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FINANCE COMMITTEE

Hundred and Ninety-fifth Session

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**International Civil Service Commission (ICSC) – Proposal to amend the
ICSC Statute**

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EXECUTIVE SUMMARY

- This item is presented to the Finance Committee in accordance with Rule XXVII, paragraph 7, sub-paragraphs (r) and (s) of the General Rules of the Organization (GRO), and follows the process applied in connection with FAO's initial acceptance of the Statute of the International Civil Service Commission (ICSC).
- The CCLM reviewed this matter at its 118th Session (6-8 March 2023). An extract of the Report of the 118th Session of the CCLM is provided in document FC 195/11 Add.1.

GUIDANCE SOUGHT FROM THE FINANCE COMMITTEE

- **The Committee is invited to take note of the contents of this document and, in particular, to recommend to the Council that it recommend adoption by the Conference of the amendments to the ICSC Statute set out in paragraph 17 of this document.**

Background

FAO's adherence to the ICSC Statute

1. The Relationship Agreement between the UN and FAO entered into force on 14 December 1946. Under Article XI, the organizations “*recognize that the eventual development of a single unified international civil service is desirable*”, and agreed “*to develop common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment*”, and to “[c]onsult together concerning the establishment of an International Civil Service Commission”.¹ This Agreement was concluded in accordance with what was then Article XIII of the FAO Constitution, which provided that “[t]he Organization shall, in accordance with the procedure provided for in the following paragraph, constitute a part of any general international organization to which may be entrusted the coordination of the activities of international organizations with specialized responsibilities”, and that arrangements for defining the relations of FAO with any such “*general organization*” shall be subject to approval by the Conference. This Article has since been superseded by Article XII of the Constitution governing relations with the UN.
2. At its Fifty-Ninth Session, convened in November/December 1972, the Council “*agreed with the need for an objective, independent International Civil Service Commission which would command the confidence of governments, management and staff*”.² At its Sixty-first Session convened in November 1973,³ the Council considered reports of the Finance Committee and CCLM on this matter and agreed with their recommendations that acceptance of a proposed ICSC Statute would be fully consistent with the policy enunciated in Article XI of the Agreement between the Organization and the UN. Because of the timing of the Sessions of the Conference and of the UN General Assembly (“UNGA”), it was doubtful whether the UNGA would have considered the Statute before the end of the Conference. The Council, therefore, recommended that the Conference authorize the Director-General to effect FAO’s acceptance in accordance with Article I (c) thereof, provided that the draft Statute was approved by the UNGA without, in the Director-General’s opinion, any important substantive change.
3. By Resolution 17/73 adopted on 26 November 1973, the Conference authorized the Director-General to accept on behalf of the Organization the Statute of the ICSC as soon as approved by the UNGA, it being understood that, if the UNGA were to introduce amendments to the proposed Statute which the Director-General considers to be of an important substantive character, he shall refer the matter to the Council for a decision as to whether the Organization should accept the Statute.
4. By Resolution 3357 (XXIX) of 18 December 1974, the UNGA approved the Statute of the ICSC without further changes. The Statute of the ICSC, as approved by the UNGA in 1974, was accepted by the Director-General on behalf of FAO in 1975. There have been no amendments to the Statute of the ICSC since.
5. Article 30 of the Statute of the ICSC stipulates that “[t]he present statute may be amended by the General Assembly. Amendments shall be subject to the same acceptance procedure as the present statute”.

Proposals for amendments to the ICSC Statute currently under consideration

6. The proposed amendments to the ICSC Statute, set out in paragraph 18 below, were recommended in response to the conflicting Judgments issued, respectively, by the Administrative Tribunal of the International Labour Organization (ILOAT) on 3 July 2019⁴ and the United Nations

¹ 1 UNTS 212.

² CL 59/REP, paragraph 307. See also Report of the Twenty-eighth Session of CCLM (CL 61/4), paragraphs 13 et seq.

³ CL 61/REP, paragraphs 172 et seq. See also CL 60/REP, paragraphs 261-265.

⁴ Judgments 4134 to 4138.

Appeals Tribunal (UNAT) on 19 March 2021.⁵ The common issue in these Judgments related to the application to the complainants' salaries, as of April 2018, of the post adjustment multipliers 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. These conflicting Judgments have resulted in two levels of pay being effective in Geneva, one for the UN common system entities under the jurisdiction of the ILOAT and another for those under UNAT's jurisdiction. At its previous Sessions, and the present Session, the Committee has been seized of the review of the jurisdictional set-up of the United Nations common system arising from these conflicting Judgments.⁶

7. In its Judgments, the ILOAT held that the ICSC lacked the authority under Article 11 (c) of its Statute to take final decisions on post adjustment multipliers, as its Statute exclusively grants this authority to the UNGA. The ILOAT set aside decisions taken by the Geneva-based organizations under its jurisdiction⁷ to implement the Geneva post adjustment multipliers as determined by the ICSC. The ILOAT further ruled that, if the UNGA wished to grant this authority to the ICSC, the Statute of the ICSC would need to be amended.

8. At its Seventy-fourth Session, in 2019, the UNGA reaffirmed the authority of the ICSC to "*continue to take decisions on the number of post adjustment multiplier points per duty station, under article 11 (c) of its statute*", while expressing "*concern at the application of two concurrent post adjustment multipliers in the United Nations common system at the Geneva duty station*" and urging the organizations of the UN common system to "*uphold the unified post adjustment multiplier for the Geneva duty station under article 11 (c) of the statute of the Commission as a matter of priority*".⁸

9. On 12 May 2020, the Executive Heads of the Specialized Agencies based in Geneva co-signed a letter addressed to the Secretary-General of the United Nations (UNSG), expressing serious concern that the UNGA Resolutions did not remedy the underlying issue. No response was received.

10. In its Seventy-fifth Session, in 2020, the UNGA restated the position set out in its 2019 Resolution on this matter, as set out above.⁹

11. On 19 March 2021, the UNAT delivered its Judgment on the appeals against the Judgments of the United Nations Dispute Tribunal (UNDT) relating to the Geneva post adjustment cases.¹⁰ The UNAT upheld rulings made by the UNDT and dismissed appeals lodged by staff members serving with Geneva-based organizations under its jurisdiction.¹¹ The UNAT held, in line with its jurisprudence, that decisions taken by the UNSG to execute regulatory decisions adopted by the UNGA are not subject to judicial review. The UNAT recognized that its ruling was at odds with the Judgments of the ILOAT on the same questions, but observed that the two tribunals operate within fundamentally different structures. The UNAT affirmed that "*any possible amendment to the ICSC Statute [would be] (...) simply a formality to adapt it to the custom*" and that "*to bring clarity and to avoid future similar misconstructions, it is incumbent upon the competent authority to formally update the ICSC Statute to the current operational reality*".¹²

⁵ [Judgment 2021-UNAT-1110](#).

⁶ See reports of the Hundred-eleventh, Hundred-twelfth, Hundred-thirteenth, and Hundred-seventeenth Sessions of the Committee on Constitutional and Legal Matters, (CL 165/12, CL166/11, CL 168/10, and CL 171/10) and document CCLM 118/4.

⁷ The International Labour Organization (ILO), the International Telecommunication Union (ITU), the International Organization for Migration (IOM), the World Health Organization (WHO), and the World Intellectual Property Organization (WIPO).

⁸ Resolution [74/255](#) A and B of 27 December 2019.

⁹ Resolution [75/245](#) dated 31 December 2020.

¹⁰ [Judgment No. 2021-UNAT-1107](#).

¹¹ The UN Secretariat, the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic Commission for Europe (UNECE), the International Trade Centre (ITC), and the United Nations Joint Staff Pension Fund (UNJSPF).

¹² Judgments No. 2021-UNAT-1107, consideration 54, footnote 50, and No. 2021-UNAT-1110, consideration 55, footnote 49.

12. On 30 September 2022, the Executive Heads of ILO, WHO, ITU, WIPO and the Joint United Nations Programme on HIV/AIDS (UNAIDS) co-signed another letter to the UNSG reiterating the concerns expressed in the letter of 12 May 2020 and calling for urgent action in view of the ICSC's "*recent completion*" of a new cost-of-living survey for Geneva which resulted in a new post adjustment multiplier. They proposed to effect "*simple amendments*" to Articles 10 and 11 of the ICSC Statute. The UNSG was requested to consider including this matter on the provisional agenda of the next session of the UNGA.

13. In October 2022, the Director-General of the ILO delivered a joint statement on behalf of the Geneva-based agencies to the Fifth Committee of the UNGA. This joint statement observed that there had been "*significant changes*" to the method of calculating post adjustment since the ICSC Statute was adopted in 1974 and expressed the view that the current Articles 10 and 11 of the ICSC Statute "*do not reflect these changes*". Accordingly, it was proposed to "*update*" the ICSC Statute, amending Articles 10 (b) and 11 (c), to "*ensure consistency with current practice and (...) enable the ILO and other organizations subject to the jurisdiction of the [ILOAT] to implement the [ICSC's] post adjustment determinations on a clear legal basis and uphold their commitment to the UN common system while remaining compliant with the judgments of the [ILOAT]*" (emphasis added).

14. The Fifth Committee recommended the adoption of the proposed amendments.¹³ It also requested its Chair to request: (i) the UN Office of Legal Affairs (OLA) to provide a legal opinion; (ii) ILOAT and UNAT to comment on the proposed amendments; and (iii) the ICSC to consult with the organizations of the United Nations common system to ascertain their intentions with respect to the proposed amendments.

15. Subsequently, on 16 November 2022, the ICSC Chair circulated a letter (ICSC 1-4-3 CS) to the Executive Heads of the member organizations concerned. During this process, the legal opinion of OLA and the UNDT's comments on the proposed amendments were also shared.

16. By letter dated 9 December 2022, the Director-General confirmed his readiness to propose recommending endorsement of the proposed amendments to the ICSC Statute to the upcoming 2023 Sessions of the appropriate FAO Governing Bodies, following confirmation of the UNGA's acceptance thereof.

17. On 30 December 2022, the UNGA decided to amend Articles 10 (b) and 11 (c) of the Statute of the ICSC as follows:¹⁴

Article 10

The commission shall make recommendations to the General Assembly on:

(...)

(b) ~~The salary scales of salaries~~ and the value of the post adjustments multiplier for staff in the Professional and higher categories;

Article 11

The commission shall establish:

(...)

(c) ~~The classification of duty stations for the purpose of applying~~ post adjustments applicable to each duty station.

18. The UNGA also reaffirmed ICSC's authority and competence to establish post adjustment multipliers under Article 11. It further specified that the amendments were done "*for clarification purposes and without altering the Commission's authority or affecting the current operational*

¹³ UN document [A/C.5/77/L.5](#) of 8 November 2022.

¹⁴ Resolution [77/256 A B](#).

reality". The UNGA urged the organizations of the common system to reaffirm their commitment to a single, unified United Nations common system and invited them to complete the formal acceptance of the amended Statute as quickly as practicable. On 20 January 2023, FAO was notified of the amendments as accepted by the UNGA.

19. The proposed amendments to the ICSC Statute do not entail any changes to the FAO's internal legal framework.