GB.347/PFA/INF/9](#).

► Amendments to articles 10 and 11 of the International Civil Service Commission Statute

1. It is recalled that at its 346th Session (October–November 2022), the Governing Body had before it a document on recent developments concerning the determination of post adjustment by the International Civil Service Commission (ICSC),¹ and on 1 November 2022, it adopted by consensus a [resolution](#) in which it expressed serious concern about the continued application of two concurrent post adjustment multipliers at the Geneva duty station and instructed the Director-General to pursue his efforts, as a matter of priority and in consultation with other specialized agencies concerned, to resolve the current impasse and to keep the Governing Body informed of any progress made.
2. The resolution was part of renewed efforts to find a solution to the deadlock concerning the application of ICSC post adjustment multipliers following Judgment No. 4134 of the ILO Administrative Tribunal of July 2019, according to which the ICSC had no authority under its Statute to make binding decisions in these matters, but only recommendations.
3. More concretely, on 30 September 2022, at the ILO's initiative, the executive heads of five Geneva-based agencies addressed a joint letter to the UN Secretary-General drawing his attention to the fact that the current situation was unsustainable from a legal, political and administrative point of view, and called for urgent action. They expressed the view that "the only viable way to address the current legal stalemate in a procedurally sound and definitive manner is to undertake a simple amendment of articles 10 and 11 of the ICSC Statute with a view to codifying the intent of the UN General Assembly resolutions" and called upon the Secretary-General to "consider placing an item on the provisional agenda of the next session of the General Assembly in accordance with rule 13(g) of the Rules of Procedure."
4. Draft amendments to the ICSC Statute and an explanatory note were prepared in coordination with the legal offices of the other agencies concerned, and a number of information sessions were organized for the three groups. The Office awareness-raising initiatives met with a favourable reaction and support from several Governments, which proactively engaged for a rapid resolution in the course of the 77th Session of the UN General Assembly. The ICSC and the UN Secretariat were kept fully informed of these initiatives.
5. To this end, on 24 October 2022, the Director-General undertook a mission to UN headquarters and delivered a statement before the General Assembly's Fifth Committee on behalf of the five Geneva-based agencies, in which he reiterated that "updating the Commission's Statute would ensure consistency with current practice [...] would require a very limited, and precise, amendment to articles 10(b) and 11(c) of the Statute of the ICSC [and] would provide a way out of the deadlock with which we have been confronted for the last three years".
6. On 15 November 2022, reacting positively to the Director-General's visit to New York and the diplomatic activity in support of a UN-driven solution to the problem, the UN General Assembly's Fifth Committee adopted a decision: (i) asking the Office of Legal Affairs for a legal opinion on the proposed amendments by 18 November; (ii) requesting the ICSC to consult with the organizations of the UN common system by 9 December; and (iii) inviting the UN and ILO

¹ GB.346/PFA/13(Rev.1).

administrative tribunals to express their opinions by 1 December, if they wished to do so. A response was received, sent on behalf of the President of the ILO Administrative Tribunal, clarifying that the Tribunal's Statute did not invest it with jurisdiction to provide an advisory opinion as suggested.

7. On 16 November 2022, following the Director-General's visit to New York, the ICSC Chairman wrote to the Director-General indicating that the General Assembly was considering amending articles 10 and 11 of the Statute and asking whether the ILO intended to take forward acceptance of the proposed amendment in case such a surgical amendment was approved, and the projected timeline. In his reply dated 24 November 2022, the Director-General confirmed that the ILO stood ready to communicate its acceptance of a formal amendment to articles 10(b) and 11(c) of the ICSC Statute as soon as the UN General Assembly notified it of the adoption of such amendment. The UN Legal Counsel and the judges of the UN Dispute Tribunal confirmed the soundness of, and expressed support for, the proposed amendments by letters dated 18 and 21 November, respectively.
8. On 30 December 2022, the UN General Assembly adopted without a vote resolution 77/256 which amended articles 10 and 11 of the ICSC Statute "for clarification purposes and without altering the Commission's authority or affecting the current operational reality" and invited the organizations of the common system "to complete as quickly as possible formal acceptance of the amended statute." The amended provisions reproduce the amendments jointly proposed by the ILO and four other Geneva-based agencies (International Telecommunication Union, World Health Organization, World Intellectual Property Organization, Joint United Nations Programme on HIV and AIDS), with the exception of the addition of a reference in article 10(b) to the "value of the post adjustment multiplier". This refers to the percentage (currently 1 per cent) of the base/floor salary that equals one post adjustment multiplier point and that is set by decision of the General Assembly. By circular letter dated 3 January 2023, the ICSC Chairman informed all executive heads of resolution 77/256.
9. On 10 January 2023, the Director-General informed the Officers of the Governing Body of the latest developments and sought their views on the communication he intended to address to the UN Secretary-General accepting the amendments on behalf of the Organization. Following some further clarification, the Officers confirmed their agreement. The Director-General also informed the Staff Union Committee of his intention to proceed with the acceptance of the amendments.
10. On 18 January 2023, consistent with the Governing Body decision of 1 November 2022 to "commit to accept amendments to the ICSC Statute regarding the ICSC's statutory authority to determine post adjustment multipliers should the UN General Assembly take such an action, and [to] instruct the Director-General to then implement the official ICSC post adjustment multipliers provided after the date of the acceptance of those amendments", the Director-General wrote to the UN Secretary-General notifying, in accordance with article 30 of the ICSC Statute, the ILO's acceptance of the amendments to the Statute and noting that "the amendments will help specialized agencies having recognized the jurisdiction of the ILO Administrative Tribunal to fully honour their obligations arising from membership in the UN common system of salaries and allowances while complying with final judgments of the Tribunal by which they are bound" (see the appendix).
11. In a user broadcast dated 20 January 2023, the Director-General informed staff that following the amendments to the ICSC Statute adopted by the UN General Assembly through resolution 77/256 and the acceptance of those amendments in accordance with article 30 of the ICSC Statute, the Office would proceed to implement the post adjustment established by the ICSC

“in all duty stations from 1 March 2023 with a view to giving staff concerned sufficient time to adjust to any changes in their remuneration”. In the same communication, the Director-General indicated that “transition measures will be put in place in duty stations other than Geneva depending on the impact of the changes to be implemented”.

12. Finally, by letter dated 20 January 2023, the Director-General informed the President of the ILO Administrative Tribunal of the acceptance of the amendments to the ICSC Statute and expressed the view that “article 11(c) of the ICSC Statute, which now unambiguously provides that the Commission shall establish the post adjustment applicable to each duty station, addresses the legal question raised in considerations 33–34 and 41–42 of Judgment No. 4134 and provides confidence that similar legal risk shall be averted in the future”.
13. The Office will continue to actively engage in the programme of work of the ICSC to ensure alignment with the UN common system and also that the applicable salary survey methodology is duly implemented in consultation with member organizations and staff representatives.

► Review of the jurisdictional set-up of the UN common system

14. It is recalled that at its 346th Session (October–November 2022), the Governing Body had before it a document ² on the ongoing review of the jurisdictional set-up of the UN common system undertaken by the UN Secretary-General at the request of the UN General Assembly with a view to considering the merits of the proposals outlined in the Secretary-General’s report (A/77/222) and providing guidance thereon. The Workers’ and Employers’ groups expressed strong concerns regarding the appropriateness of pursuing the third proposal, concerning the establishment of a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal, in the light of the very critical comments of the judges of the ILO Administrative Tribunal, whereas Government groups were largely supportive of the collaborative effort to devise mechanisms capable of preventing the risk of conflicting judgments in the future.
15. In its decision, the Governing Body took note of the comments of the judges of the ILO Administrative Tribunal and requested the Director-General to continue to engage with the UN Secretariat, taking into account the views expressed during the discussion, and to prepare a new report for its consideration at the 349th Session (November 2023). By letter dated 9 November 2022, the Office provided to the secretariat of the UN General Assembly’s Fifth Committee detailed information on the content and outcome of the Governing Body discussion that coincided with the consideration of the UN Secretary-General’s report by the General Assembly.
16. On 13 December 2022, the Director-General wrote to the President of the Tribunal to confirm that the Office intended to pursue proactive and inclusive consultations, including with the Tribunal, with a view to addressing any concerns and that the ongoing UN-wide collaborative process did not seek in any manner to question the independence of the judges of the Tribunal. He expressed the hope that the Office could count on the constructive engagement of the Tribunal with a view to resolving current and future challenges and welcomed, in this connection, the judges’ openness to engage in periodic dialogue with the judges of the UN

² GB.346/PFA/12(Rev.1).

Appeals Tribunal. By letter dated 6 January 2023, the President of the Tribunal acknowledged receipt of the Director-General's communication.

17. On 30 December 2022, the UN General Assembly adopted without a vote resolution [77/257](#) by which it: (i) encourages increased informal exchanges and sustained communication between the UN Dispute Tribunal, the UN Appeals Tribunal and the International Labour Organization Administrative Tribunal; (ii) notes the proposals for facilitating submissions by the ICSC to the tribunals and for adopting Commission guidance after Tribunal judgments in cases involving Commission recommendations or decisions, and calls for the implementation of those proposals; and (iii) invites the Secretary-General to complete the work on the outstanding legal and practical aspects pertaining to the jurisdictional set-up of the UN common system, including finalizing past proposals and assessing the viability of other options.
18. Following the adoption of resolution 77/257, by letter dated 2 February 2023, the UN Under Secretary-General for Management Strategy, Policy and Compliance, Ms Catherine Pollard, informed the President of the Tribunal of the work that the UN Secretariat intended to pursue in close collaboration with the ILO. While acknowledging the Tribunal's strong reservations regarding the outline of the proposal for the joint chamber as contained in the previous report of the Secretary-General, she emphasized that input from the Tribunal on the concretized proposal for a joint chamber, as well as other possible alternative measures, will be essential for the successful outcome of the exercise, and indicated that the first set of proposals would be circulated for review and comments at the end of February, with an offer to provide a briefing and an opportunity to provide additional comments once the observations of the judges of the UN tribunals had been received.
19. The Office will continue to cooperate for the successful completion of the UN Secretary-General's review of the jurisdictional set-up of the UN common system, while assuming its special responsibilities as custodian of the Tribunal, and will provide updated information on further developments, as appropriate.

► Appendix

The Director-General

Mr António Guterres
Secretary-General United Nations
NEW YORK
USA

18 January 2023

Dear Secretary-General,

By ICSC circular letter dated 3 January 2023, the Chairman of the International Civil Service Commission (ICSC) transmitted a copy of the UN General Assembly's recent decision (Resolution 77/256 of 30 December 2022) to amend articles 10 and 11 of the ICSC Statute with a view to clarifying the Commission's decision-making authority with respect to the determination of post adjustment multipliers.

Consistent with the decision of the ILO Governing Body taken at its 346th Session (October–November 2022) to “commit to accept amendments to the ICSC Statute regarding the ICSC's statutory authority to determine post adjustment multipliers should the UN General Assembly take such an action, and [to] instruct the Director-General to then implement the official ICSC post adjustment multipliers provided after the date of the acceptance of those amendments”, I am pleased to notify, in accordance with article 30 of the ICSC Statute, the acceptance of the said amendments on behalf of the International Labour Organization.

I believe that the amendments will help specialized agencies such as ours to fully honour their obligations arising from membership in the UN common system of salaries and allowances while complying with final judgments of the ILO Administrative Tribunal by which they are bound.

I wish to thank the UN Secretariat and you personally for the concerted efforts, openness and spirit of compromise that permitted the successful completion of the amendment process.

Yours sincerely,



Gilbert F. Houngbo