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Review of the jurisdictional setup of the UN common system

64/20**Geneva****1 October 2020**

To: All members

From: Evelyn Kortum – FICSA General Secretary

Dear colleagues,

Further to our email to FICSA members on 22 July on the above subject, we would like to bring you up to date with the latest developments as well as FICSA's involvement on your behalf. The focal points for the specialized agencies were instructed to ensure coordination with their respective staff representative body and to share any documentation with them. As not all members might have a focal point, we are also sharing resources of the review with you.

First step:

The Presidents of the three Federations requested a meeting with the UN Assistant Secretary General (ASG) for Management, Catherine Pollard, at the end of August to obtain further information about the review as well as clarification about how staff interests would be protected. The following were recorded as key points during that meeting:

- The review was being carried out following [the UN General Assembly \(GA\) resolution 74/255 B](#) paragraph 8 on this topic.

The General Assembly,

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 (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;

- The UN Secretary General had been tasked by the 5th Committee to carry out the review.
- At the request of the SG the UN Office of Legal Affairs (OLA) would be leading the review in order to ensure that it was carried out within existing human and financial resources.
 - Assurances were made that the legal advisers from all UN Common System (CS) organizations would be involved in the review.
- The purpose of the review, at the time of meeting, was to provide the GA with a purely historical and factual review to date on this topic in order for them to have the relevant information available to them to consider options going forward.



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- **FICSA and sister federations requested:**

- Due consideration be given to the fact that resolutions from the GA are not binding for specialized agencies and any GA recommendations in relation to the review of the jurisdictional setup would have to be approved by each specialized agency's governing body.
- Full transparency in the review process
- Assurances that staff voices would be included at every possible step.

On Thursday, 17 September, C. Pollard, UN ASG for Management briefed the High-Level Committee on Management (HLCM) and the Staff Federations.

General remarks: Ms Pollard stressed that this item is under the Common System on the agenda of the UN General Assembly and not under the Legal Justice Systems meaning that there is no ambition at the current time to establish a comparative study of the two tribunals, neither a single Tribunal. The UN Office of Legal Affairs addressed concerns of conflict of interest by stressing their neutral position in leading the review. They further noted that the evaluation team had already identified inconsistencies and that a new judicial dialogue would be proposed.

The ILO noted that there are significant differences between the two judicial systems, that the ILO supports issues of coherence and that there is a need to consult with organizations under the ILO jurisdiction. They further stressed that the judicial integrity and reputation of the ILO needed to be safeguarded and highlighted that any changes to the jurisdiction of the legal systems will require the approval of the [International Labour Conference](#) and the ILO governing bodies.

By request of the CEB, the specialized agencies put forward 22 focal points to work with the UN Office of Legal Affairs on the review.

Challenge identified : Two independent jurisdictional set-ups do not work coherently at all times.

Lead of the review : The request emanated from the 5th Committee. Therefore, the Secretary-General requested the UN ASG for Management to overview the process which is being lead by the UN Office of Legal Affairs. The ILO Legal Office collaborates, reviews and comments on the report.

Focus of the report: This is not a review and not a general report of the UN Common System. Rather it will focus on COHERENCE in the Common System.

Structure of the report :

Part 1: overview of the establishment and evolution of the ILOAT and the UN Tribunals (historical analysis)

Part 2: overview of prior attempts to promote consistency in the common system (3 main attempts)

Part 3: survey of the jurisprudence of both tribunals on ICSC decisions and recommendations issued starting with the establishment of the ICSC in 1975

Part 4: options for promoting consistency in the common system.



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Timelines and resources :

At this time we share the source files used in preparing the report with you. There are 222 files in three distinct zipped folders that can be downloaded through this link for FICSA Members:

[Source Documents for ILOAT](#)

[Source Documents for UN Tribunals](#)

[Source Documents for Past Efforts](#)

These documents are shared with you to ensure transparency of the process. They are for reference purposes only and while you are encouraged to acquaint yourself with the background, there is no expectation that anyone should read all the source documents in detail.

Early October : First draft will be released through the Focal Points for comments for a 3-week period.

Mid- to late November : The second draft will be circulated in for comments for a 2-week period.

Mid-December : the final draft will be sent to Conference Services for processing in order to be ready for the UN General Assembly. ([Agenda Item 148 – UN Common System](#)) (Dates and Program of Work [yet to be published](#)).

On Monday, 21 September, the Presidents of the three Staff Federation participated in a follow-up meeting with the UN ASG for Management and the lead person for the UN OLA during which the following key points were noted:

- The historical review of related issues had been completed.
- The UN OLA reiterated their request that the Staff Federations share all source documents for the historical review with their members.

Way forward :

Following discussion within the FICSA Executive Committee, we would like to inform the FICSA membership:

1. FICSA will continue to represent you at the highest level in any discussion on this important topic. Our position is to:
 - a. Ensure transparency in every step of the process
 - b. Ensure a thorough review of every recommendation
 - c. Ensure due consideration of the implications on access to justice for ALL our members, irrespective of whether they currently report to the UN Tribunals or the ILOAT.
2. Further to the reassurances from the highest levels of the UN administration, we strongly encourage you to urgently contact your organization's focal point for this project to ensure that your members' interest are known and protected at organizational level. It is important that you interact at the organization level as well, since each specialized agency and organization has its own governing bodies that may decide on the jurisdiction.