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Agenda item 145

United Nations common system

Exchange of letters between the Chair of the Fifth Committee and the Chair of the International Civil Service Commission

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Fifth Committee the letter dated 15 November 2022 from the Chair of the Fifth Committee addressed to the Chair of the International Civil Service Commission (see annex I), and the letter dated 12 December 2022 from the Chair of the International Civil Service Commission, which was sent in reply (see annex II).



Annex I

Letter dated 15 November 2022 from the Chair of the Fifth Committee addressed to the Chair of the International Civil Service Commission

I have the honour to transmit herewith the decision that was adopted by the Fifth Committee of the General Assembly at its 15th meeting, held today, 15 November 2022 under item 145, United Nations common system (see enclosure).

(*Signed*) Philippe **Kridelka**
Chair, Administrative and
Budgetary (Fifth) Committee

Enclosure**United Nations**

A/C.5/77/L.5

**General Assembly**Distr.: General
8 November 2022

Original: English

Seventy-seventh session**Fifth Committee****Agenda item 145****United Nations common system****Draft decision submitted by the Chair of the Committee following
informal consultations****United Nations common system**

The Fifth Committee,

**I
Office of Legal Affairs**

Requests the Chair of the Fifth Committee to solicit a formal legal opinion from the Office of Legal Affairs of the Secretariat by Friday, 18 November 2022, containing responses to the following elements:

1. Notes that a proposal has been made to amend the statute of the International Civil Service Commission as follows:

Article 10

The Commission shall make recommendations to the General Assembly on:

- (a) The broad principles for the determination of the conditions of service of the staff;
- (b) The salary scales ~~of salaries and post adjustments~~ for staff in the Professional and higher categories;
- (c) Allowances and benefits of staff which are determined by the General Assembly;
- (d) Staff assessment.

Article 11

The Commission shall establish:

- (a) The methods by which the principles for determining conditions of service should be applied;
 - (b) Rates of allowances and benefits, other than pensions and those referred to in article 10 (c), the conditions of entitlement thereto and standards of travel;
 - (c) The post adjustment applicable to each duty station. ~~The classification of duty stations for the purpose of applying post adjustments.~~
2. Underscores that, in considering the proposal, the General Assembly does not intend to alter the existing authority of the Assembly or the Commission, and only seeks to eliminate any perceived legal ambiguity;
 3. Inquires whether the amendment, as drafted, preserves the current operational reality, without altering the authority of the General Assembly or the Commission;
 4. Conveys that there is concern that, as drafted, the amendment could expand the authority of the Commission on matters related to post adjustment multipliers (for example, grant it the ability to set the value of the post adjustment multipliers, or determine whether post adjustment is part of the remuneration package), requests advice on how this potential and unintended shift in authority can be mitigated and whether adding “Remuneration structure and” or “Salary system and” in article 10 (b), or adding “The rates of” in article 11 (c) would preserve the current operational reality;
 5. Requests the Office of Legal Affairs, if the options mentioned in paragraph 4 affect other elements of the authority of the General Assembly or the Commission, to provide feedback on ways to address this issue;
 6. Also requests the Office, if the proposed amendment has an impact on the authority of the General Assembly or the Commission, to provide feedback on ways to preserve the current operational reality;
 7. Inquires whether the proposed amendment presents any other legal challenges and, if so, requests the Office to suggest measures to mitigate those challenges;
 8. Requests the Office to comment whether, in its legal opinion, the amendment sufficiently responds to the concerns outlined in rulings of the Administrative Tribunal of the International Labour Organization;
 9. Inquires whether an option to amend the statute through interpretive footnotes is sufficient and whether adding a footnote reading, “As decided by the General Assembly, the adoption of the post adjustment scale is subsumed in the adoption of the base/floor salary scale” to article 10 (b) of the current version of the statute of the Commission, or a footnote reading “As decided by the General Assembly, the value of the post adjustment multiplier point is set at 1% of the base/floor salary scale (one post adjustment multiplier point equals one per cent of base salary)” to article 11 (c) of the current version of the statute of the Commission, would preserve the current operational reality and provide the same level of legal clarity as amending the text of articles 10 and 11.

II

International Civil Service Commission and the organizations of the United Nations common system

Requests the Chair of the Fifth Committee to request the International Civil Service Commission to consult with the organizations of the United Nations common system and, during the consultative process, to invite the organizations to respond in writing no later than 9 December 2022 to the following questions:

1. The General Assembly is considering amending articles 10 and 11 of the statute of the International Civil Service Commission to reflect the current operational reality without altering the authority of the Assembly or the Commission. If such a surgical amendment either through the text or footnote were approved, does the Organization intend to take forward acceptance of the proposed amendment, in accordance with article 30 of the Commission statute?
2. What are the steps and the projected timeline for the Organization's acceptance process?

III

Tribunals

Invites the Administrative Tribunal of the International Labour Organization, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to express, in writing, their opinions on the matter by 1 December 2022, if they choose to do so.

Annex II**Letter dated 12 December 2022 from the Chair of the International Civil Service Commission, addressed to the Chair of the Administrative and Budgetary (Fifth) Committee**

This is in reference to your letter of 15 November 2022, in which you submitted to me draft decision [A/C.5/77/L.5](#) of the Fifth Committee. As requested by the Committee, I consulted with the organizations of the United Nations common system regarding the amendment to articles 10 and 11 of the statute of the International Civil Service Commission (ICSC) and have attached the responses that we received. We did not consult with the United Nations Secretariat and its funds and programmes, since they will have to apply any changes to the statute as decided by the General Assembly.

We transmit below summaries of the responses of the following 14 organizations which responded to my letter (see enclosure):

- Food and Agriculture Organization of the United Nations (FAO)
- International Atomic Energy Agency (IAEA)
- International Civil Aviation Organization (ICAO)
- International Fund for Agricultural Development (IFAD)
- International Labour Organization (ILO)
- International Maritime Organization (IMO)
- International Seabed Authority
- International Telecommunication Union (ITU)
- International Tribunal for the Law of the Sea
- Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
- United Nations Industrial Development Organization (UNIDO)
- Universal Postal Union (UPU)
- World Health Organization (WHO)
- World Intellectual Property Organization (WIPO).

Organizations were asked the following two questions:

- (a) Whether they would intend to take forward acceptance of the proposed amendment as stipulated in article 30 of the statute of ICSC;
- (b) The steps and projected timeline for the organization's acceptance process.

In summary, all organizations which responded viewed the proposed changes to the statute rather favourably and had no objections. The Executive Heads of the organizations did, however, point out that the official acceptance of this change required approval of the relevant governing bodies.

(Signed) Larbi **Djacta**
Chair
International Civil Service Commission

Enclosure

The Food and Agriculture Organization of the United Nations (FAO), with respect to the first question, confirmed its readiness to take the steps necessary to communicate its formal acceptance of the proposed amendments to the statute of ICSC as soon as the General Assembly had approved the amendments and reported their adoption. In addition, FAO conveyed its position that the proposed amendments should be made directly to the texts of articles 10 (b) and 11 (c) of the statute of ICSC, instead of using interpretive footnotes, to ensure legal certainty and clarity.

In response to the second question, FAO communicated that its Director General was prepared, in his capacity as Director General, to submit the proposal recommending endorsement of the proposed amendments to the statute of ICSC, to the upcoming 2023 sessions of the FAO governing bodies concerned and would formally communicate the position of FAO on the amendments in May 2023, subject to that proposal being approved by the governing bodies.

The International Atomic Energy Agency (IAEA) responded that, as pointed out in the letter of the Chair of ICSC, the amendments to the statute of ICSC, as proposed, reflected the current operational reality without altering the authority of the Assembly or the Commission. It was on that understanding that IAEA would take forward the proposal set forth in the above-referenced decision, subject to the approval of its Board of Governors. Regarding the timeline, following the amendment of the statute of ICSC by the General Assembly, under article 30 of the statute of ICSC, IAEA would submit the amendment for approval by the Board of Governors at the next opportunity.

The International Civil Aviation Organization (ICAO) confirmed that it agreed in principle to the proposed amendments to the statute of ICSC. Regarding the implementation of future amendments to the statute, ICAO would have to make a minor amendment to its staff regulations, which would require approval by the Council of ICAO. That would imply a possible acceptance of the amendments in the course of 2023.

The International Fund for Agricultural Development (IFAD), in response to the enquiries, recalled its observer status to the ICSC and the fact that, despite not having formally accepted the statute, it participated fully in the work of the Commission. Consequently, IFAD would not formally comment on or accept the proposed amendments, which appeared, in principle, to be agreeable. If the amendments were to be approved, IFAD would take the necessary administrative steps, if necessary, to adjust its internal framework.

The International Labour Organization (ILO), in response to the questions, confirmed that it stood ready to communicate its acceptance of a formal amendment to articles 10 (b) and 11 (c) of the statute of ICSC, as jointly proposed by Geneva-based agencies, as soon as the General Assembly had reported the adoption of such amendment.

By a resolution adopted on 1 November 2022, the ILO Governing Body committed to accepting amendments to the statute of ICSC regarding the authority of the Commission to determine post adjustment multipliers and instructed the Office to start implementing post adjustment multipliers provided by ICSC after the date of acceptance of those amendments. It would therefore be expected that ILO would be in a position to accept the amendments to the statute of ICSC in the days immediately following the notification of those amendments. However, any amendment that would deviate substantially from the proposed text in section I, paragraph 1, of document [A/C.5/77/L.5](#) might again require the consideration and approval of the governing body of ILO, which would imply possible acceptance not earlier than 15 March 2023.

The International Maritime Organization (IMO), in response to the questions, confirmed that it could, in principle, agree to the proposed amendments to articles 10 (b) and 11 (c) of the statute of ICSC, which only sought to eliminate any perceived legal ambiguity regarding the authority of ICSC to establish post adjustment multipliers for duty stations within the United Nations common system without intending to alter the existing authority of the Assembly or the Commission. However, before accepting any amendments in accordance with article 30 of the statute, such amendments had to be presented to the IMO Council for approval. The Council would meet again in July 2023, and IMO would therefore expect to be in a position to accept the amendments to the statute of ICSC after that meeting closed on 21 July 2023.

The International Seabed Authority considered that the proposed amendments preserved and did not affect the current operational reality of ICSC with regard to the Authority, and therefore welcomed the proposed amendment. Its secretariat supported the view that amendments should be made directly in the articles of the statute, as that would provide legal clarity in comparison with the addition of interpretive footnotes.

Its secretariat took note of the legal process identified in articles 1 (3) and 30 of the statute and indicated that the Authority would need to notify the Council and Assembly at its next meeting, in July 2023, of the proposed amendments prior to sending a written notification of acceptance.

The International Telecommunication Union (ITU) reaffirmed its support for the formal amendments to the text of articles 10 (b) and 11 (c) of the ICSC statute, as jointly proposed by the Geneva-based agencies. If such formal amendments were approved by the General Assembly, it would be expected that the ITU Council would accept, on behalf of ITU, the amendments at its next session, in July 2023. Subject to the Council's authorization, the acceptance by ITU of the amendments would be reported immediately after the next session of the Council.

The International Tribunal for the Law of the Sea transmitted its responses to the abovementioned questions, as follows:

(a) The Tribunal intended to take forward acceptance of the proposed amendments to the text of articles 10 and 11 of the statute of ICSC, as set out in document [A/C.5/77/L.5](#);

(b) Once the General Assembly adopted the amendments and the Tribunal was notified thereof, the formal acceptance of the amendments on behalf of the Tribunal would be conveyed, as soon as practicable, in a letter from the President of the Tribunal addressed to the Secretary-General, in accordance with article 30 of the statute of ICSC.

The Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization confirmed that, if the General Assembly approved the proposed amendments to articles 10 and 11, the Provisional Technical Secretariat of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization would take forward the acceptance, in accordance with article 30 of the statute of the International Civil Service Commission (ICSC). With respect to the second question, the acceptance of these amendments by the Preparatory Commission was subject to a decision of its plenary body. It would therefore plan to submit acceptance of the amendments to a session of the Preparatory Commission, through the subsidiary body dealing with financial and administrative matters. The next meetings of these bodies will take place in May and June 2023. Subject to the approval of the States signatories in this plenary body, the Comprehensive Nuclear-Test-Ban Treaty Organization could then proceed to implement the changes.

The United Nations Industrial Development Organization (UNIDO) responded that, in view of the provisions of article 16 (a) of the Agreement between the United Nations and UNIDO, of 17 December 1985, and as part of the continuous commitment of UNIDO to membership of the United Nations common system, UNIDO would be in a position to accept the proposed amendment, in accordance with article 30 of the statute of ICSC. Furthermore, in the event of the adoption of the proposed amendment by the General Assembly, the process of acceptance by UNIDO of the amendment would entail a notification from the Director General of UNIDO to the Secretary-General, informing him of the acceptance by UNIDO of the amendment. That notification would, in principle, be dispatched upon receipt of an official notification of the adoption of the amendment.

The Universal Postal Union (UPU) confirmed its understanding that the proposed amendments were aimed at ensuring consistency between the statute of ICSC and its application in practice, as well as resolving recent challenges with regard to divergent jurisprudence on matters relating to post adjustment and associated decisions by United Nations system organizations based in Switzerland regarding the implementation thereof.

At this stage, UPU would have no objection in principle to the proposed amendments and stood ready to submit them for consideration and decision by its relevant governing body (the Council of Administration) following their formal adoption – and notification thereof – by the General Assembly. Depending on the date of such notification by the Assembly, the Council of Administration would be in a position to consider the amendments at its next ordinary session, scheduled for May 2023 (or for their consideration by the Chair of the Council between ordinary sessions, if circumstances justified such an urgent decision).

The World Health Organization (WHO) confirmed with respect to the questions that, as soon as the General Assembly approved amendments to articles 10 (b) and 11 (c) of the statute of ICSC, WHO would present the amendments at the following regular session of its Executive Board, the governing body that first authorized the Director General of WHO to accept the statute of ICSC in 1975. The Executive Board will be in session in January and May 2023.

The World Intellectual Property Organization (WIPO), with respect to the first question as to whether it intended to take forward acceptance of the proposed amendment to articles 10 and 11 of the statute of ICSC, confirmed that, if such an amendment were to be approved by the General Assembly, the organization stood ready to expeditiously take the steps necessary to communicate its acceptance of the amendment, as jointly proposed by Geneva-based agencies, as soon as the Assembly reported the adoption thereof.

In that context, the following observations and clarifications were made: as jointly proposed by the Geneva-based agencies, such an amendment, to have legal certainty and clarity, should be made to the text of the articles of the statute and not through an interpretive footnote. Furthermore, and importantly, it was noted that an amendment to the statute of ICSC that bestowed upon ICSC the authority to determine the post adjustments applicable to each duty station would not only align the wording of the statute with the current operational reality but also alter the authority, as a legal matter, of the ICSC. It was upon that very premise and for that very reason that the Geneva-based agencies had made the proposal, in order to heed the judgment of the Administrative Tribunal of ILO.

In response to the question regarding the steps and projected timeline for the acceptance by WIPO of the amendments to the statute, WIPO was prepared to present the requisite working document, containing the proposal to report said acceptance, at the next meeting of the Coordination Committee of WIPO, the executive body of

WIPO member States with responsibility over matters related to conditions of employment and which had first authorized the Director General of WIPO to accept the statute of ICSC in 1975.

The Coordination Committee was scheduled to hold its next session in July 2023; subject to its formal authorization at that session, WIPO would be prepared to report its acceptance of the amendments to the statute immediately thereafter.
