



COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Hundred and Twelfth Session

Rome, 8-10 March 2021

Review of the jurisdictional set up of the United Nations common system (as per UN General Assembly Resolution 74/255B, paragraph 8) – Update – Information Report

I. Introduction

1. At its 111th Session held on 26-28 October 2020, the Committee on Constitutional and Legal Matters (hereinafter “CCLM or the Committee”) took note of document CCLM 111/5 “*Review of the jurisdictional set up of the United Nations common system (as per UN General Assembly Resolution 74/255B, paragraph 8) – Information report*” presented for information by the Legal Office.
2. The Committee was apprised of a request made by the United Nations General Assembly (UNGA), following its consideration of the report of the International Civil Service Commission (ICSC) for 2019¹, that a review of the jurisdictional set up of the common system be conducted by the Secretary-General, in his capacity as Chair of the United Nations System Chief Executive Board for Coordination (CEB).
3. In its report for the 111th Session, the CCLM noted that the matter was in its initial phase and looked forward to being informed of future developments². The present document is presented in response to the Committee’s request.
4. Accordingly, this item has been placed on the Provisional Agenda of the Committee as an information item under Rule XXXIV, paragraph 7 (m) of the General Rules of the Organization, whereby the Committee shall consider specific items referred to it which may arise out of: “*policy aspects of relations with international governmental or non-governmental organizations, national institutions or private persons*”.

¹ A/74/30.

² See *Report of the 111th Session of the Committee on Constitutional and Legal Matters*, CL 165/12, at paragraphs 28 and 29.

II. Background

5. UNGA resolution 74/255B, adopted on 27 December 2019, reads as follows:

“8. *Notes with 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, as highlighted in the report of the Commission, and requests 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 setup of the common system and submit the findings of the review and recommendations to the General Assembly as soon as practicable*”.

6. The concerns expressed by the UNGA in this resolution followed its consideration of the report of the ICSC for 2019, wherein the Commission noted that the Administrative Tribunal of the International Labour Organization (ILOAT) had set aside decisions made by the ICSC in 2016 regarding the post adjustment multipliers for Geneva, Switzerland. In the Tribunal’s view, the ICSC only had authority to make recommendations to the UNGA regarding this subject-matter.

7. Subsequently, between June and August 2020, the United Nations Dispute Tribunal (UNDT) issued a series of Judgments issued upon applications filed by Geneva-based staff members serving with various UN entities having recognized its jurisdiction. The issue was the same as that previously examined by the ILOAT. In these cases, the UNDT decided that the ICSC decisions were valid and dismissed the applications, based on its jurisprudence. These Judgments are the subject of appeals currently pending with the United Nations Appeals Tribunal (UNAT).

8. The upshot of the conflicting judgments issued by the ILOAT and the UNDT is that staff members in the professional category and above serving at the Geneva duty station are receiving different compensation depending on which Tribunal has jurisdiction over their organization.

9. As reported in document CCLM 111/5, follow-up action on UNGA resolution 74/255B was initiated in July 2020 by the UN Under-Secretary-General for Management Strategy, Policy and Compliance, when she informed the members of the CEB that the review would be conducted by the UN Office of Legal Affairs. This was followed by a briefing to the Members of the High-Level Committee on Management of the CEB in September 2020, during which the Under Secretary-General advised that the report on the review of the jurisdictional set up of the UN common system would be submitted to the UNGA Secretariat in December 2020, according to the following timeline:

- a) Sharing of the source documents in September 2020.
- b) In early October 2020, distribution of a first draft through designated focal points in each entity.
- c) In mid-October 2020, a meeting of the Legal Advisers Network to be held to discuss the first draft.
- d) In mid- to late November 2020, circulation of a second draft of the report.
- e) Submission of a report to the UNGA in December 2020.

III. Update on subsequent developments

10. The timeline set in September 2020 by the Under-Secretary-General for Management Strategy, Policy and Compliance was adhered to. The first draft of the report was circulated on 2 October 2020, followed by a meeting of the Legal Advisers Network held on 16 October 2020. A second draft of the report was circulated on 25 November 2020, and on 17 December 2020, the Under-Secretary-General wrote to the CEB Principals to convey a copy of the final report.

11. This final report was forwarded to the Secretariat of the UNGA for editing and translation. The report will be formally issued towards the end of February 2021 and taken up by the UNGA thereafter. The Legal Office proposes to circulate this final report to the Members of the CCLM following its publication by the UN.

12. At this stage, it is understood that the report will only set out the “preliminary findings” of the “initial review” conducted pursuant to resolution 74/255B. The report will also clarify that the request by the UNGA for the review is understood by the United Nations Secretariat as not inviting a broad review of the overall functioning of the two Tribunal systems. Rather, the review will focus on how the co-existence of the two Tribunal systems impacts on consistency in the implementation of ICSC decisions and recommendations.

13. FAO has monitored closely the preparation of this report, providing detailed comments on both the first and second draft reports. These comments were the results of informal exchanges with other UN entities, as well as internal consultations involving notably the FAO Staff Representatives Bodies.

14. The salient observations made by FAO during this consultative process, which were supported by other UN entities, were as follows:

- a) Any reform of the jurisdictional set up of the United Nations common system would require formal consultations with the specialized agencies of the UN, including their Governing Bodies in light of their autonomous nature.
- b) The review should be conducted within the framework of the CEB, and not the UN Secretariat alone.
- c) The report should refer to the context which brought the UNGA, in its resolution 74/255B, to express concerns over the fact that “*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*”, specifically the Judgments issued by the ILOAT on the legality of the ICSC decisions on the post adjustment for Geneva.
- d) Maintaining the *status quo* should figure among the options proposed for promoting consistency in the implementation of ICSC decisions, possibly coupled with other initiatives like a review of the functioning and decision-making authority of the ICSC.

15. It is understood that these observations by FAO, supported by other UN entities, will be reflected in the final report. However, the fundamental reasons for the conflicting Judgments on the Geneva post adjustment cases will not be discussed. In her correspondence of 17 December 2020, the Under-Secretary-General for Management Strategy, Policy and Compliance advised that there would be no further expansion on this point while the cases are pending before the UNAT.

16. In sum, the review of the jurisdictional set up of the United Nations common system is progressing as planned and will be taken up by the UNGA in the coming months. Members of the Committee may wish to note that, in its recent resolution 75/245, adopted on 31 December 2020 under the item “*United Nations common system*”, the UNGA “*expresse[d] concerns at the continued application of two concurrent post adjustment multipliers in the United Nations common system at the Geneva duty station (...)*”.

IV. Suggested actions by the Committee

17. This document is for the information of the Committee, which is invited to make such observations thereon as appropriate and may wish to request the Secretariat to provide any update on the matter at its forthcoming session as deemed relevant.