



# Governing Body

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Programme, Financial and Administrative Section

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## Matters relating to the Administrative Tribunal of the ILO: Report of the United Nations Secretary-General on the jurisdictional set-up of the United Nations common system

**Summary:** This document provides information on the report of the United Nations Secretary-General on the jurisdictional set-up of the United Nations common system.

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**Related documents:** None.

1. The United Nations (UN) General Assembly, in resolution 74/255B dated 9 January 2020,<sup>1</sup> requested the UN Secretary-General, “in his capacity as Chair of the United Nations System Chief Executives Board for Coordination [CEB], 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. The General Assembly requested the review following its consideration of the report of the International Civil Service Commission (ICSC) for 2019. The ICSC drew the attention of the General Assembly to a series of judgments delivered by the ILO Administrative Tribunal in July 2019 with regard to ICSC determinations on post adjustment multipliers for the Geneva duty station (Judgments Nos 4134 to 4138). The General Assembly expressed “concern at the application of two concurrent post adjustment multipliers in the United Nations common system at the Geneva duty station” and noted 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”.
3. It is recalled that the ILO Administrative Tribunal set aside the payment of post adjustment amounts calculated in accordance with ICSC post adjustment multipliers established in 2017, principally on the ground that under its Statute, the ICSC had authority to issue recommendations only and not binding decisions on post adjustment multipliers. Similar complaints were filed with the United Nations Dispute Tribunal. In July 2020, the UN Dispute Tribunal rendered its judgments (Judgments Nos UNDT/2020/129/Corr.1 to UNDT/2020/133) confirming the authority of the ICSC to establish post adjustment multipliers. The UN Dispute Tribunal concluded, nonetheless, that it is only the UN Secretariat and funds and programmes that are directly bound by the General Assembly’s decisions on the matter of ICSC competencies, and that this conclusion distinguishes the cases brought before the UN Dispute Tribunal from the case related to Judgment No. 4134 of the ILO Administrative Tribunal. The judgments of the UN Dispute Tribunal have been appealed and the appeal is currently pending before the UN Appeals Tribunal.
4. The request made by the General Assembly was understood as not inviting a broad review of the overall functioning of the two tribunal systems, but rather a review of how the co-existence of two systems may have an impact on consistency in the implementation of ICSC decisions and recommendations, it being understood that divergent judicial pronouncements may give rise to significant financial, legal and administrative challenges for the organizations of the UN common system.
5. The report was prepared by the UN Secretariat between July and December 2020 and was the subject of broad consultations with organizations of the UN common system and their staff representatives, as well as the High-Level Committee on Management, the network of legal advisers of the UN system, the three staff federations (the Coordinating Committee for International Staff Unions and Associations of the United Nations System; the Federation of International Civil Servants’ Associations; and the United Nations International Civil Servants Federation), the ILO Administrative Tribunal and UN Tribunals and their registrars, and the ICSC secretariat. Consultations with the Office, as the custodial institution of the ILO Administrative Tribunal, were comprehensive and very constructive. The Office’s contribution focused in particular on

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<sup>1</sup> UN General Assembly, resolution 74/255B, United Nations common system, [A/RES/74/255 A-B](#) (2020).

the parts of the report pertaining to the ILO Administrative Tribunal with a view to ensuring that the relevant information was thorough and correct.

6. The initial review of the jurisdictional set-up of the UN common system (A/75/690) consists of four parts. Part I provides an overview of the establishment and evolution of the two tribunal systems. Part II examines past efforts to address challenges related to having two tribunal systems for the UN common system. Part III contains a survey of the jurisprudence of the ILO Administrative Tribunal and UN Tribunals on ICSC decisions and recommendations covering the period 1975–2016. Part IV provides a general overview of various approaches for addressing the question of inconsistent implementation of ICSC decisions and recommendations, and also provides an overview of the preliminary views of stakeholders as to whether any of those approaches should be further explored.
7. The variety of options presented in Part IV of the initial review fall into four broad categories: (a) maintenance of the status quo; (b) measures unrelated to the structure or jurisdiction of the tribunals (e.g. review of the ICSC); (c) measures involving universal changes to the tribunals (e.g. harmonization of statutes, establishment of a single appellate mechanism, recourse to the International Court of Justice); and (d) measures involving changes to the adjudication of ICSC matters (e.g. establishment of a joint chamber composed of judges from the ILO Administrative Tribunal and UN Tribunals which would issue interpretative or preliminary rulings on the legality of ICSC decisions and recommendations).
8. It must be stressed that the findings of the initial review are not being presented for a decision by the General Assembly at this stage but merely seek to inform further discussions on possible future action. The report specifically indicates that it will ultimately be for the UN Member States, through the General Assembly, and for the governing bodies of the organizations concerned to make any determinations as regards the issues at stake and how they might be tackled (in the case of the ILO, any eventual implications for the ILO Administrative Tribunal would need to be considered not only by the Governing Body but also by the International Labour Conference). It is anticipated that any such decisions will be brought before the governing bodies of the organizations concerned at the end of a process which could include the establishment of a CEB working group and certainly further consultations with staff representative bodies, the ILO Administrative Tribunal and UN Tribunals, as well as the ICSC.
9. The Secretary-General's report, having been circulated among the CEB members, is currently being prepared for publication and is expected to be considered by the General Assembly during the first part of its resumed session, which begins on 1 March 2021.