UNITED NATIONS **A**

General Assembly

Distr.
GENERAL

A/C.5/50/23
8 November 1995

ORIGINAL: ENGLISH

Fiftieth session
FIFTH COMMITTEE
Agenda item 121

UNITED NATIONS COMMON SYSTEM

Comments by the Federation of International Civil Servants' Associations

Note by the Secretary-General

The Secretary-General transmits herewith for consideration by the Fifth Committee a document submitted by the Federation of International Civil Servants' Associations (FICSA) (see annex). The document has been submitted pursuant to the provisions of paragraph 2 (b) of General Assembly resolution 35/213 of 17 December 1980, whereby the Assembly reiterated its readiness to receive and consider fully the view of the staff as set out by a designated representative of FICSA in a document submitted through the Secretary-General.

ANNEX

Proposal submitted by the Federation of International Civil Servants' Associations on negotiation and consultation in the United Nations common system

I. INTRODUCTION

1. In section II of its resolution 49/223 of 23 December 1994, the General Assembly requested the staff, the organizations and the International Civil Service Commission (ICSC) to review how the consultative process in the Commission could be improved. In the present report, the Federation of International Civil Servants' Associations (FICSA) will respond to the request of the Assembly. The Federation proposes the abolition of the current structure and its replacement by a more responsive and representative body where the three parties involved, i.e., the Member States, the organizations and the staff, would jointly meet the challenges of the common system. Ample justification for the reform proposal is provided in the present report, which will deal with the basic legal parameters of the issue; a brief historical description of staff/management relations in the common system; the fundamental weaknesses in the process of so-called consultation in ICSC; the feasibility of introducing collective bargaining in the common system; and the FICSA proposal for the reform of the consultative process.

II. THE ISSUE

2. The issue to be addressed can be summarized by posing a question:

> "Why is the United Nations system not consistent in extending to its own staff members the fundamental human rights, workers' rights and the right of association that it promulgates in Member States?"

The response needs to be seen in the context of the legal status of international organizations and international civil servants, topics that have been the subject of intense debate among legal experts for many years. International organizations are entities resulting from treaties among contracting States. When States ratify conventions or treaties, they pledge to apply the terms of such agreements within their national boundaries. However, the terms of such agreements do not imply that the application of the treaty or the agreement is extended to international organizations located in the ratifying countries. International organizations typically enjoy extraterritorial status in the host country and possess a number of immunities vis-à-vis the national laws of the host country. These immunities generally include immunity against the application of the Conventions and Recommendations of the International Labour Organization (ILO) if the host State has ratified these agreements. This implies that in this case the citizens of the host country employed by an international organization cannot claim protection of these ILO agreements in staff/management conflicts. It was noted during a recent symposium organized by the Yearly Organizing Reunion of International Civil Services (YORICS) on the legal status of international civil servants,

that the immunity granted to maintain the independence of international organizations had prevented employees of those organizations from enjoying the protection of national laws with inadequate rights being granted to them within their own organizations.

3. The Copenhagen Declaration on Social Development, adopted by the World Summit for Social Development, held at Copenhagen from 6 to 12 March 1995, a/ is a recent example in a long series of inconsistencies within the United Nations in extending the same protection that it recommends to the workers and the employees in the private and public sectors throughout the world to its own staff members. With this declaration, 184 States have pledged, inter alia, to promote the observance of the ILO conventions on freedom of association and collective bargaining, a pledge that is significant for the nationals of the 184 countries concerned. However, it does not follow that the same countries will enforce the application of these ILO conventions within the United Nations organizations or in ILO itself. The latter organization is the custodian of several conventions that have been ratified by many States but that have not been implemented within the organization itself. In other words, ILO and the other United Nations organizations have not effectively recognized the right of their staff members to bargain collectively with their governing bodies and their executive heads on terms and conditions of service.

III. HISTORICAL PERSPECTIVE

4. The previous paragraphs describe the fundamental weaknesses in the legal definition of the international civil servant as a "worker" category, to use ILO terminology, and concurrently to ensure legal protection of the fundamental rights of the international civil servants. These fundamental rights, which citizens all over the world enjoy, are not automatically granted to international civil servants and this automatically weakens the position of staff employed in international organizations in staff/management disputes. Before elaborating on the deficiencies of the current consultative process and submitting the FICSA proposal for reform we wish to provide a short history of staff/management relations in the United Nations common system.

5. Staff/management relations in international organizations have always been more unequal and limited in scope than employer/employee relations in the national private and public sectors of the industrialized world. Staff associations, staff committees, staff councils or staff unions in the United Nations common system were gradually established in the organizations, beginning in the early 1950s. Many organizations, with notable exceptions such as ILO, which had an elected Staff Union more or less immediately after its inception, initially did not make any provision for staff representational facilities and the initiative in doing so came from the staff members who elected their representatives in order to make the voice of the staff heard by management. Once elected, the staff representatives frequently had to convince the executive head or the governing body to grant formal recognition of the staff association or union. Occasionally, in the absence of effective staff representation, the national unions started to organize the staff within the organizations, which in turn prompted these organizations to close the door to outside "agitators" and set up more docile internal staff associations approved by management. During

this period, most staff associations or unions in the common system had, at best, the right to organize only social and cultural activities.

6. The first (and for the first 30 years, the only) federated body of United Nations staff associations - FICSA - was set up in 1952. The focus shifted from the organization of the office Christmas Party to more serious issues affecting the staff in all organizations, such as the protection of the independence of international civil servants. The independence of the international civil service, which is enshrined in Article 100 of the Charter of the United Nations, came under serious attack during the administration of the first Secretary-General of the United Nations, who did not resist the strong political pressure of the Government and Congress of the United States of America, in particular the McCarthy Commission, and unilaterally terminated the contracts of some United States staff members of the United Nations who appealed the decision. When the General Assembly refused permission to the Secretary-General to implement the judgements of the United Nations Administrative Tribunal by stopping the payment of termination indemnities awarded to the staff members, FICSA intervened and was instrumental in obtaining an advisory opinion of the International Court of Justice, which stipulated that even governing bodies of international organizations were not above the rule of law and that they were obliged to implement decisions of administrative tribunals.

7. The relative success of the Federation in protecting the international civil servant against gross political interference by one member country did not mean that, overnight, FICSA became a respected interlocutor of the management in the common system organizations. The system very much functioned, and to a certain extent still does, as a gentleman's club and staff representatives clearly had a difficult task in trying to join the club. The fact that staff representatives often had to resort to legal appeals against decisions of the executive head did not help either.

8. Slowly, the Federation gained access to the United Nations system administrative bodies, the Administrative Committee on Coordination (ACC) and the Consultative Committee on Administrative Questions (CCAQ), and the main legislative body, the Fifth Committee of the General Assembly. This access was neither automatic nor easy to obtain. As late as the 1970s, CCAQ devoted several hours of discussion to the question of whether or not FICSA should be accorded a hearing. Even today, CCAQ may on occasion decide to go into closed session, excluding both staff federations (FICSA and the Coordinating Committee for International Staff Unions and Associations of the United Nations System (CCISUA)). It was only in 1975 that FICSA was allowed to address ACC and only since 1980 has FICSA been invited to address the Fifth Committee. An invitation to address the Fifth Committee is granted on an annual basis and upon request: FICSA is not recognized as an institutional partner in the process of determining conditions of service. Moreover, the address is made during the formal session of the Committee and neither staff federation is allowed to participate in or to observe the informal decision-making process of the Fifth Committee.

9. Whether it is at the common-system level or in each organization, the situation has remained unchanged as far as the concept of negotiation is concerned: there are no means of direct negotiation between staff and

management. Most organizations do have various joint staff/management bodies, but in no way do these bodies have collective bargaining rights. Some of these joint bodies have, on occasion and for specific issues, negotiated agreements. Within the ILO Administrative Committee, for instance, there have been several examples, but the statutory machinery of ILO has not been adjusted to institutionalize this commendable practice. In other words, staff at the level of their employing organization have no actual or even theoretical right to negotiate with their employer, a right that is taken for granted by employees and employers in many member States.

10. If the situation is unsatisfactory at the level of the organizations, it is even more so at the United Nations common-system level. The Statute of ICSC, adopted by the General Assembly on 18 December 1974 (resolution 3357 (XXIX)), explicitly excludes negotiation with staff. Moreover, ICSC has neither a practice nor a tradition, either formally or informally, to negotiate agreements. Nevertheless, FICSA acknowledges that initially, when ICSC started to function in 1975, the expectations were very high, because at that time the staff felt that at last this "independent" Commission would concentrate on technical issues instead of political intimidation and attacks on the independence of the international civil service. However, practice was quite different from theory. Twenty years after its establishment, almost all reasonable observers and participants in the consultative process for determining conditions of service in the common system, including senior Directors-General and ACC as a whole, agree that ICSC is overpoliticized. Even some Commissioners, such as Mr. Antonio Fonseca Pimentel, who have been in the Commission from the early days and have witnessed the deterioration of the situation within ICSC, now stress the need for fundamental structural reforms. During a meeting held at Montreal in early May 1995, Mr. Pimentel, who is the oldest serving Commission member and who tends to be consistent and independent in his appraisals of the situation, stated that a new tripartite structure for the Commission was the only solution to the current deadlock situation regarding participation of staff in the work of the Commission.

IV. FUNDAMENTAL WEAKNESSES IN THE PROCESS OF CONSULTATION WITH THE COMMISSION

11. The crucial weakness of ICSC lies in a total absence of any pragmatic system of direct staff/management negotiation or even a semblance of consultation. But the Commission's consultative process is flawed in several other ways. A list of some of these deficiencies is provided below.

A. The Commission has always been largely unresponsive to the particular needs of specialized agencies and programmes

12. The common system is composed of several agencies and programmes with different needs and priorities. These agencies are part of the common system by virtue of relationship agreements between them and the United Nations in New York. Initially, i.e., before the establishment of ICSC 20 years ago, these relationship agreements tying the specialized agencies to the United Nations through adherence to "a single unified international civil service" (later

termed "United Nations common system") were intended to be between equals. The organizations agreed to "consult together" and to "cooperate" regarding conditions of service and the creation of a suitable machinery for the settlement of disputes. This parity between the specialized agencies and the United Nations is reflected in article 9 of the ICSC Statute. However, ICSC tends to disregard this article and give priority to article 10 of its Statute. According to this article, the Commission will report regarding very crucial issues such as, among other subjects, Professional salaries, only to the General Assembly of the United Nations and not to the other governing bodies of the United Nations common system. In practical terms this means that the General Assembly has a dominant role in the functioning of the Commission. Although the executive heads and the other governing bodies of the common system have the opportunity to include issues on the agenda of the Commission, the latter tends to minimize the needs of these organizations and to concentrate solely on the needs of the United Nations and the requests made by the United Nations governing body, i.e., the Fifth Committee of the General Assembly. This trend to overemphasize the requests made by the United Nations governing body and to ignore the priorities of other common system organizations has always been present in the Commission but has gained strength during the past five years. The reason for this phenomenon is linked to the politicization of the Commission and the electioneering of some Commissioners (for more details on this aspect of the Commission, see section E below);

B. The Commission does not respect the common system

13. It has often been stated by some delegates in governing bodies that ICSC is the watchdog of the common system. These statements are usually made in the context of certain entitlements, which in some organizations appear to be more generous than those recommended by ICSC. The delegates forget that the common system is made up of several organizations with different mandates, needs, budget procedures and working environments. What is a proper management practice in the United Nations in New York may not be appropriate for a World Food Programme (WFP) operation in Mozambique, a World Health Organization (WHO) project in Thailand or a division at the United Nations Educational, Scientific and Cultural Organization (UNESCO) headquarters in Paris. ICSC does not take into account the different needs of the common-system organizations and disregards article 9 of the ICSC Statute, which states that "the Commission shall be guided by the principle set out in the agreements between the United Nations and the other organizations, which aims at the development of a single unified international civil service...";

C. The unresponsive attitude of the Commission is a prelude to the break-up of the common system

14. The lack of respect of the Commission for the common system has often been minimized by the Commission. This was evidenced during the discussions on recruitment and retention of staff, as part of the recent review of the Noblemaire principle, which addressed the issue of the competitivity of the United Nations system as an employer. During the review, the Commission made no significant effort to recommend practical solutions to satisfy the specific

technical human resource requirements of the agencies and the United Nations. During a recent meeting of ACC, on 12 September 1995, at least one executive head announced that his organization was reconsidering its relation or affiliation to the common system because it did not meet the needs of his organization. While FICSA is not, for the time being, advocating this position the staff representatives and the administrations may have to resort to this strategy if no structural reforms are proposed in the near future. This may mean that the specialized agencies need to withdraw from ICSC, by giving advance notice under article 31 of the Statute, in order to have equal and meaningful consultations with the United Nations on conditions of service, particularly in cases where the specialized agencies require solutions tailored to their own unique situations. It is clear that there is an inequality of treatment, or discrimination, vis-à-vis the specialized agencies in the common system in general and by ICSC in particular and this needs to be addressed by the Fifth Committee if the Committee wants the common system to survive;

D. The work of the Commission is overcentralized and caters solely to the needs of the political branch of the United Nations family, i.e., the United Nations in New York

15. This point may seem to have only an anecdotal merit but there is a more fundamental point involved here. This increasing disparity between the United Nations and the specialized agencies has resulted in doubt and ambiguity about the designation "employer". The director-general of a specialized agency, who is legally respondent when it comes to appeals, has little or no say over important aspects of the terms and conditions of employment, which are generally established by ICSC and approved by the General Assembly. ICSC cannot be considered an employer, but the introductory articles of the ICSC Statute do give some authority to the Secretary-General of the United Nations over the functioning of ICSC. Does this imply that the Secretary-General is the employer of a staff member of UNESCO? The question cannot be answered with any precision because of the autonomy of UNESCO and because of the limited authority of the Secretary-General of the United Nations over ICSC. So who is the employer of a staff member of a specialized agency? The executive head, the Secretary-General of the United Nations or the Chairman of ICSC? This ambiguity creates various legal problems and occasionally unsurmountable difficulties in terms of staff/management relations.

16. These questions point to the need for more decentralization, which is the solution proposed by many eminent experts. On a more political level, for example, concern regarding the overconcentration on the New York-based governing bodies has been reflected in various United Nations reform proposals. Recently, Sir Brian Urquhart and Mr. Erskine Childers formulated several proposals for reform of the United Nations system, all of which aim to restore the autonomy and the competencies of the specialized agencies while increasing the coordination of all activities. The authors state that the founding fathers of the United Nations had recognized the independence of the agencies but that the special agreements between the United Nations and the agencies have never been respected, initially by the United Nations and later by the Member States: "In the original design, key features of the relations between the United Nations and the agencies were stipulated in the special agreements. Member Governments

have allowed many of these crucial provisions to be ignored. Their full implementation is vital to build a responsive, coherent United Nations system." The spirit and the letter of agreements between the agencies and the United Nations, including the common system relationship agreements, should be respected. The ICSC Statute would most undeniably require a major overhaul if the reforms of the type proposed by Messrs Urquhart and Childers are seriously considered.

E. The decision-making process in the Commission is neither transparent nor open but clearly follows perceived political priorities of the United Nations General Assembly

17. FICSA is of the opinion that this is due primarily to the politicization of the ICSC agenda, in particular to suit the political agenda of the United Nations General Assembly as perceived by a handful of Commissioners.

18. In a 1987 article in the Journal of Development Planning, published by the United Nations, b/ Mr. John Renniger wrote of ICSC, that:

> "Its task is to provide objective technical advice, but as issues related to salaries become increasingly politicized, it cannot remain above the political fray. One of the documents prepared by the ICSC secretariat for the twenty-first session of the Commission explicitly states that one alternative for defining a range for the margin would be 'politically risky'. In recent decisions the General Assembly has shown that it is more concerned with costs than with procedures or legalities ... To explicitly make recommendations based on political considerations runs a ... grave risk of totally losing credibility with the staff and organizations."

19. In February 1995, the Under-Secretary-General for Administration of the United Nations Secretariat declared during a meeting of ACC that he considered ICSC too expensive, too unresponsive and too politicized. In May 1994, FICSA submitted well ahead of time and ready for the fortieth session of ICSC a paper dealing with the General Service salary survey methodology. Although the issue was on the agenda of ICSC, the ICSC Chairman used the lame excuse of the heavy workload of the ICSC secretariat to refuse a substantive discussion in the Commission. FICSA learned later on that the ICSC Chairman was afraid of jeopardizing his chances for re-election if he accepted a substantive discussion on the topic because this would inevitably imply costly corrections of the more blatant errors in the revised methodology. These costly corrections might have upset the more influential delegates in the Fifth Committee and encouraged them to vote for another candidate. Every two years the debates in ICSC are tainted by electioneering ploys of the Commissioners, whose only desire is to continue their mandate even if their age is more than respectable, the average age of the Commissioners being around 66 years. ICSC is, therefore, in the eyes of most observers, not an independent commission but quite clearly a politically oriented group of elected officials who try faithfully to defend the priorities of those who elect them.

F. There is no mechanism in place to ensure that the Commissioners have the required competencies

20. Although it was envisaged that "the members of the Commission shall be appointed in their personal capacity as individuals of recognized competence who have had substantial experience of executive responsibility in public administration or related fields, particularly in personnel management" (article 3.1 of the ICSC Statute), this has not happened in practice. On this subject, Mr. Renniger has written:

> "Contrary to the expectations of those who accepted the statutes of ICSC, the Commission increasingly appears as a body composed of people with little or limited background and experience in public administration or personnel management ...
>
> "The first Commission differed fundamentally from the present one because when the first Commission was chosen the selection process worked as designed and as expected by the parties concerned. Some of the first members of the Commission were suggested by the organizations in the common system and/or by staff associations. But this has occurred only once. Thereafter all the members have been selected by the regional groups in the General Assembly. The suggestions of the organizations and staff are routinely ignored. Efforts of ACC to give more meaning to the consultation process have been ignored by Member States in the Fifth Committee. This can only be seen as a rebuff and an unwillingness to recognize the organizations and staff as partners in the common system as defined by the ICSC statutes."

21. Moreover, with the growth in the 1980s of human resources development as an integral field of study, research and application, it has become even more necessary for the skills required of Commissioners to be clearly defined, delineated, written down and adhered to.

G. The Commission is too expensive and too bureaucratic

22. The costs involved in maintaining the so-called "leadership role" of ICSC in the organization and implementation of Professional and General Service salary surveys are exorbitant by any standard. The bureaucracy is stifling and wasteful. The legal costs incurred by the system in the defence of indefensible decisions of ICSC also absorb sizeable sums from the administrations and staff alike. The only cost-effective measure is the elimination of the Commission and its replacement by a group of experts who would be accountable to the parties concerned and responsive to the real needs of the organizations, staff and administrations alike.

H. The Commission is not accountable for its decisions and recommendations when implemented by United Nations organizations and the specialized agencies

23. Should fault be found with a decision of ICSC, or a recommendation that is implemented after becoming a resolution of the General Assembly, legal appeal is made, not against the Commission, but against a specific administration that has not even participated in the decision-making process. An award granted in the case of a successful legal appeal is paid by an organization, not the Commission. Such awards can be costly to the organizations concerned, often requiring additional resources in their budgets to make good for mistakes made by the Commission. Two recent examples are: compensation for a mistake in calculating the General Service salary scales in Geneva in 1991 and in Vienna in 1987.

I. The Commission has evolved into a regulatory body

24. It is now common knowledge, and has been widely acknowledged by administrations, Member States and the Commission itself, that the United Nations has lost its competitive edge as an employer. Given its current pay rates, which lag 40 to 50 per cent behind those of its competitors on the international labour market, it is fair to estimate that the United Nations and its agencies are able to recruit only in the bottom quartile of that market. This was not always the case, and it would not appear to be by chance alone that the downward trend in compensation coincides, and even commences, with the establishment of ICSC in 1976. Rather than carry out objective analyses of the labour markets, the Commission regulated salary packages according to the implicit, and oftentimes explicit, financial limitations set by the Member States of only one governing body, the United Nations General Assembly. The needs of the specialized agencies in the international labour market have been disregarded by the Commission.

J. The functioning of the Commission has been blurred by procedural rigidities, such as in agenda-setting and reporting, and diplomatic small talk and niceties among the Commissioners

25. These rigidities or codes of behaviour may very well prove to be essential in political debates such as in the Security Council but within ICSC they are not needed and constitute impediments to the establishment of dialogue and the development of mutually acceptable recommendations on conditions of service. However, while questions of procedure would seem easy to resolve, they have not been addressed satisfactorily, nor would a change in style alone satisfactorily address the issues of substance outlined in sections A to I above.

26. It is clear that the need for review of the consultative process called for by General Assembly resolution 49/223 is not only urgent but also inescapable. It should be underlined here that both FICSA and CCAQ have, on various occasions, suggested reform of ICSC within the parameters of the current statutes, for example, by requesting the Commission not to make decisions during closed executive sessions and by trying to improve the selection of the

Commissioners. Much to our regret, most of these efforts have not yielded any improvement in the performance of the Commission.

V. FEASIBILITY OF INTRODUCING COLLECTIVE BARGAINING IN THE UNITED NATIONS COMMON SYSTEM

27. Staff representatives are convinced that there should be a process of direct negotiation between employers and employees in international organizations. As early as 1979, the FICSA Council adopted a resolution declaring that international civil servants have the right to participate in decision-making relating to their working conditions. The same resolution also encourages the administrations to establish suitable procedures for negotiation, conciliation and arbitration of work disputes. None of these recommendations have been implemented at the common system level, one major consideration being that the administrations to whom these recommendations are addressed have no regulating authority over ICSC.

28. In January 1995, a symposium of legal experts convened in New York by YORICS reviewed the legal regimes that currently apply to international civil servants in a wide variety of organizations, including the United Nations system, the Bretton Woods organizations, the Coordinated Organizations and the European Union. The legal experts were of the opinion that the time had come to provide certain minimum rights to that category of worker and to bring their legal regimes in line with modern labour practices. On 31 January 1995, the symposium adopted a New York Declaration on the Independence and Rights of International Civil Servants (see appendix I to the present annex). Collective bargaining figures prominently in the Declaration, which was unanimously approved by the participants, who included a former Chairman of ICSC, a former Deputy Legal Counsel of the United Nations and the Head of the ILO Workers' Group. With such endorsement from a highly qualified group of senior experts, it could be concluded that contrary to perceptions of some Member States, collective bargaining would not necessarily be detrimental to the common system.

29. In January 1989, the Council of Europe Parliamentary Assembly's Committee on the Budget and Intergovernmental Work Programme unanimously adopted a recommendation on the rights of the Council of Europe's staff, with particular regard to the United Nations system. The recommendation asks the Committee of Ministers to align the rights of the Council of Europe's staff on those of member countries' civil servants, which implies, amongst other things, that the organization's officials be afforded the rights embodied in article 6 of the Social Charter (right to bargain collectively) and in articles 2 and 3 of the Additional Protocol (the right to information and consultation; right to take part in the determination and improvement of the working conditions and working environment). As regards the United Nations system, the Committee of Ministers is to urge the Governments of Member States to adopt a positive attitude towards the international civil service, by seeking to safeguard the independence of officials under the United Nations common system and ensure that they are afforded the rights embodied in ILO Convention No. 151.

30. Convention No. 151 provides in article 7 that measures shall be taken, where necessary to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters. Moreover, under article 8 of the Convention, the settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

31. The rights foreseen in the recommendation of the Council of Europe have not yet been implemented in the United Nations system, despite the declaration adopted by the World Summit for Social Development, despite the call for reform of the United Nations during this fiftieth anniversary year and despite the other calls for reform from legal experts, executive heads, former ICSC Commissioners and staff representatives. The basic lesson to be learned from the above texts is that the United Nations common system always appears to lag behind. If European regionally integrated organizations can practice what they teach there is no reason why the common system would be unable to cope with collective bargaining arrangements.

VI. NEGOTIATION IN THE UNITED NATIONS COMMON SYSTEM: PROPOSAL OF THE FEDERATION OF INTERNATIONAL CIVIL SERVANTS' ASSOCIATIONS FOR AN INTERIM MEASURE

32. Although there are many authoritative sources in Europe and elsewhere that advocate and practice direct negotiation or collective bargaining as the mechanism for setting the conditions of service of their staff, FICSA is prepared to proceed pragmatically, in a step-by-step manner, and to take into account the specific conditions of the United Nations common system. Collective bargaining is, and remains, our goal. The proposal which is appended to the present report (annex, appendix II) represents an interim measure. It has been discussed and presented to ACC and our colleagues in CCISUA and there is a clear consensus on the need for reform and the basic philosophy of a tripartite commission. Various other options (quadripartite, bipartite, etc.) have been reviewed as well during the discussion and were discarded because they do not respond to the needs of the common system. Both our interlocutors in the administrations and in CCISUA agree that the tripartite composition of the new Commission should also be reflected in its bureau or secretariat. The basis of the proposed interim measure is parity, i.e. equal representation of the three parties concerned, governing bodies, administrations, and staff, as in the United Nations Joint Staff Pension Board. Another structure that could serve as a model is the ILO Governing Body, which is constituted as a tripartite body and in turn this tripartite nature is also reflected in the secretariat of the organization.

33. The interim measure proposed by FICSA is, in the view of staff representatives, the most fitting response to General Assembly resolution

49/223, in which the Assembly essentially recognized the tripartite nature of the consultative process. The Assembly indeed requested "the staff bodies, the organizations and the Commission to review with all urgency how the consultative process can best be furthered and to report thereon to the General Assembly". FICSA has reviewed the Commission's consultative process and concluded that a tripartite mechanism provides the best guarantee for a fair and equitable system of setting conditions of service.

34. A major advantage of the solution proposed here is its similarity to another tripartite committee, that of the European Communities which was introduced in 1981, based on, perhaps, a more advanced human resource management style than that of United Nations common system organizations. Mr. Nicolas Valticos, who served recently as a Judge at the European Court of Human Rights and who also had a distinguished career with ILO and the International Court of Justice in The Hague, made a striking comparison between the European Union system and the United Nations common system.

> "The case of the United Nations common system, in which there is also a screen in the form of a commission with broad terms of reference and restrictive views on the subject of dialogue, is even more striking. Broadly speaking, therefore, there is no real consultation and still less negotiation between associations of international civil servants and those who actually determine their status ...
>
> "Particular attention should therefore be paid to the interesting system introduced in the European Communities in 1981, providing for a consultation procedure within a committee formed on a tripartite basis and hence including representatives of the member States, the staff and the administrative authorities concerned to ensure that the views of the staff and administrative authorities are known to the representatives of the member States before the adoption of any firm position on their part. It is not really negotiation, but it is at any rate a form of dialogue."

35. This quotation illustrates the point that: (a) once again the United Nations common system in general and ICSC in particular are lagging behind; and (b) a tripartite arrangement is beneficial for the organizations and the staff alike. ICSC has always been "a screen", to quote Judge Valticos, and it is not in the interest of the organizations to set up a common system screen between themselves and the staff, a screen which, as events have shown, does not serve the interests of the organizations nor of staff.

36. Finally, the third and most obvious advantage of a tripartite machinery is its similarity to the United Nations Joint Staff Pension Fund, which is governed by a Board and a Standing Committee of tripartite composition. The members of these bodies are elected by the governing bodies, the executive heads and the participants (staff and former staff) of 14 common system organizations. Since salary and pension matters are closely linked, there is no valid technical argument against the adoption of the same tripartite composition for the new "Commission on the setting of conditions of service in the United Nations common system".

37. To set up this new tripartite body, ICSC in its present form would have to be phased out gradually over a reasonable period of time. During this period, which should not exceed one year since one year would be sufficient to revise or redraft the Commission's statutes, ICSC should only deal with routine matters. The revised statutes should be prepared by a small working committee consisting of the Bureau of the Fifth Committee, administration and/or governing body representatives of one or two organizations and the two staff federations. Once agreed in the working group, the statutes should be submitted for approval to the governing bodies of the common system organizations and to the Councils of FICSA and CCISUA. FICSA stands ready to work with CCAQ members to prepare the preliminary draft statutes of the new body for consideration by the General Assembly and the other common system governing bodies.

Notes

a/ Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995 (A/CONF.166/9), chap. I, resolution 1, annex I.

b/ Journal of Development Planning, No. 17 (United Nations publication, Sales No. 87.II.A.22).

APPENDIX I

New York Declaration on the Independence and Rights of International Civil Servants, adopted by the Symposium on the Legal Status of International Civil Servants on 31 January 1995

The Symposium on the Legal Status of International Civil Servants was convened to address the basic rights and independence of international civil servants throughout the world.

Individuals working for international organizations are subject to the statutes and regulations of those organizations and general principles of law. The immunity granted to maintain the independence of international organizations has prevented employees of those organizations from enjoying the protection of national laws. Therefore, there must be a workable legal framework consistent with modern labour management practices that guarantees to all civil servants due process and equal protection equivalent to the rights and principles they would enjoy under relevant national laws.

In view of the foregoing, to protect the rights and independence of the international civil service, they should be afforded the following:

Freedom of association:

- International civil servants should have the right to freedom of association and this right includes the right to form and join the staff association or union of their choice and to create international associations of international civil servants;

- International civil servants should be given the means to exercise effectively this right of association;

- The staff associations or unions should have the right to affiliate with other international associations or unions as part of a federation;

Collective bargaining:

- International civil servants should have the right, through their staff associations or unions, to bargain collectively on their working conditions;

- International civil servants' associations or unions should have the right to petition and address the governing bodies of their organizations;

- International civil servants should have the right to take collective actions including the right to strike;

Due process and judicial review:

- International civil servants should be entitled to due process in the administrative hearing and the appeal process;

- International civil servants should have access to an independent administrative tribunal composed of attorneys and jurists. This right of access shall include the rights of due process, a fair and speedy trial, and an oral hearing;

- This right of access to an administrative tribunal should extend to individuals, staff associations and unions to represent the collective rights of the staff;

Protection of fundamental rights:

- To protect the fundamental rights of all international civil servants, they should be given the rights extended under international human rights instruments as well as relevant international labour standards as embodied in ILO conventions and recommendations relating to conditions of employment.

APPENDIX II

Proposal of the Federation of International Civil Servants' Associations concerning negotiation in the United Nations common system

I. Goal of the Federation of International Civil Servants' Associations (FICSA)

- COLLECTIVE BARGAINING.

- Binding agreements negotiated on a bipartite basis, i.e., via a bipartite body with worker and employer representation.

II. Interim goal

- Binding negotiated agreement on a tripartite basis.

A. Configuration:

- Seven elected or appointed by the United Nations General Assembly (three members) and by the other governing bodies of the specialized agencies on a rotating basis (four members). a/

- Seven appointed by the administrations reporting directly to the United Nations General Assembly (i.e. three members appointed by the United Nations, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees) and four others appointed by the specialized agency representatives on a rotating basis. a/

- Seven elected by the staff federations (FICSA and CCISUA) on the basis of proportional representation using the annual personnel statistics of CCAQ.

B. Decision-making:

- By majority vote after counting the individual votes.

Notes

a/ The rotation mechanism would be determined on a pro rata basis taking into account the staff strength in the respective organizations.
