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

Report of the Secretary-General

Summary

In its resolution 77/257, the General Assembly invited the Secretary-General to complete the work on the outstanding legal and practical aspects pertaining to the review of the jurisdictional set-up of the United Nations common system, including finalizing past proposals and assessing the viability of other options.

The present report consists of three sections. Following an overview of the consultative process undertaken for the preparation of the report, section I contains general observations on the review. Section II contains the finalized proposal for a joint chamber of the Administrative Tribunal of the International Labour Organization and the United Nations Appeals Tribunal, as well as an evaluation of other options that could help to preserve the unity of the United Nations common system in the context of two independent tribunal systems. Section III contains a set of conclusions.

The General Assembly is requested to take note of the present report and to provide any observations or guidance to the Secretary-General.

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Introduction

1. In its resolution 74/255 B, the General Assembly noted the challenge of having two independent administrative tribunals with concurrent jurisdiction among the organizations of the common system and requested the Secretary-General to conduct a review of the jurisdictional set-up of the United Nations common system and submit the findings of the review and recommendations to the Assembly. In his report on the initial review of the jurisdictional set-up of the United Nations common system (A/75/690), the Secretary-General provided an overview of the establishment and evolution of the two tribunal systems, the Administrative Tribunal of the International Labour Organization (ILO) and the United Nations Tribunals; examined past efforts to address the challenges of having two tribunal systems; surveyed the jurisprudence of both tribunal systems on recommendations and decisions of the International Civil Service Commission (ICSC) from 1975 to 2016; and set out options to address the issue of inconsistent implementation of the recommendations and decisions of the Commission in the context of two independent tribunal systems.

2. Following the General Assembly's request for additional information and thorough analysis on practical options, as set out in resolution 75/245 B, the Secretary-General prepared a second report (A/77/222), in which he provided an update on the Tribunals' post-2016 jurisprudence on ICSC-related matters and assessed the impact of divergent jurisprudence on the cohesion of the United Nations common system. The report also set out three proposals for promoting consistency in the implementation of ICSC recommendations and decisions in the context of two independent tribunal systems. These were (a) a proposal to facilitate ICSC submissions to the Tribunals during litigation arising out of ICSC recommendations or decisions; (b) a proposal to facilitate ICSC guidance following tribunal judgments in cases involving ICSC recommendations or decisions; and (c) a proposal to establish a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal to issue interpretative, preliminary and/or appellate rulings in cases involving ICSC recommendations or decisions.

3. In its most recent resolution, 77/257, the General Assembly encouraged increased informal exchanges and sustained communication between the United Nations Tribunals and the ILO Administrative Tribunal and requested ICSC, and encouraged other stakeholders, to implement the first two proposals outlined in the second report of the Secretary-General. It also invited 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 second report, and to submit final proposals no later than the main part of the seventy-eighth session of the Assembly.

Proposals

4. The invitation of the General Assembly in resolution 77/257 was understood by the Secretariat of the United Nations, in consultation with the International Labour Office, to encompass the following:

(a) The finalization of the proposal for the establishment of a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal;

(b) An assessment of three other proposals that might address the problem of conflicting tribunal judgments concerning the lawfulness of ICSC recommendations and decisions and that had not yet been fully explored: increased informal exchanges and sustained communication between the Tribunals (as encouraged by the Assembly); the designation of one tribunal with exclusive jurisdiction to hear cases

related to the implementation of ICSC recommendations and decisions (as proposed by ICSC); and the establishment of an appeal mechanism with limited jurisdiction over cases arising from ICSC recommendations or decisions (as raised during the discussions in the Fifth Committee).

5. The proposals were developed under the coordination of the Under-Secretary-General for Management Strategy, Policy and Compliance and with the technical support of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel. The Office of Administration of Justice was consulted throughout the process.

Consultations with stakeholders

6. In line with the General Assembly's request in resolution 77/257 that the Secretary-General continue consultations to find a sustainable, long-term solution with regard to the jurisdictional set-up and to preserve the unity of the United Nations common system, the following stakeholders were consulted: ICSC,[1] the Tribunals,[2] the Internal Justice Council, the United Nations system organizations[3] and the staff federations.[4]

7. On 2 February 2023, the Under-Secretary-General for Management Strategy, Policy and Compliance wrote to the Chair of ICSC, the President of the ILO Administrative Tribunal, the President of the United Nations Dispute Tribunal and the President of the United Nations Appeals Tribunal, informing them of the proposed next steps of the review. On the same day, similar communications were sent to the United Nations Legal Advisers networks, the staff federations, the Internal Justice Council and the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

8. On 23 February 2023, the four proposals referred to in paragraph 4 were transmitted to the stakeholders for their review and input by 12 April 2023. The invitation to provide input was accompanied by draft amendments to the statutes of the ILO Administrative Tribunal and the United Nations Tribunals providing for the establishment of a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal, together with an explanatory note. All stakeholders were offered the opportunity to receive a briefing on the proposals. The legal advisers were requested to consult internally with their human resources departments and staff representative bodies to ensure full coordination when providing feedback on the proposals. The ILO Administrative Tribunal, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal were invited to complete a questionnaire aimed at ascertaining their interest in pursuing increased informal exchanges and sustained communication between the tribunals, as well as their views on the frequency and modalities of any such exchanges.

9. Simultaneously, the Under-Secretary-General for Management Strategy, Policy and Compliance, in her capacity as chair of the High-Level Committee on Management, informed the Committee members that the proposals had been sent to the stakeholders

[1] On 7 February 2023, the Chair of the International Civil Service Commission (ICSC) informed the United Nations Legal Counsel of the three substantive focal points whom he had designated for the purposes of the review.

[2] Administrative Tribunal of the International Labour Organization (ILO); United Nations Dispute Tribunal; United Nations Appeals Tribunal; Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

[3] See A/77/222, para. 19, for the groups of organizations that were consulted.

[4] Coordinating Committee for International Staff Unions and Associations of the United Nations System; Federation of International Civil Servants' Associations; United Nations International Civil Servants Federation.

and requested the support of the Committee members in ensuring internal coordination with regard to input on the proposals from their respective organizations.

10. The following stakeholders received briefings on the status of the review and the proposals under consideration: ICSC (27 March 2023, at its ninety-fifth session), the United Nations Legal Advisers networks (3 April 2023), the staff federations (4 April 2023) and the United Nations Dispute Tribunal (5 April 2023).

11. On 8 May 2023, following receipt of comments from stakeholders – including the United Nations Dispute Tribunal, the United Nations Appeals Tribunal, ICSC, two staff federations and numerous United Nations system organizations[5] – the draft amendments to the statutes of the tribunals were revised and recirculated to all stakeholders, with an invitation to provide comments on the revised drafts and any further observations on all the proposals under consideration by 5 June.

12. On 16 May 2023, the Fifth Committee received an informal briefing on the status of the review.

13. On 30 June 2023, the present report was shared with the stakeholders. ICSC, the tribunals and the Internal Justice Council were invited to provide comments, to be annexed to the report. The United Nations system organizations and the staff federations were invited to place views on a website created for the purpose of the report.[6] They were also provided with a questionnaire requesting their views on the proposals (see annex VI).[7] On 3 July, the report was transmitted to the High-Level Committee on Management with an invitation to take note of it.

14. On 18 July 2023, the report was sent to the principals of the United Nations System Chief Executives Board for Coordination with an invitation to take note of it.

Preparation of the report

15. The present report was prepared by the United Nations Secretariat in close consultation with the International Labour Office, as the custodial institution of the ILO Administrative Tribunal.[8]

16. The report consists of three sections. Section I contains general observations on the review of the jurisdictional set-up. Section II contains the finalized proposal for a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal, as well as an evaluation of other options that could help to preserve the unity of the United Nations common system in the context of two independent tribunal systems. Section III contains a set of conclusions. The comments of ICSC, the United Nations Appeals Tribunal, the ILO Administrative Tribunal and the Internal Justice Council are contained in annexes II, III, IV and V, respectively. The UNRWA Dispute Tribunal and the United Nations Dispute Tribunal confirmed that they did not wish to submit further observations.

[5] The UNRWA Dispute Tribunal confirmed that it did not wish to make observations. By a letter dated 12 April 2023 addressed to the ILO Director General, the ILO Administrative Tribunal stated that it would not respond to communications from officials of the United Nations Secretariat, as “the Tribunal has no relationship with the UN itself and any communications on a topic of this character should be between the Tribunal and the ILO”. The letter was shared by ILO with the United Nations Secretariat on 27 June, and the Tribunal’s substantive comments on the proposals are reflected in the present report, as appropriate.

[6] See www.un.org/management/content/review-jurisdictional-set-up-united-nations-common-system.

[7] With regard to the United Nations system organizations, it is acknowledged that the views in question are subject to endorsement by the executive bodies of the organizations concerned.

[8] The participation of the International Labour Office is without prejudice to the views and decisions of the ILO Governing Body. The assessment of the proposals and the conclusions of the report may not be deemed to reflect an endorsement by the Office.

I. General observations on the review of the jurisdictional set-up

17. The present report is the third report of the Secretary-General on the review of the jurisdictional set-up of the United Nations common system. Like the first two reports, the present report was prepared following extensive research and system-wide consultations with multiple stakeholders. At the present stage, it is appropriate to recall two recurrent themes that have run through the discussions.

Is there a problem that needs to be addressed?

18. Some stakeholders maintain that the review was ill-conceived and disproportionate, given that inconsistencies in the implementation of ICSC recommendations and decisions owing to the existence of the two tribunal systems have been rare. They consider that there has been only one instance in which the tribunals arrived at different conclusions: the 2017 Geneva post adjustment cases, which concerned the authority of ICSC to establish post adjustment multipliers. They also note that the ICSC statute was recently amended by the General Assembly, which essentially resolved that critical issue and obviated the need for further action at the present stage.

19. Other stakeholders emphasize the possible significant and long-lasting impact of any divergent jurisprudence concerning the lawfulness of ICSC recommendations and decisions, even if such divergence occurs infrequently. They point to the serious ramifications of the Tribunals' different conclusions in the 2017 Geneva post adjustment cases and the need to avoid similar scenarios in the future.

20. The General Assembly has reiterated the importance of preserving a single, unified and coherent United Nations common system[9] and confirmed the central role of ICSC in the regulation and coordination of the conditions of service and entitlements for all staff serving in the organizations of the United Nations common system.[10] It has also stressed that upholding the consistency of the United Nations common system is a matter of principle, irrespective of the actual frequency of challenges to its cohesion (resolution 75/245 B, para. 7). The Secretary-General considers that divergent judgments of the ILO Administrative Tribunal and the United Nations Tribunals on ICSC recommendations and decisions carry the risk that key features of the United Nations common system will be inconsistently implemented by the participating organizations, directly undermining the scope and purpose of the common system. While such a split in the jurisprudence may be atypical and exceptional, it is detrimental to organizations and staff, as exemplified by the consequences of the Tribunals' differing conclusions in the 2017 Geneva post adjustment cases. It also undermines trust and confidence in the system, as well as the credibility of the system. Divergences between the Tribunals on such critical matters should therefore be avoided as a matter of principle.

21. The Secretary-General also observes that the recent clarifying amendments to the ICSC statute set out in General Assembly resolution 77/256 A have addressed an important yet strictly limited issue, namely, the Commission's authority to establish post adjustment multipliers. The amendments have not affected the methodology used

[9] Resolution 77/257, para. 5; see also, for example, resolutions 77/256 A and B, 76/240, 75/245 A, 75/245 B, 74/255 A and B and 72/255.

[10] Resolution 77/256 B, para. 4; resolution 76/240, para. 5; resolution 75/245 A, para. 4; resolution 74/255 B, para. 4; resolution 73/273, para. 4; and resolution 72/255, para. 4.

by ICSC to determine the multipliers or their implementation.[11] Moreover, given the broad mandate of ICSC for the regulation and coordination of the conditions of service of the United Nations common system (ICSC statute, art. 1 (1)), the possibility of the Commission's recommendations and decisions in other areas of its mandate facing legal challenges in the future cannot be ruled out. The Commission has been requested to present to the General Assembly, at its eighty-first session, a comprehensive assessment and review of the compensation system.[12] Depending on the outcome of the review and any implementing actions, litigation may arise before the Tribunals, which, in turn, carries an inherent risk of further divergences in the jurisprudence, with attendant negative consequences for the unity and cohesion of the United Nations common system as a whole.

Are there other root causes of the problem?

22. Several stakeholders hold the view that the main cause of the inconsistent implementation of ICSC recommendations and decisions is ICSC itself, rather than the jurisdictional set-up of the United Nations common system. They call for an in-depth review of the Commission's functioning, procedures and methodologies, including clarification of the criteria applicable to ICSC recommendations and decisions that entail amendments to the conditions of service. They believe that such a review would increase trust in the system, thereby minimizing the risk of litigation and eliminating the need to consider any changes to the jurisdictional set-up.

23. The Secretary-General recalls that those concerns were presented in his first report to the General Assembly and reiterates his position that a review of ICSC as a subsidiary organ of the Assembly would require a mandate from the Assembly and close consultations with the Commission.[13] In addition, regardless of any possible or desirable enhancements in the functioning of ICSC, the fact remains that the implementation of ICSC recommendations and decisions may be contested by staff members in two independent tribunal systems. That may result in divergent jurisprudence and, consequently, inconsistent implementation of ICSC recommendations and decisions.

II. Proposals for promoting consistency in the implementation of the Commission's recommendations and decisions in the context of two independent tribunal systems

24. In line with the invitation of the General Assembly in resolution 77/257, the proposal for the establishment of a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal was advanced and finalized. In addition, three other options were considered: increased informal exchanges and sustained communication between the tribunals; the designation of one tribunal with exclusive

[11] The challenges by staff members to the implementation of the revised post adjustment multipliers in Geneva were not limited to the issue of the Commission's authority to establish post adjustment multipliers. For example, the ILO Administrative Tribunal, in its relevant judgments, concluded that, under the provisions of the ICSC statute, ICSC did not have the power to establish the new post adjustment multiplier but could only make recommendations in that regard to the General Assembly, which had the authority to approve them. On that basis, the Tribunal set aside the organizations' implementing decisions. However, the Tribunal also considered that the application of a gap closure measure by ICSC had been neither substantiated nor transparent (ILO Administrative Tribunal judgment No. 4134, para. 49). The Tribunal noted that it had "not addressed a multiplicity of other arguments raised by the complainants in their pleas, though, it should be observed, a number of them raise issues of real substance. It has been unnecessary to address them" (ibid., para. 51).

[12] Resolution 76/240, para. 13.

[13] A/75/690, paras. 97–100 (containing a reference to previous reviews of the functioning of ICSC).

jurisdiction to hear cases related to the implementation of ICSC recommendations and decisions; and the establishment of an appeal mechanism with limited jurisdiction over cases arising from ICSC recommendations or decisions.

A. Establishment of a joint chamber of the International Labour Organization Administrative Tribunal and the United Nations Appeals Tribunal to issue preliminary rulings in cases involving recommendations or decisions of the Commission

Background

25. In his first report (A/75/690), the Secretary-General presented the broad outlines of a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal, which would operate within the existing structures of the two tribunals, leaving their other functions intact. It was proposed that such a chamber, composed of judges from both tribunals, could be given a role in reviewing ICSC matters at one or more stages of adjudication (A/75/690, paras. 125–132). In compliance with the request of the General Assembly for a detailed analysis of that option (resolution 75/245 B, para. 8), the Secretary-General, in his second report (A/77/222), set out the key elements of the joint chamber, including its competence, composition and decision-making process, as well as the types of rulings that it might be authorized to issue. The Secretary-General recommended that the proposal for a joint chamber be advanced and concretized for review by the Assembly and the ILO Governing Body (A/77/222, paras. 67–105 and 111).

26. In line with the General Assembly's invitation in resolution 77/257, the proposal was refined and now takes the form of draft amendments to the statutes of the ILO Administrative Tribunal, the United Nations Appeals Tribunal and the United Nations Dispute Tribunal. In the drafting process, care was taken to address the observations and concerns of the stakeholders as expressed during the consultations in preparation for the present report and the previous reports. The process resulted in a concise draft, which provides for the composition and competence of and procedure before the joint chamber. The draft is contained in annex I.

Structure of the draft amendments

27. The joint chamber would be anchored in the existing statutes of the ILO Administrative Tribunal, the United Nations Appeals Tribunal and the United Nations Dispute Tribunal. In view of the succinct nature of the statutes, new articles added to each one would provide for the establishment of the joint chamber and its authority to issue preliminary rulings, whereas the details of the composition, competence and procedure of the joint chamber would be set out in a common annex to the statutes of all the tribunals.

Composition of the joint chamber

28. As an important recognition of parity between the two tribunal systems, the joint chamber would be composed of an equal number of judges from the ILO Administrative Tribunal and the United Nations Appeals Tribunal. Upon referral of a matter to the joint chamber, the Presidents would each designate three judges from their respective tribunals to sit in the joint chamber.[14] That composition would allow for a thorough consideration of the legal issues involved.

[14] The full composition of the ILO Administrative Tribunal and the United Nations Appeals Tribunal is seven judges each.

29. The judges of the joint chamber would decide on a presiding judge, who would coordinate the work of the joint chamber and have a casting vote in cases of deadlock. The modalities for the election of the presiding judge would be left to the discretion of the judges, who could decide by consensus or by vote, or on the basis of criteria such as seniority in service of the Tribunals.

30. The joint chamber would not be extraneous to the ILO Administrative Tribunal or the United Nations Appeals Tribunal. Rather, it would be a shared ad hoc body that would form an integral part of the set-up of the two Tribunals. It would be convened only upon referral of a matter to the joint chamber. Hence, it would not be a permanent body and its composition could vary in different cases.

31. Judicial support for the activities of the joint chamber would be provided by the existing Registries of the ILO Administrative Tribunal and the United Nations Appeals Tribunal, as agreed by them, in consultation with the Presidents of the two Tribunals.

Competence

32. The joint chamber would be authorized to issue preliminary rulings [15] concerning the lawfulness of an ICSC recommendation or decision in respect of four matters, namely:

(a) Whether the recommendation or decision is consistent with the ICSC statute and rules of procedure, both procedurally and substantively, including whether ICSC has the authority to make a recommendation or decision on a specific subject;

(b) Whether the recommendation or decision is consistent with the Commission's methodology, developed through the Commission's own work as a subsidiary body of the General Assembly;

(c) Whether the methodology employed is tainted by a material error. This recognizes that, while ICSC is an independent expert body established by the General Assembly, it cannot act arbitrarily or base its recommendations and decisions on a flawed methodology;

(d) Whether the recommendation or decision is consistent with the legal framework governing the international civil service. The joint chamber would be able to draw on the relevant principles developed by the Tribunals, as appropriate.

33. This list of matters for review is exhaustive and is linked to the purpose of the joint chamber, that is, to enhance consistency, legal certainty and the rule of law across the United Nations common system. Significantly, the joint chamber's competence would not extend to a review of the lawfulness of an organization's implementation of an ICSC recommendation or decision. Such a review would be carried out by the Tribunal concerned in the light of the specific factual background of the case. Similarly, if the joint chamber were to determine that an ICSC recommendation or decision was unlawful with regard to any of the enumerated

[15] The option of giving the joint chamber the power to issue interpretative and/or appellate rulings was not further developed, given the strong concerns of stakeholders about the viability of those two types of rulings. The interpretative ruling (A/77/222, paras. 86–88) was considered alien to the existing procedural framework, under which the Tribunals review administrative decisions by organizations when challenged by staff members rather than considering the lawfulness of an ICSC recommendation or decision in the abstract. While an interpretative ruling would be aimed at pre-empting any litigation, it might be perceived as involving the Tribunals in the policymaking process. In the absence of a specific challenge brought by an individual staff member, it might also not be effective. The appellate ruling (A/77/222, paras. 94–96) was regarded as adding another layer of review, which would unduly delay the proceedings, impede legal certainty and collide with the principle of the finality of the Tribunals' judgments.

matters, it would be for the Tribunal concerned to consider the consequences for the underlying case or cases.

34. Any of the three Tribunals – the ILO Administrative Tribunal, the United Nations Dispute Tribunal or the United Nations Appeals Tribunal – could refer a legal question to the joint chamber for a preliminary ruling in cases where the litigation arises from the implementation of an ICSC recommendation or decision. The Tribunals could act on their own motion or upon the application of either party. To prevent unwarranted referrals, the relevant Tribunal would have to be satisfied that resolution of a given legal question:

(a) Is required for the determination of the case;

(b) Serves the interest of ensuring consistency across the United Nations common system.

Criteria that could warrant the referral of a matter to the joint chamber to avoid potentially divergent jurisprudence could include the nature of an ICSC recommendation or decision and whether the consequences of its implementation in a particular case could extend to staff in similar situations in other organizations.

35. The Tribunal concerned, when referring a matter to the joint chamber for a preliminary ruling, would have to specify the legal question that had arisen in relation to an ICSC recommendation or decision. That would help to prevent unwarranted referrals and assist the joint chamber in the consideration of the matter. The joint chamber would have the power to reformulate the legal question, as appropriate, in order to ensure clarity and enhance the efficiency of the process. To avoid relitigation of the same issue, a legal question related to an ICSC recommendation or decision that had already been the subject of a prior preliminary ruling by the joint chamber could not be referred again for a preliminary ruling.

36. In deciding whether to refer a legal question to the joint chamber, the Tribunal concerned would exercise its discretion in a particular factual and legal context. The decision would be final and would not be subject to review, reconsideration or appeal.

37. Pending the preliminary ruling of the joint chamber, the proceedings would be suspended. That would also apply to other pending proceedings before the same Tribunal or the other two Tribunals if they required resolution of the same legal question submitted to the joint chamber,[16] thereby ensuring that the specific legal issue was clarified before either of the Tribunals issued a judgment. Upon issuance of the preliminary ruling by the joint chamber, the suspended proceedings would resume. In that regard, the preliminary ruling on the legal question would be binding on the Tribunals when adjudicating the underlying matter. Otherwise, the use of the preliminary ruling would not be efficient, and its purpose of providing legal clarity and consistency would be undermined.

38. To avoid any perception of prejudgment, a judge of the joint chamber that issued a preliminary ruling would not be permitted to participate in the adjudication of the underlying case that had led to the referral.

Procedure

39. The joint chamber would have the discretion to determine the relevant procedure in the specific case before it, including the format of and time limits for submissions, subject to any specific provisions in the common annex to the statutes of the

[16] Once a Tribunal had referred a matter to the joint chamber, the President of that Tribunal would notify the Presidents of the other two Tribunals of the referral.

Tribunals.[17] In exercising its judicial discretion, the joint chamber would have to pay due regard to the existing rules of procedure of the Tribunals.

40. The joint chamber would be provided with the full case record, including the original action brought by the staff member, the reply and any further briefs, as applicable. It would invite submissions from the parties and other United Nations common system stakeholders with an interest in the resolution of the legal issue, namely, ICSC, common system organizations under the jurisdiction of the tribunals and staff representative bodies. Such submissions would be limited to the legal question under consideration by the joint chamber.

41. As is the case with other judicial panels, the six judges comprising the joint chamber would be expected to find common ground and agree on a ruling supported by all or a majority of the judges of the joint chamber. If there were no consensus, or no majority, the presiding judge would cast the deciding vote.[18] That would be in line with the practice of the United Nations Appeals Tribunal in cases in which there is, exceptionally, an even number of judges on a panel.[19] Judges of the joint chamber would be permitted to append separate, concurring or dissenting opinions to the ruling of the joint chamber.

42. Since the joint chamber's competence would be limited to considering legal questions related to an ICSC recommendation or decision, the proceedings before it would be based on written submissions and would normally not require an oral hearing. That would be in line with the practice of the ILO Administrative Tribunal[20] and the United Nations Appeals Tribunal,[21] both of which rarely hear oral arguments. However, the judges would retain the authority to hold an oral hearing if exceptionally required, which would be conducted by video link or other electronic means,[22] in order to expedite the proceedings by minimizing logistical complexity and to avoid unnecessary travel costs. Similarly, as the judges of the ILO Administrative Tribunal and the judges of the United Nations Appeals Tribunal are not permanently based at

[17] See United Nations Appeals Tribunal rules of procedure, art. 31 (1) ("all matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Appeals Tribunal on the particular case, by virtue of the powers conferred on it by article 6 of its statute") and Rules of the ILO Administrative Tribunal, art. 17 ("the Tribunal shall, in exercise of the powers vested in it by Article X of the Statute, deal with any matter which these Rules do not expressly provide for").

[18] Several other options for resolving a possible deadlock were considered but found to be problematic. Designating one additional ad hoc judge from the ILO Administrative Tribunal or the United Nations Appeals Tribunal to resolve a deadlock would run counter to the idea of equality between the Tribunals. Designating an external judge drawn from a roster of judges to resolve a deadlock would involve a judge who is not a member of the ILO Administrative Tribunal or the United Nations Appeals Tribunal and who may not have the same experience and familiarity with the relevant legal frameworks. Designating a United Nations Dispute Tribunal judge as a tie-breaker would create the perception that one tribunal system was given precedence over the other. Therefore, providing the presiding judge with the casting vote in the event of a deadlock was considered to be the most feasible option. In that regard, the Secretary-General does not share the view, held by some stakeholders, that there would necessarily be a split among the judges in the joint chamber in line with their membership of the respective Tribunals. The judges are professional and independent in their functions and would be reasonably expected to resolve any case on its particular merits.

[19] United Nations Appeals Tribunal rules of procedure, art. 4 (2); see also United Nations Appeals Tribunal judgment No. 2018-UNAT-840, para. 63.

[20] ILO Administrative Tribunal statute, art. V; see also ILO Administrative Tribunal judgment No. 4515, consideration 5.

[21] United Nations Appeals Tribunal statute, art. 8; United Nations Appeals Tribunal rules of procedure, art. 18 (1); see also United Nations Appeals Tribunal judgment 2022-UNAT-1234, para. 33.

[22] See United Nations Appeals Tribunal rules of procedure, art. 18 (2), which provides for the possibility of hearings by electronic means.

the same duty station, their deliberations could be conducted remotely, thus saving resources.[23]

43. In order to expedite proceedings, the joint chamber would normally be mandated to issue its ruling within three months of the referral of a matter. The ruling would have to be reasoned and in writing; an oral pronouncement would not be required.

Costs

44. The joint chamber would be an innovation within the jurisdictional set-up of the United Nations common system. In the absence of operational practice, it is not possible to provide a full cost estimate at this juncture. However, some cost assumptions, based on the following considerations, are set out below:

(a) The joint chamber would operate within the framework of the existing Tribunals and would comprise serving judges. It would not be a standing body with running costs. Instead, it would be convened only as needed. Considering past experience, it is not likely that the joint chamber would be frequently engaged, with the assumption that a preliminary ruling would be requested, on average, once a year;[24]

(b) Both the judges of the ILO Administrative Tribunal and the judges of the United Nations Appeals Tribunal are remunerated on a per-judgment basis.[25] While a preliminary ruling would not be equivalent to a full judgment, it would be important to acknowledge the special nature of the joint chamber and its rulings and ensure fair and equal compensation for the participating judges. In that light, it would be reasonable to consider remunerating the judges at a level comparable to the compensation received by the presiding judge in a case before the United Nations Appeals Tribunal, currently set at $2,400 per judgment. If that rate were applied to the judges in the joint chamber, assuming that the panel were composed of six judges (three from the ILO Administrative Tribunal and three from the United Nations Appeals Tribunal), the total compensation for all six judges would amount to $14,400 per ruling. Providing judges in the joint chamber with the highest level of compensation would acknowledge their expertise and experience and the additional responsibilities they would assume when jointly considering legal questions at the intersection of the two tribunal systems;

(c) The joint chamber would be supported by the Registries of the ILO Administrative Tribunal and the United Nations Appeals Tribunal.[26] It can reasonably

[23] During the coronavirus disease (COVID-19) pandemic, both the ILO Administrative Tribunal and the United Nations Appeals Tribunal conducted their sessions remotely (see, for example, information on the 133rd session of the ILO Administrative Tribunal at www.ilo.org/tribunal/about-us/WCMS_822291/lang--en/index.htm; see also A/76/99, paras. 4, 6, 24 and 109; and A/77/156, para. 30). While in-person deliberations might normally be preferable in the light of the collegial nature of the proposed joint chamber, there is no reason to assume that the judges would be unable to exceptionally discharge their mandate by electronic means for the particular purposes of the joint chamber, which is intended to resolve specific legal issues and which would not be frequently engaged.

[24] For an overview of past instances of challenges to decisions arising from ICSC recommendations and decisions, see A/75/690, paras. 79–86, and A/77/222, paras. 35–43.

[25] At the ILO Administrative Tribunal, an amount of 4,500 Swiss francs is allocated for each judgment adopted, shared among the members of the panel hearing the case. That rate has not been adjusted since 2006 (see A/75/690, para. 23 (c)). The judges of the United Nations Appeals Tribunal receive the following honorariums: the presiding judge receives $2,400 per judgment and the other participating judges receive $600 per judgment. Those rates have not been adjusted since 2009 (see resolution 63/253, para. 30, referring to A/63/314, para. 83). In addition, a judge of the United Nations Appeals Tribunal receives an honorarium of $600 for each interlocutory motion adjudicated. That rate has not been adjusted since 2018 (see resolution 72/256, para. 33).

[26] For the current caseload of the United Nations Appeals Tribunal, see A/78/156, paras. 9 and 29.

be expected that any technical and administrative assistance that the judges might require in order to issue the one preliminary ruling anticipated per year could be absorbed by the Registries. The joint chamber would not entertain new cases and would not be authorized to adjudicate contentious cases involving ICSC matters in full. It would consider only discrete issues of law in the context of pending litigation. Furthermore, a binding ruling by the joint chamber would obviate the need for litigation on the same issue before the Tribunals, thereby facilitating more expeditious disposal of cases involving identical subject matter and potentially saving resources;

(d) It is anticipated that the joint chamber would not normally need to hold oral hearings and that the judges would not need to travel in order to deliberate.

45. Given the anticipated infrequent use of the joint chamber and the inherent unpredictability in that regard, the Secretary-General would not propose additional resources under the regular budget if the joint chamber were to be established. Any related expenditure incurred by the United Nations Appeals Tribunal (Office of Administration of Justice) would be reported in the context of the financial performance report. Costs incurred by the ILO Administrative Tribunal should be borne by ILO. Furthermore, if the actual use of the joint chamber, in terms of both frequency and operational requirements, significantly deviated from the current assumptions, the Secretary-General would reassess the resource situation and bring the outcome of such assessment to the attention of the General Assembly in line with budgetary procedures.

46. To avoid any undue burden on particular organizations litigating a case on a legal question referred to the joint chamber, and given that the legal certainty provided by the joint chamber would benefit the United Nations common system as a whole, it would be proposed that the costs of the joint chamber be shared between the United Nations Secretariat and ILO, which have administrative responsibility for the United Nations Appeals Tribunal and the ILO Administrative Tribunal, respectively. Such an arrangement would be subject to an agreement with ILO.[27]

Implementation

47. The establishment of the joint chamber would require parallel amendments of the Tribunals' statutes by the International Labour Conference (for the ILO Administrative Tribunal)[28] and the General Assembly (for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal).[29] To avoid inconsistency in the implementation of the amendments to the statutes and permit the necessary practical arrangements, any decisions approving the amendments would have to specify that the amendments would enter into force three months after their adoption by one body or three months after the adoption of corresponding amendments by the other body, whichever would be later.

48. In addition, the relevant decisions would have to contain specific provisions on the initial modalities for the technical and administrative assistance provided by the Registries of the Tribunals and the provisional procedure that would apply in the event of an initial request for a preliminary ruling.

[27] Given the limited anticipated additional expenditure associated with the operation of the joint chamber, it would not be feasible or cost-efficient to apply a joint funding arrangement similar to that applied with respect to ICSC or other entities whose costs are shared among participating organizations.

[28] ILO Administrative Tribunal statute, art. XI.

[29] United Nations Dispute Tribunal statute, art. 13; United Nations Appeals Tribunal statute, art. 12.

Views of stakeholders

49. There are significantly differing views among the stakeholders in the United Nations common system on the desirability and viability of a joint chamber.

50. Many stakeholders expressed principled objections to the proposal, raising fundamental legal, technical and operational concerns. They consider that the establishment of a joint chamber would be disproportionate to the sporadic nature of inconsistencies in the implementation of ICSC recommendations and decisions. They point to the jurisdictional differences between the ILO Administrative Tribunal and the United Nations Tribunals, arguing that those differences would not be addressed by a joint chamber. They also note the differences in the case law of the Tribunals on specific aspects of international civil service law, such as the acquired rights of staff, which they perceive as difficult to reconcile. Furthermore, they stress the strong opposition to the proposal expressed by the ILO Administrative Tribunal and the United Nations Appeals Tribunal, which casts doubt on its practical implementation, including the willingness of the Tribunals to use the joint chamber. Some stakeholders raised concerns about potential infringements of the independence and autonomy of the Tribunals, which would be bound by rulings involving judges who would be extraneous to their respective tribunal systems. They also voiced reservations about the potential for significant delays and unnecessary costs.

51. Other stakeholders indicated support for the establishment of the joint chamber as a practical and effective approach to mitigating the risk of divergent jurisprudence between the tribunals that would require only a limited adjustment to the existing jurisdictional set-up. They noted that the joint chamber would be the solution most likely to preserve a single, unified and coherent common system by helping to provide legal certainty across the system, while not changing the fundamental elements of the existing legal framework. They argued that the proposal would preserve judicial independence and that there would be limited resource implications, which could possibly be managed within existing structures. They emphasized the need for preliminary rulings to have a binding effect in order to be fully effective.

Assessment

52. The Secretary-General considers that the establishment of a joint chamber could be a suitable measure to help to avoid divergent jurisprudence by the two tribunal systems. Through a binding ruling on the lawfulness of an ICSC recommendation or decision in the context of litigation challenging its implementation, the joint chamber would promote legal certainty and uniformity of approach. At the same time, it is recognized that, even with possible further refinements, the proposal lacks, at present, the level of support from the stakeholders that would facilitate its implementation, notably from the ILO Administrative Tribunal and the United Nations Appeals Tribunal.

53. From the outset, it should be noted that the joint chamber would not completely exclude the risk of divergent jurisprudence on ICSC recommendations and decisions and their inconsistent implementation by the organizations of the United Nations common system. However, it would reduce that risk to a large degree by providing a judicial forum that would allow for the uniform resolution of key legal issues related to ICSC matters while preserving the existing bifurcated jurisdictional set-up. It would therefore serve as a fall-back mechanism, to be utilized only in rare cases where necessary. With regard to specific concerns raised by some stakeholders, the following observations are made:

(a) It is acknowledged that there are differences between the jurisdiction of the ILO Administrative Tribunal and the jurisdiction of the United Nations Tribunals,

which arise from their respective statutes and the jurisprudence developed by them. However, the scope of the Tribunals' jurisdiction is circumscribed by the General Assembly (for the United Nations Tribunals) and the International Labour Conference (for the ILO Administrative Tribunal), as legislative bodies with the authority to amend the Tribunals' statutes. If the Assembly and the Conference were to authorize the establishment of a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal, with specific competence to consider the lawfulness of ICSC recommendations and decisions in very limited circumstances, that would modify the statutory framework and adjust the existing set-up, which would have to be considered by the Tribunals when interpreting the scope of their jurisdiction;

(b) In considering the preliminary question referred to it, the joint chamber would draw upon the case law of the Tribunals, as appropriate. To the extent that there were differences in jurisprudence that would impact the assessment of the lawfulness of an ICSC recommendation or decision, the judges in the joint chamber would be best placed to reconcile those differences. Indeed, the establishment of a joint chamber would be premised on the need to enhance consistency and legal certainty concerning the litigation of ICSC-related matters throughout the United Nations common system. In that light, it is not a given that the judges of the joint chamber, with their different perspectives, would necessarily adhere to the previous case law of the Tribunals, which, as in any other jurisdiction, may evolve over time. [30] Furthermore, it cannot be presumed that any existing variations in the case law would necessarily be determinative in the consideration of cases involving ICSC recommendations and decisions. For instance, the principles developed by the tribunals on the concept of staff members' acquired rights were not determinative in the 2017 Geneva post adjustment cases. In the cases concerning the introduction of a new unified salary scale following an ICSC review of the compensation package in 2016, both the ILO Administrative Tribunal and the United Nations Appeals Tribunal arrived at the same conclusion, ruling that the acquired rights of staff members had not been breached (A/77/222, paras. 36–43);

(c) If the statutes of the tribunals were amended to provide for the establishment of a joint chamber, the judges would adjudicate matters under a modified statutory framework that would provide for the referral of legal questions for preliminary rulings when necessary. Therefore, it is reasonable to assume that the judges would utilize the new mechanism in appropriate cases;

(d) The establishment of the joint chamber would not affect the independence of the ILO Administrative Tribunal or the United Nations Appeals Tribunal or of their judges. Any modification to the set-up of the Tribunals and the scope of the judges' functions and responsibilities in relation to the operation of the joint chamber would be effected through properly adopted amendments to the respective statutes, providing for the establishment and jurisdiction of the joint chamber and the binding nature of its rulings. The joint chamber would not be extraneous to the Tribunals; it would be formally and expressly provided for in the respective statutes and composed of an equal number of judges from both Tribunals;

(e) While there would be some additional time required in the litigation of a matter before the Tribunals pending a ruling by the joint chamber on the legal question or questions referred to it, that ruling would eventually expedite the proceedings overall, given that it would provide clarity on what would, in all likelihood, be the

[30] See, for example, ILO Administrative Tribunal judgment No. 4498, consideration 5 (citing judgment No. 2220, consideration 5), holding that the tribunal would follow its own precedents "unless it is persuaded such precedents were wrong in law or in fact or *that for any other compelling reason they should not be applied*" (italics added).

determinative issue in the particular case and related litigation. Similar considerations apply to the costs of the joint chamber, given its potential to obviate repetitive litigation on the same legal issue, which would ultimately save resources, and the positive effects on the functioning of the United Nations common system of avoiding split jurisprudence.

B. Increased informal exchanges between the tribunals

Background

54. In his first report (A/75/690), the Secretary-General recorded the view of some stakeholders that increased exchanges between the Tribunals would contribute to greater awareness and appreciation of each other's jurisprudence. At the same time, he noted the concerns of other stakeholders about the usefulness and appropriateness of such an approach for addressing any inconsistencies in the implementation of ICSC recommendations and decisions (A/75/690, para. 105). In its resolution 75/245 B, the General Assembly requested the Secretary-General to further analyse the option of increased exchanges between the Tribunals in his next report. However, no proposal was subsequently developed, given that the ILO Administrative Tribunal had not responded to a questionnaire seeking to ascertain interest in pursuing increased exchanges (A/77/222, footnote 15). Nonetheless, in its comments annexed to the second report of the Secretary-General (A/77/222), the ILO Administrative Tribunal noted the preparedness of its judges "to engage in periodic informal dialogue with judges of UNAT to see what can be done to maintain or create consistency and cohesion within [the] common system without compromising the judges' duties deriving from acceptance of appointment to an independent international judicial tribunal" (see A/77/222, annex II).

55. In its resolution 77/257, the General Assembly encouraged increased informal exchanges and sustained communication between the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and the International Labour Organization Administrative Tribunal. In the light of that language, and given the fact that the Assembly has not received comprehensive information on that option, it was considered useful to provide more details on its implications.

56. Cognizant of the independence and discretion of the tribunals, the judges were invited to provide detailed feedback on the preferred scope and modalities of informal exchanges as well as any particular administrative requirements. The invitation was accompanied by a brief questionnaire. The judges were also invited to provide any other comments on the possibility of increased informal exchanges between the tribunals, including the potential contribution of such exchanges to maintaining a coherent and consistent United Nations common system.

Views of stakeholders

57. The United Nations Appeals Tribunal expressed preparedness to engage in in-person informal exchanges with the ILO Administrative Tribunal to discuss general common issues and jurisprudence, with the caveat that the exchanges would be voluntary, would not concern specific cases and would not bind the judges or otherwise compromise their duties. That, according to the Tribunal, might or might not assist in creating consistency on some common issues. The United Nations Dispute Tribunal noted that exchanges would have to be voluntary, include the different tribunals and involve a broad complement of judges through, for instance, in-person conferences, seminars or retreats. That should be viewed as a form of

continuous learning.[31] There could be no expectation of immediate changes in jurisprudence; any exchange would be academic and abstract, rather than forging solutions on specific issues. The ILO Administrative Tribunal stated that the Tribunals, with the support of their Registries, could readily implement exchanges among themselves, without the involvement of representatives of their Administrations. Initially, such meetings should be in person and would lead to personal and professional engagement. It would then probably be possible to meet periodically by video link.[32]

58. Other stakeholders considered that, while facilitating informal exchanges between the Tribunals could be a practical way to foster awareness of their jurisprudence and help to identify best practices and working methods, it would not address the issue of divergent jurisprudence. Stakeholders also stressed that any exchanges would have to be transparent and could not interfere with or give the perception of interference with the independence of the Tribunals or due process requirements. In particular, there could be no communications on pending cases or on specific legal issues pertaining to pending cases.

Assessment

59. The Secretary-General considers that informal exchanges between the Tribunals, regardless of the format, are not a substitute for the formal adjudication of staff members' challenges to the implementation of ICSC recommendations and decisions. They cannot resolve the issue at the core of the review of the jurisdictional set-up of the United Nations common system, that is, to avoid, to the extent possible, divergences in the Tribunals' jurisprudence on ICSC matters. Moreover, great care must be taken to avoid any impression of encroachment upon the Tribunals' independence. There must be no perception that exchanges between the Tribunals unduly influence the litigation of cases, potentially undermining confidence in the internal system of justice. To that end, any informal exchanges, as encouraged by the General Assembly, must be voluntary and cannot be mandated. If such exchanges take place, that should be transparently communicated.

60. The Secretary-General notes the interest expressed by the United Nations Tribunals in engaging in judicial dialogue. The Tribunals have indicated that informal exchanges could be of value in themselves and should preferably be conducted in person once a year for at least one full day. However, that would necessitate additional resources, in particular to cover travel costs, and increased support from the Registries.[33] Moreover, the judges of the United Nations Appeals Tribunal are appointed on a part-time basis and are remunerated for the judgments they deliver. It might therefore be necessary to consider additional compensation for supplementary activities, such as engaging in exchanges with other tribunals.[34] Lastly, any additional

[31] See code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, art. 7 (g).

[32] The ILO Administrative Tribunal noted that there had been an initiative to arrange a meeting of its President and Vice-President with the Bureau of the United Nations Appeals Tribunal but that the United Nations could not cover expenses associated with the travel of the Bureau. The Tribunal expressed its hope that the ILO Director General would agree, in principle, to the ILO providing funding for such meetings, in collaboration with the Office of Administration of Justice.

[33] There are seven judges serving on the United Nations Appeals Tribunal and nine judges serving on the United Nations Dispute Tribunal (three full-time and six half-time). Travel costs and any additional costs would be incurred accordingly, depending on the level of attendance by the judges.

[34] Similar considerations would apply to the half-time judges of the United Nations Dispute Tribunal, who can only be deployed for judicial work for six months per year.

activities must not compromise the judges' obligations or interfere with the Tribunals' core task of adjudicating the cases before them.

61. In that light and bearing in mind the General Assembly's previously expressed encouragement of informal exchanges between the Tribunals, the Secretary-General considers that those concerns and requirements would have to be satisfactorily addressed. If the Assembly were to recognize value in supporting informal exchanges, despite their limited potential to prevent divergent jurisprudence on ICSC matters, it would be necessary to establish a framework within which such exchanges could be facilitated and administered. That would involve allocating the necessary additional financial resources for the United Nations Tribunals,[35] including in close consultation with the independent Office of Administration of Justice, which has overall responsibility for the coordination of the United Nations system of administration of justice.[36]

C. Designation of one tribunal with exclusive jurisdiction to hear cases related to the implementation of the Commission's recommendations or decisions

Background

62. In its comments on the second report of the Secretary-General (A/77/222), ICSC suggested that the "ideal solution to avoid inconsistency among jurisdictions would be to designate only one tribunal for the litigation arising from administrative decisions based on ICSC decisions or recommendations, similar to the jurisdictional set-up for the United Nations Joint Staff Pension Fund. This would imply an adjustment of the relevant bilateral agreements with regard to organizations' adherence to the tribunals" (see A/77/222, annex I).

Views of stakeholders

63. Stakeholders were generally sceptical about designating one tribunal with exclusive jurisdiction to hear cases on ICSC-related matters. They considered that, while such designation would avoid inconsistency in the implementation of ICSC recommendations and decisions, it would necessarily entail changes to the ICSC statute, requiring acceptance by the participating organizations, and amendments to the internal regulations of those organizations that would have to submit to the jurisdiction of the designated tribunal.

64. Stakeholders also pointed to the difficulties of conclusively deciding what matters would fall under the exclusive jurisdiction of the designated tribunal. Lastly, stakeholders noted the political nature of determining which of the two tribunal systems would have exclusive jurisdiction, which might undermine the perception of the tribunals' independence and diminish confidence in the internal system of justice. In that context, several stakeholders stated that only the designation of the ILO Administrative Tribunal would be acceptable to them.

Assessment

65. Under the ICSC proposal, as understood by the Secretariat, one of the two tribunal systems would be vested with exclusive jurisdiction for the litigation of any case brought by a staff member that related to the implementation of an ICSC

[35] Any additional resource requirements for the judges of the ILO Administrative Tribunal would have to be covered by ILO.

[36] Resolution 61/261, para. 28; ST/SGB/2010/3, para. 2.1.

recommendation or decision. That would ensure that such cases were treated uniformly and consistently.

66. However, there are several drawbacks. For one, the ICSC statute does not make participation in the United Nations common system conditional on accepting the exclusive jurisdiction of any specific tribunal concerning challenges to the Commission's recommendations and decisions. Both the ILO Administrative Tribunal and the United Nations Tribunals have adjudicated ICSC-related matters for several decades since the establishment of the Commission in 1975. If the General Assembly were to preclude either tribunal system from exercising jurisdiction over such matters, possibly through an amendment of the ICSC statute,[37] that would lead to a major modification of the current jurisdictional set-up.

67. Conferring exclusive jurisdiction over ICSC-related matters on one tribunal would also necessitate amendments to the relevant staff regulations and rules of those organizations that currently accept the jurisdiction of a tribunal that would no longer be competent to hear challenges pertaining to such matters. That is because those internal regulations normally set out the applicable internal justice process for each organization. The amended regulations, as well as the statutes of the Tribunals, would have to uniformly prescribe:

(a) Which administrative decisions could be challenged only at the designated tribunal, in particular when an administrative decision would be considered to arise from the implementation of an ICSC recommendation or decision;

(b) Whether both tribunal systems would retain the power to decide that jurisdictional threshold question and the consequences of divergent views for a tribunal's competence in a particular case;

(c) Whether certain components of the litigation unrelated to the implementation of an ICSC recommendation or decision would have to be separated into discrete matters for consideration by the tribunal with "ordinary" jurisdiction.

Consideration would also have to be given to the financial implications for organizations, some of which would have to contribute to both tribunals.

68. Lastly, the Secretary-General considers that the jurisdictional set-up of the United Nations Joint Staff Pension Fund is not a model that is transferable to the handling of challenges to administrative decisions arising from ICSC recommendations and decisions. When joining the Fund, member organizations accept the jurisdiction of the United Nations Appeals Tribunal to hear and pass final judgment on applications from their staff members alleging non-observance of the Regulations of the Fund arising from decisions of the United Nations Joint Staff Pension Board.[38] As set out above, no similar requirement currently exists for participation in the United Nations common system. There is a further conceptual difference. With regard to the Fund, the decision that may be contested before the United Nations Appeals Tribunal is a decision of the Standing Committee acting on behalf of the Board. In contrast, ICSC recommendations and decisions cannot be

[37] As a technical matter, should the General Assembly wish to amend the ICSC statute to impose additional requirements for participation in the United Nations common system, such as acceptance of the exclusive jurisdiction of one designated administrative tribunal, it has the legal authority to do so. Article 30 of the ICSC statute provides that "the present statute may be amended by the General Assembly. Amendments shall be subject to the same acceptance procedure as the present statute". An amendment to the ICSC statute would therefore require acceptance by participating organizations of the United Nations common system before it could be deemed effective and binding on them.

[38] Regulations of the United Nations Joint Staff Pension Fund, art. 48; United Nations Appeals Tribunal statute, art. 2 (9).

challenged directly; rather, a staff member may only contest an organization's decision to implement an ICSC recommendation or decision in the context of that organization's legal framework.[39] If a single tribunal were to be designated to hear such challenges, it would have to rule on matters that would normally fall outside its competence, for instance, the interpretation of staff regulations and rules of organizations that have otherwise not accepted its jurisdiction.

D. Establishment of an appeal mechanism with limited jurisdiction over cases arising from the Commission's recommendations and decisions

Background

69. In his report on the initial review of the jurisdictional set-up of the United Nations common system (A/75/690), the Secretary-General explored the history and the feasibility of a proposal to establish a single appellate mechanism for both tribunal systems (A/75/690, paras. 112–114). In its resolution 75/245 B, the General Assembly did not request further analysis of that option. During the Assembly's consideration of the second report of the Secretary-General (A/77/222), inquiries were made as to the possibility of a single appeal mechanism with limited jurisdiction over cases arising from ICSC recommendations and decisions.

Views of stakeholders

70. Most stakeholders did not support that option. They considered that a new appeal mechanism would constitute a significant structural change to the existing jurisdictional set-up, even if the jurisdiction of such a mechanism were circumscribed to ICSC-related matters. They highlighted the delays that an additional level of review would cause and the additional resources that it would require.

Assessment

71. A dedicated appeal mechanism, with limited power to review cases concerning ICSC-related matters, could potentially resolve differences in the consideration of such cases and provide greater legal certainty and finality. There could be two options: either the United Nations Appeals Tribunal would serve as an appellate instance for the ILO Administrative Tribunal, or a new appellate body, separate from the existing tribunals, would act as a second level of review for the ILO Administrative Tribunal and a third level of review for the United Nations Tribunals. Either option would provide for the authoritative and final resolution of any ICSC-related case.

72. Nonetheless, introducing an additional layer of review would constitute a major intervention in the current jurisdictional set-up. Under the respective statutes of the ILO Administrative Tribunal and the United Nations Appeals Tribunal, the judgments of the tribunals are final and without appeal.[40] Regardless of the preferred approach, any change to that set-up would necessitate an amendment of the statutes of both Tribunals. Such amendments would have to precisely describe which cases could be appealed as of right to the appeal mechanism and how disputes concerning that right of appeal would be resolved.

73. Given the status of ICSC as a subsidiary body of the General Assembly, it could be argued that the United Nations Appeals Tribunal would be best placed to serve as

[39] For example, in the 2017 Geneva post adjustment cases, staff members challenged the organizations' decisions to reduce their salaries through the implementation of a lower post adjustment multiplier that had been set by ICSC.

[40] ILO Administrative Tribunal statute, art. VI; United Nations Appeals Tribunal statute, art. 10 (6).

an appellate instance on ICSC-related cases. However, that would upset the balance between the two tribunal systems and would not be acceptable to many stakeholders, in particular those that have recognized the jurisdiction of the ILO Administrative Tribunal. At the same time, creating a new appellate body to hear appeals from both the ILO Administrative Tribunal and the United Nations Appeals Tribunal would have major logistical, administrative and financial implications.

74. For example, a determination would have to be made as to the number of judges on the new appeal body, as well as their qualifications, status and mode of appointment. Consideration would also have to be given to the question of where the new body would be administratively located and how it would be maintained. Conceivably, it would require support from a registry that was not linked to the existing Tribunals. Additionally, the resolution of cases would be significantly prolonged, with detrimental consequences for organizations and staff.

III. Conclusions

75. The present review of the jurisdictional set-up of the United Nations common system is the latest in a series of efforts to survey and address the challenges of having two tribunal systems with concurrent jurisdiction among the organizations of the system, including over matters relating to ICSC. As set out in the report of the Secretary-General on the initial review of the jurisdictional set-up of the United Nations common system (A/75/690), those efforts, which commenced soon after the establishment of ICSC in 1975, involved exploring the feasibility of a single administrative tribunal and the harmonization of the tribunals' statutes (1978–1989), the provision of notice and opportunity for ICSC to present its views to the Tribunals (1993–1994) and the establishment of a joint panel for advisory opinions on matters relating to ICSC (1995–1999). Each of those efforts was informed by concerns related to the cohesion and consistency of the common system. Ultimately, none of them resulted in comprehensive action.

76. In the course of the present review, the Secretary-General has assessed a range of options to promote the consistent implementation of ICSC recommendations and decisions against the backdrop of the duality of the current jurisdictional set-up of the United Nations common system. In that context, the General Assembly may wish to consider the following:

(a) At the present stage, the stakeholders have not coalesced around any of the proposals put forward. Indeed, there is disagreement on whether action is necessary in the first place, which indicates a lack of shared understanding about the issue at stake. Some stakeholders firmly oppose all proposals that would change the existing jurisdictional set-up of the United Nations common system;

(b) Any measures involving changes to the adjudication of cases involving ICSC matters by the Tribunals would require, at the very least, the agreement of the tripartite constituents of the International Labour Organization, as the custodial institution of the ILO Administrative Tribunal. Depending on the nature of such changes, the agreement of other organizations might also be required. Unilateral action by the General Assembly would be neither advisable nor sufficient to achieve a practical outcome;

(c) The proposal for a joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal is the most advanced and, if implemented, would have the potential to minimize the risk of divergence in the jurisprudence of the tribunal systems on ICSC matters. It would require few changes to the existing set-up with limited cost implications. However, the majority of stakeholders do not support

the proposal or have strong reservations about it and have raised various concerns. Among them are the two aforementioned Tribunals, which have expressed their outright opposition. It is also recognized that strong objections have been expressed by the non-governmental groups of the ILO Governing Body.[41] Without the support of those key stakeholders, the prospects for the acceptance and practical implementation of the proposal are compromised;

(d) More sweeping changes – conferring on one tribunal exclusive jurisdiction over ICSC-related cases, elevating one tribunal to hear appeals from the other on such cases, or creating a new appeal mechanism for both Tribunals – would be complex and costly to implement and are almost unanimously opposed by the stakeholders. Pursuing those options may not be practical or feasible;

(e) Maintaining the status quo carries significant risks for the cohesion and consistency of the United Nations common system. As the 2017 post adjustment cases have demonstrated, divergent jurisprudence of the two tribunals on ICSC-related challenges, even if infrequent, may lead to inconsistent implementation of the Commission's recommendations and decisions, which in turn carries harmful repercussions for organizations and staff. The possibility of similar scenarios in the future cannot be excluded, for instance, with respect to the Commission's forthcoming assessment and review of the compensation system. Leaving the issue unaddressed would echo past failed efforts to resolve the challenges inherent in having two independent tribunal systems.

77. Lastly, if the General Assembly were to request the Secretary-General to carry out further work in connection with the review of the jurisdictional set-up, it would need to allocate the necessary resources to support such a request.[42]

78. **The General Assembly is requested to take note of the present report and to provide any observations or guidance to the Secretary-General.**

[41] See ILO documents GB.346/PFA/12(Rev.1) and GB.346/PFA/PV, paras. 241–268.

[42] The existing resources for the review of the jurisdictional set-up were approved until the end of 2023. In the absence of continued resources, there is no capacity in the Secretariat to conduct further work in connection with the review.

Annex I

Draft amendments to the statutes of the Administrative Tribunal of the International Labour Organization, the United Nations Appeals Tribunal and the United Nations Dispute Tribunal

1. Statute of the Administrative Tribunal of the International Labour Organization[1]

Article XII [new provision]

There shall be established a joint chamber of the Tribunal and the United Nations Appeals Tribunal, which shall be competent to issue preliminary rulings in accordance with the provisions of the common annex to the statutes of the Tribunal, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.

2. Statute of the United Nations Appeals Tribunal[2]

Article 2, paragraph 11 [new provision]

There shall be established a joint chamber of the Appeals Tribunal and the Administrative Tribunal of the International Labour Organization, which shall be competent to issue preliminary rulings in accordance with the provisions of the common annex to the statutes of the Appeals Tribunal, the Dispute Tribunal and the Administrative Tribunal of the International Labour Organization.

3. Statute of the United Nations Dispute Tribunal

Article 8 bis [new provision]

When an application under article 2 (1) (a) of the present statute arises from the implementation of a recommendation or decision of the International Civil Service Commission, the Tribunal may refer one or more legal questions regarding that recommendation or decision to the Joint Chamber of the Appeals Tribunal and the Administrative Tribunal of the International Labour Organization for a preliminary ruling, in accordance with the provisions of the common annex to the statutes of the Dispute Tribunal, the Appeals Tribunal and the Administrative Tribunal of the International Labour Organization.

4. Common annex to the statutes of the Administrative Tribunal of the International Labour Organization, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal [new provision]

Joint Chamber of the Administrative Tribunal of the International Labour Organization and the United Nations Appeals Tribunal

1. Composition

(a) The Joint Chamber shall be composed of three judges from the Administrative Tribunal of the International Labour Organization, designated by its President, and three judges of the United Nations Appeals Tribunal, designated by its President. The judges of the Joint Chamber shall elect among them a presiding judge.

[1] Amendments to the statute of the ILO Administrative Tribunal may be made by the International Labour Conference.

[2] Amendments to the statutes of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal may be made by the General Assembly.

(b) The Joint Chamber shall be convened only when required under paragraph 3 of the annex.

(c) The Joint Chamber shall be supported by the Registries of the Administrative Tribunal of the International Labour Organization and the United Nations Appeals Tribunal in a manner agreed between them, in consultation with the Presidents of the two Tribunals.

2. Competence

The Joint Chamber shall be competent to issue a preliminary ruling on the following matters:

(a) Whether a recommendation or decision of the International Civil Service Commission is consistent with the statute and rules of procedure of the Commission;

(b) Whether a recommendation or decision of the International Civil Service Commission is consistent with the Commission's own methodology;

(c) Whether the methodology employed by the International Civil Service Commission in arriving at a recommendation or decision is tainted by a material error;

(d) Whether a recommendation or decision of the International Civil Service Commission is consistent with provisions of the legal framework governing the international civil service and the general principles of international civil service law.

3. Request for a preliminary ruling

(a) When

– A complaint under article II (1) or (5) of the statute of the Administrative Tribunal of the International Labour Organization, or

– An application under article 2 (1) (a) of the statute of the United Nations Dispute Tribunal, or

– An appeal under article 2 (1) or an application under article (2) (10) of the statute of the United Nations Appeals Tribunal

arises from the implementation of a recommendation or decision of the International Civil Service Commission, the relevant Tribunal, as applicable, on its own motion or on the application of either party, may refer one or more legal questions regarding that recommendation or decision for a preliminary ruling by the Joint Chamber if resolution of such questions is required for the determination of the matter and is in the interest of ensuring consistency across the United Nations common system. The Tribunal may not refer a legal question regarding a recommendation or decision of the International Civil Service Commission when that question has previously been considered and addressed by the Joint Chamber.

(b) The decision on whether to refer a question to the Joint Chamber for a preliminary ruling is final and cannot be contested by the parties.

(c) The President of the Tribunal shall notify the Presidents of the other two Tribunals of the referral.

(d) Pending the preliminary ruling of the Joint Chamber, the proceedings in the case that gave rise to the referral, and in any case pending before the Tribunal or before either of the other two Tribunals that requires resolution of the same legal question or questions submitted to the Joint Chamber, shall be suspended.

(e) The preliminary ruling of the Joint Chamber shall be binding on all the Tribunals in their consideration of these cases.

(f) No judge of the Joint Chamber shall participate in the adjudication of the case that gave rise to the referral to the Joint Chamber.

4. Procedure before the Joint Chamber

(a) The Joint Chamber shall determine the procedure to be applied in the matter before it, with due regard to the rules of procedure of the Administrative Tribunal of the International Labour Organization and the United Nations Appeals Tribunal, respectively.

(b) The Joint Chamber shall be provided with all relevant documentation. It shall invite written submissions concerning the legal question from the parties, the International Civil Service Commission, other organizations of the United Nations common system under the jurisdiction of the Tribunals and staff representative bodies.

(c) The Joint Chamber shall decide by consensus or, in the absence of consensus, by majority. Separate, concurring or dissenting opinions may be appended to its ruling. If the judges of the Joint Chamber do not reach a consensus, or if there is no majority, the presiding judge shall have a casting vote.

(d) The Joint Chamber shall issue its reasoned ruling normally within three months of being convened. It shall normally decide on the basis of written submissions. In exceptional circumstances, hearings by electronic means may be organized. Deliberations shall be conducted by electronic means.

Annex II

Comments of the International Civil Service Commission

The International Civil Service Commission (ICSC) wishes to highlight the importance of maintaining a single, unified and coherent United Nations common system.

We categorically disagree with paragraph 22 of the report, which reflects the view of some stakeholders that the Commission was at fault for the inconsistent implementation of decisions, rather than the jurisdictional set-up of the common system. We also maintain that the methodologies applied, in the development of which all stakeholders are participating, are fair and fit for purpose.

The Commission considers that, after the General Assembly's decision in its resolution 77/256 on the competence of the ICSC, conflicting judgements among the Tribunals of the common system are less probable but still a possibility in the future, and that a simple, reasonable and cost-effective approach should be found to avoid or address such conflicts.

The Commission expresses support for increased informal exchanges between the tribunals, while maintaining their independence. With regard to guidance by the Commission following decisions or judgments by the Tribunals, the Commission notes that this is also required by relevant General Assembly resolutions and is thus inherent to its work. The ICSC will continue to prepare such guidance in consultation with the organizations and the staff federations.

The Commission remains of the view that the proposal to designate only one tribunal with exclusive jurisdiction to hear cases related to the implementation of recommendations and decisions of the Commission represents a clear and concise option, which could and should have been fully explored. The Commission regrets the lack of a comprehensive and elaborated assessment of this proposal in earlier phases of the process, which could have enabled adequate consideration and an informed decision on this option, possibly allowing more stakeholders to coalesce around it. Limited analysis of this option may have also contributed to improper assumptions concerning certain elements of the proposal, including on the financial implications for organizations.

The Commission also notes that consultations on the jurisdictional set up are ongoing and should be thoroughly undertaken before a final decision is taken.

The Commission acknowledges the detailed analysis set out in the most recent report of the Secretary-General on some of the proposals, in particular with respect to the establishment of a joint chamber, including specific cost implications and statutory changes needed. However, it notes some general statements referred to in the context of underlying considerations and made regarding the other proposals, which have not been substantiated. No detailed analysis was prepared on the proposal most recently highlighted by the Commission regarding designating one of the existing tribunals to hear cases related to the implementation of recommendations and decisions of the Commission. This proposal and some others are described as "complex and costly", without specifics. It is also noted, however, that the report indicates the lack of capacity in the United Nations Secretariat to conduct further work on the review in the absence of further resources.

(*Signed*) Larbi **Djacta**
Chair

Annex III

Comments of the United Nations Appeals Tribunal

1. Jurisdiction

On 12 April and 5 June 2023, the United Nations Appeals Tribunal (the Appeals Tribunal or UNAT) provided its observations on the approaches proposed in the review of the jurisdictional set-up of the United Nations common system, including the proposed joint chamber and draft amendments to the statutes of the International Labour Organization Administrative Tribunal (ILOAT), the United Nations Dispute Tribunal (UNDT) and UNAT.

The Appeals Tribunal was, and continues to be, mindful of its role as an independent judicial body in taking formal positions on matters that are within the purview of the legislative body in the common system, which is the General Assembly.

However, in our earlier submissions, we confirmed that the differing conclusions of the United Nations Tribunals and ILOAT in the Geneva salary cases were due to fundamental jurisdictional and structural differences between the United Nations tribunals and ILOAT.

As stated in its jurisprudence, the competence of the Appeals Tribunal to review legislative texts originating from the General Assembly is restricted and the powers of both UNDT and the Appeals Tribunal, as judicial bodies of the United Nations internal justice system, must conform to their respective statutes.[1] Multiple Assembly resolutions have confirmed that recourse to general principles of law and the Charter of the United Nations by the Tribunals is to take place within the context of and consistent with their statutes and the relevant Assembly resolutions, regulations, rules and administrative issuances.[2] Furthermore, decisions of the Assembly related to human resources management and administrative and budgetary matters are subject to review by the Assembly alone.[3] In this instance, “decisions of the General Assembly are binding on the Secretary-General, and therefore, the administrative decision under challenge must be considered lawful, having been taken by the Secretary-General in accordance with the content of higher norms”.[4]

The Appeals Tribunal has judicially noted that the fundamental structure under which each of the United Nations and International Labour Organization judicial bodies operates differs considerably. ILOAT is not part of the United Nations administration of justice system, which consists of a two-tier judicial system, and its judges are not elected by the General Assembly. As indicated, the Appeals Tribunal is bound by Assembly resolutions, particularly if they specifically refer to both the United Nations Dispute Tribunal and the Appeals Tribunals. As such, the Assembly resolutions, together with the statute of the Appeals Tribunal, operate to limit the Appeals Tribunal’s scope of judicial review of certain cases related to human resources management and administrative and budgetary matters. Furthermore, the Appeals Tribunal is an appellate body while UNDT is a tribunal of first instance. ILOAT is not constrained by these significant structural and jurisdictional characteristics.[5] In the Geneva salaries cases, the Appeals Tribunal recognized that it

[1] *Abd Al-Shakour et al.*, Judgment No. 2021-UNAT-1107.
[2] Resolution 69/203.
[3] Resolution 73/276.
[4] *Ovcharenko et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-530.
[5] *Abd Al-Shakour et al.*.

was these structural and jurisdictional differences between the United Nations Tribunals and ILOAT that resulted in the differing conclusions in those cases.[6]

The Appeals Tribunal has stated its concern that the proposed approaches, including the joint chamber, do not address these fundamental differences. The proposed amendments do not appear to acknowledge or address the principled arguments made against this proposal by UNAT, UNDT and ILOAT.

For example, we are of the opinion that the proposed amendment on the competence of a joint chamber set out in the common annex does not address the jurisdictional differences between the Tribunals.

As we explained in our observations, simply referring to a "legal framework" in the draft provision is not sufficient owing to the different jurisprudence of the United Nations Tribunals and ILOAT (including differing jurisprudence on "acquired rights"). How would this provision affect what we have previously indicated (both in our jurisprudence and our observations): that the Appeals Tribunal is bound by United Nations General Assembly resolutions (unlike ILOAT) and that the Assembly resolutions, together with the statute of the Appeals Tribunal, operate to limit the Appeals Tribunal's scope of judicial review of certain cases related to human resources management and administrative and budgetary matters?[7]

2. Independence of the Appeals Tribunal

The provision that preliminary rulings of the joint chamber will be binding on the United Nations Tribunals and ILOAT directly and pointedly impacts the independence of each of the tribunals.

This is further underscored by the prohibition against judges meeting in person to discuss and decide such cases simply to economize resources.

This is contrary to the internationally accepted process for judicial decision-making and directly impacts the independence of judges to deliberate and exercise their jurisdiction. It ignores or at least underestimates the collegial judicial method, especially where judges are from different nations with different legal systems. It also ignores the logistical issues of judges from different countries and different time zones trying to meet remotely to deliberate important issues that widely impact the staff of the United Nations common system.

As indicated by the Secretary-General, ICSC decisions are important. Therefore, a joint chamber must be adequately resourced, including provision for judges to hold hearings in person and to deliberate in person. These operational decisions must be made by the judges themselves, who are best placed to decide how cases are handled. Indeed, even more fundamentally, it is a matter of judicial independence that the judges be able to do so and not be directed by the Organization as to how they hear and decide cases.

Furthermore, the desire to have such cases all concluded within a period of three months from filing to disposal should not put such pressure on the judges that they are forced in effect to do so by electronic communications only.

3. Operations of a Joint Chamber

The Appeals Tribunal has other concerns and questions about the proposed operations of a joint chamber:

[6] See *Abd Al-Shakour et al.* and ILOAT Judgment No. 3450.

[7] *Abd Al-Shakour et al*. and UNAT observations on proposed approaches in the review of the jurisdictional set-up of the United Nations common system, 12 April 2023.

(a) President: Under the proposed amendments, the joint chamber would consist of three judges from ILOAT and three judges from UNAT, and these judges would "elect" a presiding judge. The presiding judge casts the deciding vote in the event there is no consensus and an impasse.

This is not consistent with the practice of the Appeals Tribunal, which is to have three-member panels (an odd number; see article 4 (1) of the rules of procedure of UNAT). Article 4 (2) refers to the President or two judges of a panel scheduling a case for a full bench or a panel of seven judges (an odd number).

Because of the proposed equal number of judges of the joint chamber, if the jurisdictional conflict between ILOAT and UNAT is not dealt with, the presiding judge's election becomes critical, as the presiding judge's judicial opinions (based on whether they are from ILOAT or UNAT jurisprudence) would decide most rulings.

We accept the report when it notes that it will not necessarily be the case that UNAT and ILOAT judges of the joint chamber will follow their predecessors' decisions on legal questions, especially after hearing arguments and the views of their new colleagues. However, it is still distinctly possible that there will be an equally divided (3-3) bench, in which case the role of the presiding judge becomes crucial and determinative. Although we accept that the Presidents of UNAT and ILOAT should nominate their three constituent members of the joint chamber and that those six should elect a president from among them for any particular case, it would help achieve a better balance to have a rule that the presidency of the joint chamber should alternate between UNAT and ILOAT for each case dealt with by the chamber.

(b) Lack of hearing: The requirement to decide such issues without a hearing other than in exceptional circumstances (if so, a remote or virtual hearing) impacts the procedural fairness of parties before the joint chamber.

The Appeals Tribunal does not normally hold oral hearings because UNAT is an appellate body and not the tribunal of first instance. The first-instance tribunal, UNDT, conducts oral hearings and makes findings of fact upon which issues are determined. This requirement for fact-finding would need to be in place before a matter proceeds to any joint body.

(c) Judges' remuneration: It is proposed that the judges in the joint chamber be paid $2400 per case, irrespective of whether they are presiding, whether they are authoring the unanimous or the majority judgment, or whether they are writing a dissent or concurring judgment for themselves or on behalf of others. It is inequitable to have one rate per case when there will be significantly different commitments to this process by different judges. Also, the proposed sum was set in 2009 with no change and as such is currently inadequate. The remuneration of joint chamber judges needs to be considered in a significantly more nuanced way.

(d) Registry support: The report does not deal at all with what assistance the judges in a joint chamber can expect to receive and from whom and at whose cost.

There is no provision for support, either logistical or financial. What budget is available to the joint chamber? Who bears the burden of that cost? What if there is no agreement between the Presidents of the two Tribunals?

While the Appeals Tribunal judges currently have legal officers to assist in their preparation and checking of their judgments, a joint chamber case will add extra strain to an already stretched facility, at least within the Appeals Tribunal. Unless extra resources are provided, the ordinary work of the Appeals Tribunal will suffer. The same consideration applies to the Registrar's role: this is fully occupied with current UNAT duties and, even assuming that the registry roles for the joint chamber would be shared with ILOAT, the important work of getting cases ready and judgments

published will require additional resourcing if the Appeals Tribunal's ordinary work is not to suffer.

Finally, there is nothing mentioned about the languages of the joint chamber's judgments and the availability of translation services, especially if judgments are to be issued in writing and not pronounced at a session. Prompt translation services will have to be available to ensure that judgments are released contemporaneously in the appropriate languages. This will also add to the resourcing costs of the proposal.

(e) Availability of judges: There are likely to be some judges at the Appeals Tribunal who will be effectively unavailable to constitute the joint chamber because of their other commitments in their national jurisdictions.

Section 4(d) of the common annex mandates the joint chamber to issue its ruling normally within three months of the referral of a matter.

However, the Appeals Tribunal judges do not sit full-time but in sessions in March, June and October each year. Judges have other national obligations. Presumably, joint chamber sittings will be ad hoc and with an expectation that cases will be disposed of within three months of referral. Many judges at the Appeals Tribunal will likely not be able to allocate the time and commitment necessary within what is proposed to be a very tight time frame to decide very important questions.

4. Conclusion

In conclusion, there are many significant concerns, both jurisdictionally and operationally, regarding the proposed joint chamber, which remain to be adequately addressed, particularly in such a short time frame.

(*Signed*) Kanwaldeep (Simmi) **Sandhu**
President and Judge

Annex IV

Comments of the International Labour Organization Administrative Tribunal

With reference to the invitation made on 3 July 2023 to the Tribunal to provide comments on the latest report of the Secretary-General of the United Nations on the review of the jurisdictional set-up of the United Nations common system, the Tribunal wishes to reaffirm its adherence to the various arguments presented in its letters of 25 July 2022 and 12 April 2023. The Tribunal believes that its many and fundamental concerns regarding the proposed creation of a joint chamber, as expressed in these previous letters, have not been adequately understood and addressed. Furthermore, the Tribunal notes that the new proposals formulated in the report would limit, in a most problematic way, its existing competence in reviewing matters arising from the United Nations common system. The Tribunal therefore continues to consider that this proposal is fundamentally unsound and should not be pursued.

Regarding exchanges between the United Nations Appeals Tribunal and the International Labour Organization (ILO) Administrative Tribunal, this Tribunal noted with interest that, in its resolution 77/257, the General Assembly encouraged "increased informal exchanges and sustained communication" between the Tribunals. Indeed, the two Tribunals have recently created a channel of communication at the level of their presidencies. Unfortunately, the lack of funding has prevented a planned meeting in person of the presidencies, which would have allowed more productive exchanges.

Finally, the Tribunal notes with some concern that the Secretary-General's report seems to suggest that the exchanges between the Tribunals would have to be "transparently communicated" and/or should be "facilitated and administered" by the United Nations and ILO. Such administrative arrangements do not appear to us to be a means of allowing informal exchanges of the type contemplated by the General Assembly but rather an entirely inappropriate attempt to control or regulate these exchanges. If so, they would plainly not respect the two Tribunals' full independence and, moreover, could undermine the conditions required for really productive contacts between them. This Tribunal does not see any need for the involvement of anyone, beyond the Tribunals' respective Registries, in the organization of such exchanges, apart from the provision of funding.

(*Signed*) Judge Patrick **Frydman**
President

(*Signed*) Judge Michael **Moore**
Vice-President

Annex V

Comments of the Internal Justice Council

1. The Internal Justice Council welcomes the opportunity to provide comments on the Secretary-General's report on the review of the jurisdictional set-up of the United Nations common system. The Council has reviewed the report and does not have any proposals in relation to it.

2. The Internal Justice Council gives the report its support on the condition that it has the consent of the judges of the United Nations Appeals Tribunal and the Administrative Tribunal of the International Labour Organization.

Annex VI

Preliminary views on the proposals and options set out in the present report

The table below reflects the preliminary views of stakeholders who responded to a questionnaire on the proposals and options set out in the present report or indicated that they reserved their views.[1] In addition, the position of individual stakeholders, if provided, can be accessed at www.un.org/management/content/review-jurisdictional-set-up-united-nations-common-system.

Whether the proposal/option below is supported either on its own or as part of a combination of two or more proposals/options	*Yes*	*No*	*Views reserved*
A. Maintenance of the status quo			
Maintenance of the status quo without any changes to the jurisdictional set-up of the Tribunals	CTBTO, FAO, IFAD, ITU, OPCW, PAHO, UNAIDS, UNESCO, UNFCCC, UNFPA, UNIDO, WHO, WIPO *Staff:* CCISUA, FICSA, UNISERV	United Nations, ICAO, UNDP, UNHCR, UNICEF, UNOPS, WMO, WFP	IOM, UN-Women
B. Proposals and options set out in the present report			
1. Joint chamber of the ILO Administrative Tribunal and the United Nations Appeals Tribunal	United Nations, UNHCR, UNICEF, WFP	CTBTO, FAO, ITU, OPCW, PAHO, UNAIDS, UNESCO, UNFPA, UNIDO, WHO, WIPO, WMO *Staff:* CCISUA, FICSA, UNISERV	IAEA, ICAO, IFAD, IOM, UNFCCC, UNDP, UNOPS, UN-Women
2. Increased exchanges between the ILO Administrative Tribunal and the United Nations Tribunals	CTBTO, FAO,[2] IAEA, ICAO, IFAD, IOM, ITU,[2] OPCW,[2] PAHO,[2] UNAIDS,[2] UNDP, UNESCO,[2] UNFCCC, UNFPA, UNHCR, UNIDO,[2] WFP, WHO,[2] WIPO[2]	WMO	United Nations, UNICEF, UNOPS, UN-Women *Staff:* CCISUA, FICSA, UNISERV

[1] With regard to the United Nations system organizations, it is acknowledged that these views are subject to endorsement by the executive bodies of the organizations concerned.

[2] FAO, ITU, OPCW, PAHO, UNAIDS, UNESCO, UNIDO, WHO and WIPO indicated that they were not opposed to the proposal to increase exchanges between the tribunals per se. However, they noted that this would not resolve the perceived concern about divergent jurisprudence, which was the focus of the review of the jurisdictional set-up, while being mindful that the formalization of such exchanges should not come at the expense of added financial burdens for participating organizations.

	Whether the proposal/option below is supported either on its own or as part of a combination of two or more proposals/options	*Yes*	*No*	*Views reserved*
3.	Designation of one tribunal with exclusive jurisdiction to hear cases related to the implementation of ICSC recommendations or decisions	WMO	United Nations, FAO, IAEA, ICAO, IFAD, IOM, ITU, OPCW, PAHO, UNAIDS, UNESCO, UNFCCC, UNFPA, UNHCR, UNICEF, UNIDO, UNOPS, UN-Women, WFP, WHO, WIPO *Staff:* CCISUA, FICSA, UNISERV	CTBTO, UNDP
4.	Establishment of an appeal mechanism with limited jurisdiction over cases arising from ICSC recommendations and decisions	UNOPS	United Nations, CTBTO, FAO, IAEA, ICAO, IFAD, IOM, ITU, OPCW, PAHO, UNAIDS, UNESCO, UNFCCC, UNFPA, UNHCR, UNICEF, UNIDO, UN-Women, WFP, WHO, WIPO, WMO *Staff:* CCISUA, FICSA, UNISERV	UNDP

Abbreviations: CCISUA, Coordinating Committee for International Staff Unions and Associations of the United Nations System; CTBTO, Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization; FAO, Food and Agriculture Organization of the United Nations; FICSA, Federation of International Civil Servants' Associations; IAEA, International Atomic Energy Agency; ICAO, International Civil Aviation Organization; IFAD, International Fund for Agricultural Development; IOM, International Organization for Migration; ITU, International Telecommunication Union; OPCW, Organisation for the Prohibition of Chemical Weapons; PAHO, Pan American Health Organization; UNAIDS, Joint United Nations Programme on HIV/AIDS; UNDP, United Nations Development Programme; UNESCO, United Nations Educational, Scientific and Cultural Organization; UNFCCC, Secretariat of the United Nations Framework Convention on Climate Change; UNFPA, United Nations Population Fund; UNHCR, Office of the United Nations High Commissioner for Refugees; UNICEF, United Nations Children's Fund; UNIDO, United Nations Industrial Development Organization; UNISERV, United Nations International Civil Servants Federation; UNOPS, United Nations Office for Project Services; UN-Women, United Nations Entity for Gender Equality and the Empowerment of Women; WFP, World Food Programme; WHO, World Health Organization; WIPO, World Intellectual Property Organization; WMO, World Meteorological Organization.