



# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Hundred and Eighteenth Session

Rome, 6-8 March 2023

### Review of the jurisdictional set-up of the United Nations common system - Update

#### I. Introduction

1. The Committee on Constitutional and Legal Matters (hereinafter “CCLM” or “the Committee”) was briefed on the on-going review of the jurisdictional set-up of the UN common system during its last session in October 2022.<sup>1</sup> In its report, the Committee noted that “*there continue to be divergent views among the concerned parties*” in this process, and “*looked forward to an update at a future session of CCLM*”.<sup>2</sup>

#### II. Background

2. As previously recalled,<sup>3</sup> the review of the jurisdictional set-up of the United Nations common system was initiated following a request of the United Nations General Assembly (hereinafter “UNGA”) in its Resolution 74/255 B of 27 December 2019,<sup>4</sup> in which it expressed “concern *that the organizations of the United Nations Common system face the challenge of having two independent administrative tribunals with concurrent jurisdiction among the organizations of the common system*”.

3. This Resolution was adopted after it was reported to the UNGA that the Administrative Tribunal of the International Labour Organization (hereinafter “ILOAT”) had set aside, in July 2019, decisions made by the International Civil Service Commission (hereinafter “ICSC”) regarding the post adjustment multiplier applicable to staff members serving in Geneva, Switzerland, based on its 2016 cost-of-living survey in that city. Subsequently, in March 2021, the United Nations Appeals Tribunal (hereinafter “UNAT”) ruled, further to appeals lodged by staff members serving in Geneva with other organizations under its jurisdiction, that the said ICSC decisions were valid. The upshot of these conflicting judgments is that, to this day, staff members based in Geneva are subject to different levels of pay depending on which administrative tribunal has jurisdiction over their organization.

<sup>1</sup> [CCLM 117/6](#).

<sup>2</sup> [CL 171/10](#), paragraphs 40-41.

<sup>3</sup> CCLM 117/6, paragraphs 4-9.

<sup>4</sup> UN Doc. [A/RES/74/255 A-B](#).

4. A first report on this question was issued by the Secretary-General in January 2021.<sup>5</sup> The UNGA reviewed it in April 2021,<sup>6</sup> and requested a further report “*with detailed proposals (...) on practical options, giving priority to measures involving changes to the adjudication of cases involving the [ICSC]*”. This second report by the Secretary-General<sup>7</sup> was circulated to CCLM members before its 117th Session in October 2022.

5. The report included three proposals for consideration by the UNGA:

- **Proposal 1:** Submissions by the ICSC to Tribunals during litigation of complaints arising out of an ICSC decision or recommendation.
- **Proposal 2:** ICSC guidance following Tribunal judgments.
- **Proposal 3:** Establishment of a joint ILOAT-UNAT chamber issuing interpretative, preliminary or appellate rulings.

6. As reported to CCLM, the first two proposals are supported by most organizations participating in the UN common system, including FAO. The establishment of a joint ILOAT-UNAT chamber is more complex and has brought about divergent positions among organizations. Under this proposal, the joint chamber would be competent to issue one or more of the following types of rulings:

- a) **Interpretative ruling:** The purpose of an interpretative ruling is to identify and resolve any legal issues pre-emptively before an ICSC recommendation or decision is finalized or implemented.
- b) **Preliminary ruling:** The purpose of a preliminary ruling is to enable a Tribunal to seek a ruling from the joint chamber on a legal question that is relevant to the Tribunal’s review of an application challenging the implementation of an ICSC recommendation or decision.
- c) **Appellate ruling:** The purpose of an appellate ruling is to resolve divergence in cases where the ILOAT and the UNAT reach inconsistent conclusions on a legal question relevant to an ICSC recommendation or decision.

### III. Update on subsequent developments

7. The UNGA considered the second report of the Secretary-General on 30 December 2022 and adopted Resolution [77/257](#).

8. In short, the UNGA requested the ICSC, and encouraged other relevant stakeholders, to implement proposals 1 and 2 when appropriate.

9. On proposal 3, the UNGA decided as follows:

*“Invites the Secretary-General to complete the work on the outstanding legal and practical aspects pertaining to the jurisdictional set-up of the United Nations common system, including finalizing past proposals and assessing the viability of other options, including those proposed by the stakeholders as reflected in the report of the Secretary-General, and to submit final proposals no later than the main part of the seventy-eighth session of the General Assembly”.*

10. Following this decision, the United Nations Secretariat and the International Labour Organization have announced that consultations will be pursued through the Legal Advisers Networks, with a view to clarifying pending issues and addressing the concerns that have been raised so far. It is anticipated that a first set of proposals to initiate these consultations will be issued at the end of February 2023.

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<sup>5</sup> UN Doc. [A/75/690](#).

<sup>6</sup> UNGA Resolution [75/245 B](#).

<sup>7</sup> UN Doc. [A/77/222](#); circulated as [CCLM 117/INF/1](#).

11. It may be recalled that, in their comments on these proposals, the ILOAT Judges considered the proposal to establish a joint chamber to be “*fundamentally unsound*” and stated that they do not support it.<sup>8</sup> On his part, the Secretary-General recommended the establishment of a joint chamber competent to issue interpretative and preliminary rulings only, excluding appellate rulings.<sup>9</sup> This illustrates that there are still widely divergent views among stakeholders on the desirability of a joint chamber and its eventual role.

12. The Legal Office intends to participate fully in the upcoming consultations on this remaining issue and will report to CCLM on their outcomes.

#### **IV. Suggested action by the Committee**

13. This document is for the information of the Committee, which is invited to make such observations thereon as it considers appropriate. It may wish to request the Secretariat to provide updates on any developments on this matter at a future session.

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<sup>8</sup> UN Doc. [A/77/222](#), Annex II, page 28.

<sup>9</sup> UN Doc. [A/77/222](#), paragraph 111.