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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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**Review of the jurisdictional setup of the United Nations common system
(as per UN General Assembly Resolution 74/255B, paragraph 8) –
Information report**

I. Introduction

1. Resolution 74/255B of the United Nations General Assembly (UNGA) was adopted on 27 December 2019, under the agenda item “*United Nations common system*”. Following its consideration of the report of the International Civil Service Commission for 2019¹, the General Assembly requested a review of the jurisdictional setup of the common system in the following terms:

“8. *Notes with concern that the organizations of the United Nations common system face the challenge of having two independent administrative tribunals with concurrent jurisdiction among the organizations of the common system, as highlighted in the report of the Commission, and requests the Secretary-General, in his capacity as Chair of the United Nations System Chief Executives Board for Coordination, to conduct a review of the jurisdictional setup of the common system and submit the findings of the review and recommendations to the General Assembly as soon as practicable*”.

2. In its report, the International Civil Service Commission (ICSC) had taken note of Judgments Nos 4134 to 4138 issued by the Administrative Tribunal of the International Labour Organization (ILOAT) on 3 July 2019, following complaints filed by staff members of ILO, ITU, IOM, WHO and WIPO² against their respective organizations. The common issue in these five cases related to the application to the complainants’ salaries, as of April 2018, of the post adjustment multipliers

¹ A/74/30

² ILO – The International Labour Organization; ITU – The International Telecommunication Union; IOM – International Organization for Migration; WHO – World Health Organization; WIPO – World Intellectual Property Organization

Documents can be consulted at www.fao.org

determined by the ICSC on the basis of its 2016 cost-of-living survey in Geneva, Switzerland, which resulted in a reduction of their salaries.

3. The ICSC noted that with these judgments, the ILOAT had set aside the implementation of the contested ICSC decisions on post adjustment multipliers for Geneva on the basis of the 2016 survey, and ordered the retroactive adjustment of remuneration of affected staff and the payment of interest fees. In short, the ILOAT ruled that the ICSC did not have the power to decide, by itself, the amounts of post adjustments which resulted in a salary reduction for Geneva-based staff members in the Professional category and above. In the Tribunal's view, the ICSC could only make recommendations and not decide on amounts, which was the preserve of the UNGA.

4. More recently, on 16 July 2020, the United Nations Dispute Tribunal (UNDT) issued a judgment on an application filed by 11 Geneva-based staff members of the UNDP³. The case was decided by the UNDT in Nairobi, due to recusal by the two Geneva-based UNDT judges. The issue was the same as that previously examined by the ILOAT, *i.e.* the 2016 cost-of-living surveys which resulted in a reduction of the applicants' remuneration. In this case, the UNDT decided that the ICSC decision was valid and dismissed the application, based on its jurisprudence.

5. It is worth noting that the UNDT had been fully apprised of the earlier ILOAT judgments on the same question. Shortly after it was issued on 3 July 2019, the UNDT granted a motion filed by the applicants to enter the ILOAT judgment into the record and the parties filed submissions in that regard.

6. This item has been placed on the Provisional Agenda of the Committee on Constitutional and Legal Matters (hereinafter "CCLM or the Committee") as an information item under Rule XXXIV, paragraph 7 (m) of the General Rules of the Organization (GRO), whereby the Committee shall consider specific items referred to it which may arise out of: "*policy aspects of relations with international governmental or non-governmental organizations, national institutions or private persons*".

II. Background

7. The ILOAT has its seat in Geneva and is the successor of the League of Nations Administrative Tribunal, established in 1927. It transferred to the ILO in 1946, when the latter became a specialized agency of the United Nations. The Tribunal is composed of seven judges, who must be of different nationalities. Its judgments are final and without appeal. Currently, 59 international organizations and entities have recognized the jurisdiction of the ILOAT. They are listed in Annex 1 hereto.

8. The FAO Conference decided to accept the jurisdiction of the ILOAT at its 7th Session in 1953⁴, except for disputes with regard to matters concerning the United Nations Joint Staff Pension Fund, which would be referred to the Administrative Tribunal of the United Nations.

9. From its establishment in 1950 until 2009, the United Nations Administrative Tribunal (UNAT) exercised jurisdiction over applications by staff members from those organizations, agencies and entities that accepted UNAT's jurisdiction alleging non-observance of their contracts of employment or terms of appointment. The Tribunal was composed of seven members and sat in panels of three members. Its judgments were final and without appeal. On 1 July 2009, a major reform of the UN internal justice system was introduced, with the establishment, *inter alia*, of the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT).

10. The UNDT is the first instance of the two-tier formal system of administration of justice in the United Nations. It is composed of nine judges appointed for a single non-renewable term of seven

³ UNDP – United Nations Development Programme

⁴ Resolution No. 71

years. Cases are normally considered by a single judge in one of its three locations, *i.e.* New York, Geneva, and Nairobi. The UNAT was constituted as the second instance appeal tribunal. It is composed of seven judges who normally review cases in a panel of three. The Tribunal sits in the same three locations as the UNDT and its judgments are final and without appeal. As of 1 January 2020, the jurisdiction of the UNDT, UNAT or both, has been accepted by 16 entities. They are listed in Annex 2.

III. Previous reviews of the administration of justice in the United Nations common system

11. In 1978, the UNGA requested the United Nations Secretary-General and his colleagues on the Administrative Committee on Co-ordination (ACC) “*to study the feasibility of establishing a single administrative tribunal for the entire common system (...)*”⁵. This initiative stemmed from concerns that the jurisprudence of the Administrative Tribunals of the ILO and the UN were diverging, which might impact unfavourably on the unity of the common system⁶. The report of the ACC was submitted to the UNGA at its next session⁷. It concluded that the concerns that had led the UNGA to make its request were not so compelling as to call for the creation of a single tribunal. However, the ACC noted that certain of the advantages that might be hoped from the establishment of a single tribunal “*might be achieved by a purposeful harmonization and further development of the statutes, rules and practices of the existing tribunals*”⁸.

12. This course of action was adopted by the UNGA⁹. Pursuant to that decision, the UN Secretary-General engaged in extensive consultations during the next several years with the various organizations, staff representative bodies and administrative organs concerned. A comprehensive ACC report was submitted to the UNGA by the UN Secretary-General in 1987¹⁰. The report included a review of the Statutes and practices of the two Tribunals, with a comparison of their composition, jurisdiction, procedures, remedies, and options for post-judgment proceedings. Following initial consideration by Member States of the UN of the proposals made in the report to harmonize the two Tribunals, the UNGA deferred consideration of the matter.

13. Subsequent attempts by the UNGA and UN System organizations to promote consistency in the common system aimed, in particular, at securing an active role for the ICSC in judicial proceedings examining ICSC matters¹¹ and establishing a joint panel that would issue advisory opinions on ICSC matters¹². These initiatives were still pending by 2005, when the process for redesigning the system of administrative justice in the UN was launched by the UNGA, leading to the two-tier structure described above.

IV. Follow-up to UNGA Resolution 74/255B

14. On 8 July 2020, the UN Under-Secretary-General for Management Strategy, Policy and Compliance wrote to the members of the UN System Chief Executives Board for Coordination (CEB),

⁵ G.A. Res. 33/119, U.N. Doc. A/RES/33/119

⁶ See *Report of the Secretary-General on the Harmonization of the statutes, rules, and practices of the administrative tribunals of the International Labour Organization and of the United Nations*, U.N. Doc. A/43/704, at para. 6

⁷ *Feasibility of establishing a single administrative tribunal*, U.N. Doc. A/C.5/34.31

⁸ at para. 13

⁹ see decision 34/438 of 17 December 1979

¹⁰ *Report of the Secretary-General on the Feasibility of Establishing a Single Administrative Tribunal*, U.N. Doc. A/42/328

¹¹ G.A. Res. 48/224

¹² see *Judicial Review of Decisions Taken by the ICSC, Note prepared by an Ad Hoc Working Group established by the Meeting of Legal Advisers of the UN System (UN, FAO, ILO, ITU)*, 6 March 1998, and *Judicial Review of Decisions taken by the ICSC, Note prepared by the Legal Advisers of the UN System*, 5 March 1999

regarding the review of the jurisdictional setup of the UN common system, as requested by the General Assembly in its Resolution 74/255B. She advised that the Secretary-General had requested her to coordinate the process and that the review would be carried-out by an officer in the UN Office of Legal Affairs, under the direct supervision of the UN Legal Counsel. She added that the outcome of the review would be submitted in a report to the UNGA in December 2020. A message of 9 July 2020 from the UN Legal Counsel followed, confirming these arrangements and the intention to involve legal advisers of each entity in this process.

15. On 27 August 2020, the WHO Legal Counsel wrote to the UN Legal Counsel on behalf of FAO, IOM, ITU, PAHO¹³, WIPO and WHO, observing that these organizations had their own governance structure and separate legal framework. He noted that the method proposed for the review was aligned with that used for UN Secretariat internal reviews, while the request in the UNGA resolution was made to the UN Secretary-General in his capacity as Chair of the CEB. Therefore, he suggested that the review be conducted through the usual mechanisms of the CEB, involving the establishment of an inter-organization working group as well as the use of independent experts. He also suggested that the CEB Human Resources (HR) Network be informed of the review to ensure representation and meaningful consultation of staff.

16. On 17 September 2020, a briefing on the review was given to the Members of the High-Level Committee on Management (HLCM) of the CEB by the UN Under-Secretary-General for Management Strategy, Policy and Compliance and the UN Legal Counsel. The Under-Secretary-General informed participants that the report would be submitted to the UNGA Secretariat in December 2020, pursuant to the following timeline:

- Sharing of source documents for the report in September.
- In early October, distribution of a first draft through designated focal points in each entity for input within three weeks.
- In mid-October, a meeting of the Legal Advisers Network would convene to discuss the first draft.
- In mid to late November, a second draft of the report would be circulated for input within two weeks.
- Throughout this process, there would be continuous engagement with the focal points and feedback would be given on the input provided.

17. It was noted during the briefing that the designated focal points would be responsible for coordinating the inputs of each entity, taking into account perspectives from HR and legal offices, and ensuring that the inputs reflected the positions of their CEB principals. Focal points were also expected to share the material received with heads of Staff Representative Bodies.

18. Both the Under-Secretary-General and the UN Legal Counsel emphasised during the briefing that the report would not present a general review of the administration of justice systems of the ILO and the United Nations. Rather, it would address the UNGA's specific concern regarding how the jurisdictional setup of the common system, as it relates to ICSC decisions, might affect the coherence of the common system.

19. In parallel to these exchanges among concerned UN organizations, internal consultations were held with the FAO Staff Representative Bodies. Correspondence was exchanged between the FAO Legal Counsel and the representatives of the Association of Professional Staff in FAO (AP-in-FAO)

¹³ PAHO – Pan American Health Organization

and the Union of General Service Staff of FAO and WFP (UGSS) between July and September 2020, confirming the intent by FAO management to engage the SRBs in the process. Staff representatives were provided with updates on the way forward and generally agreed with the proposal to conduct the review through the CEB. The FAO Legal Counsel will continue to consult the Staff Representative Bodies as this process continues.

V. Suggested action by the Committee

20. This document is for the information of the Committee, which is invited to make such observations thereon as appropriate and to request the Secretariat to provide any update on the matter at its forthcoming sessions as appropriate.

Annex 1**Organizations that accept the jurisdiction of the ILOAT**

- Advisory Centre on WTO Law
- ASEAN+3 Macroeconomic Research Office (ASEAN+3 (AMRO))
- African Training and Research Centre in Administration for Development (CAFRAD)
- Centre of Excellence in Finance (CEF)
- European Organization for Nuclear Research (CERN)
- Consortium of International Agricultural Research Centers (CGIAR Consortium)
- Court of Justice of the European Free Trade Association (EFTA Court)
- International Centre for the Registration of Serials (CIEPS)
- Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom)
- European Free Trade Association (EFTA)
- European Molecular Biology Laboratory (EMBL - LEBM)
- Energy Charter Conference (ECC)
- European Patent Organization (EPO - OEB)
- European and Mediterranean Plant Protection Organization (EPO - OEPP)
- European Southern Observatory (ESO)
- European Organization for the Safety of Air Navigation (EUROCONTROL)
- International Organization for the Development of Fisheries in Eastern and Central Europe (EUROFISH)
- EUTELSAT
- Food and Agricultural Organization of the United Nations (FAO), including the World Food Programme (WFP)
- Global Community Engagement and Resilience Fund (GCERF)
- Global Crop Diversity Trust (Crop Trust)
- Global Fund
- Global Green Growth Institute (GGGI)
- Green Climate Fund (GCF)
- International Atomic Energy Agency (IAEA - AIEA)
- International Bureau of Weights and Measures (BIPM)
- International Criminal Court (ICC)
- International Cocoa Organization (ICCO)
- International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM)
- International Centre for Genetic Engineering and Biotechnology (ICGEB)
- International Criminal Police Organization (INTERPOL - ICPO)
- International Institute for Democracy and Electoral Assistance (International IDEA)
- International Federation of Red Cross and Red Crescent Societies (IFRC - FICR)
- International Hydrographic Organization (IHO - OHI)
- International Labour Organization (ILO - BIT)
- International Organization for Migration (IOM - OIM)
- International Olive Council (IOOC - COI)
- International Plant Genetic Resources Institute (IPGRI)
- Inter-Parliamentary Union (IPU - UIP)
- ITER International Fusion Energy Organization (ITER Organization)
- International Telecommunication Union (ITU - UIT)
- International Office of Epizootics (OIE)
- International Organization of Legal Metrology (OIML)

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- International Organization of Vine and Wine (OIV)
 - Organization for the Prohibition of Chemical Weapons (OPCW - OIAC)
 - Pacific Community (SPC) [admission to be approved by ILO Governing Body in November 2020]
 - Organisation of African, Caribbean and Pacific States (OACPS)
 - Pan American Health Organization (PAHO)
 - South Centre
 - Surveillance Authority of the European Free Trade Association
 - United Nations Educational, Scientific and Cultural Organization (UNESCO)
 - United Nations Industrial Development Organization (UNIDO - ONUDI)
 - United Nations World Tourism Organization (UNWTO)
 - International Union for the Protection of New Varieties of Plants (UPOV)
 - Universal Postal Union (UPU)
 - World Customs Organization (WCO - OMD Customs)
 - World Health Organization (WHO – OMS), including the Joint United Nations Programme on HIV/AIDS (UNAIDS)
 - World Intellectual Property Organization (WIPO - OMPI)
 - World Trade Organization (WTO)

Annex 2**Organizations that have accepted the jurisdiction of the UNDT, the UNAT, or both,
as of 1 January 2020**

- United Nations
- United Nations Children’s Fund (UNICEF)
- United Nations Development Programme (UNDP)
- United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
- United Nations Population Fund (UNFPA)
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Office for Project Services (UNOPS)
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)
- International Civil Aviation Organization (ICAO)
- International Maritime Organization (IMO)
- International Seabed Authority (ISA)
- International Trade Center (ITC)
- International Tribunal for the Law of the Sea (ITLOS)
- World Meteorological Society
- International Fund for Agricultural Development (IFAD)
- International Court of Justice (ICJ)