

## REPORT OF THE STANDING COMMITTEE ON LEGAL QUESTIONS

### Introduction

1. The Standing Committee on Legal Questions (LEG – see Appendix 1 for participants) met in virtual sessions on 17 February, and in face-to-face meetings on 26 and 27 April 2022 to address its agenda. Its elected Birahim Fall (UPU) as its Rapporteur.

### Report on activities in 2021

2. LEG discussed the actions taken to implement the [decisions](#) of the 74<sup>th</sup> FICSA Council on legal questions.

3. Decision FICSA/C/74/D/1 read: “The FICSA Executive Committee should send a formal letter to all presidents/chairs of member staff associations/unions, encouraging them to secure legal protection insurance through FICSA where possible, underlining that those FICSA members that signed a contract with Fortuna should be aware of the need to exercise due diligence in controlling ongoing cases, to ensure that no frivolous cases were filed.” The letter was sent on 7 April 2021. Members of LEG emphasized the importance of having legal insurance. The best example of this might be the case of the Geneva pay cut, which was won, among other factors, because many of the organizations that appealed had legal insurance.

4. FICSA signed a contract for legal insurance with Fortuna in 2020. For organizations/agencies that could not afford to sign up for the insurance contract with Fortuna, which requires a minimum of 1,000 members, the option adopted was to take out insurance through FICSA, but that option was only applicable to organizations/agencies based in Switzerland. The legal insurance was limited to the coverage of lawyers’ fees. In addition, there is a six-month membership period before the insurance becomes effective.

5. For organizations/agencies not based in Switzerland, the issue of the court on which they depend was decisive. If they were under the jurisdiction of the UN Appeals Tribunal (UNAT), access to the Office of Staff Legal Assistance (OSLA) may facilitate proceedings for appellants. However, some organizations under UNAT jurisdiction did not have access to OSLA or agreement with the UN Dispute Tribunal (UNDT). That was the case of ICAO, which had therefore started to negotiate its access to UNDT as an intermediary instance. Also, the factor of neutrality in the various first instances (internal justice of the organizations) was obviously an obligation to be received by UNAT. ExCom would need to consider all those issues in its monitoring of the situation of the organizations/agencies under UNAT jurisdiction.

6. Decision FICSA/C/74/D/2 read: “The FICSA Executive Committee should prepare an updated list of organizations and agencies under the jurisdictions of the ILO Administrative Tribunal (ILOAT) or the

United Nations Dispute Tribunal (UNDT)/the United Nations Administrative Tribunal (UNAT) and send it to staff representatives.” The list was compiled, although some information may be missing or out of date. Staff associations/unions needed to inform FICSA of any jurisdictional changes. [The list](#) was now available in the Legal section of the FICSA website.

7. Decision read: “The FICSA Executive Committee should prepare a letter encouraging FICSA members to ensure that they are consulted by their respective managements on the review of the jurisdictional set-up of the UN common system, and to designate formal focal points to follow up matters relating to the review.” The issue arose after ILOAT and UNAT made different decisions on the post-adjustment multipliers used in Geneva. The issue is discussed in more detail below.

8. Decision FICSA/C/74/D/4 read: “The FICSA Executive Committee should consistently advocate the development of overall administrative guidelines on arrangements for remote working, to cover issues relating to, for example, occupational health and safety, teleworking away from the duty station, changes in the terms and conditions of the employment contract, reimbursement of staff expenditures, insurance and post adjustment.” For the first time, the UN had a common framework for policies for flexible working in the common system, which was available on the [FICSA website](#).

9. LEG considered that that policy-framework should be used as a basis for discussion with management. Special attention should be given to some aspects of remote work, such as benefits due, job accommodation, mental health, and hiring and firing arrangements. Benefits could be pro-rated between office and telecommuting time; for example, 75% if staff telecommuted three months per year. Further adjustment could be made on the basis of the remote location for the time staff work remotely. As to mental health, remote working could clearly be good for some people, but very bad for others. Finally, some changes in hiring and firing arrangements had already been observed in some organizations. FICSA hoped that its members would quickly communicate any decisions by administrations that might violate existing rules.

10. LEG reviewed a range of factors in remote working that needed consideration. In some circumstances, as in France, teleworking more than two days a week had tax implications. In addition, working from home needed to be distinguished from working away from the workplace. For example, a radius of 60 km from Geneva was still considered to be within the catchment area of the workplace. The situation of other duty stations with agencies and staff could also vary. In addition, short-term contracts could lack adequate health insurance coverage. Question arose about the meaning Other aspects were evoked in LEG, in particular the meaning of being part of an organization or a team without being physically present in it. That issue gained importance when one considered that participating in a dynamic, face-to-face, multicultural environment was one of the reasons why people chose to work at the UN. LEG agreed that the Standing Committee on Human Resources Management would discuss most of these issues in depth.

## **Update on the review of the jurisdictional setup of the UN common system**

### **Proposals by the Working Group of the United Nations Legal Advisers Networks on the Review of the Jurisdictional Setup of the United Nations Common System**

11. Following ILOAT and UNAT’s divergent judgments on the post-adjustment multiplier s used in Geneva in 2020, UN General Assembly [resolution A/RES/75/245B](#) had established the Working Group to develop proposals to address the divergence in law between the tribunals on decisions of ICSC. In November 2021, the Working Group had made three proposals:

- submissions by ICSC to tribunals during litigation of complaints arising out of an ICSC decision or recommendation;
- ICSC guidance following tribunal judgments;
- a joint ILOAT–UNAT chamber in issuing interpretative, preliminary or appellate ruling.

12. In 2021, the staff federations (FICSA, CCSIUA and UNISERV) wrote to express their concern about their exclusion from Working Group meetings. After meeting 11 times to develop proposals, the Working Group invited the federations to a meeting on 14 December 2021, not as a consultation with stakeholders but only as an informative session. The federations reiterated their concerns about the lack of consultation and inclusivity. On 18 February 2022, the staff federations received a summary of the Working Group’s final report, and were invited to a meeting that provided an opportunity for questions and comments. A FICSA [message](#) describes those events and provides links to important documents.

13. The comments of the three federations were sent to the UN Legal Advisers Network to be attached to the UN Secretary-General’s report.

### **Analysis of the three proposals**

14. To gain a clearer legal perception of the situation, the risks and the scope of the Working Group’s three proposals, FICSA asked its legal adviser, Mr Laurence Fauth, to carry out a legal analysis. He submitted a report by 16 February 2022, and gave an overview of the issues in a teleconference with LEG at the 75th FICSA Council, allowing participants to ask questions. He underlined that the first two proposals did not create anything new, but described the establishment of a joint chamber as adding time and red tape to an already lengthy and litigious procedure.

15. LEG’s questions concentrated on the third proposal, which it saw as a false solution to a real problem: that is, ILOAT case law could be circumvented. Moreover, the Working Group had not addressed the fact that UNAT jurisprudence could only be reviewed and brought into harmony with international law if the General Assembly amended the UNAT statutes and allowed for judicial review of the Secretary-General’s decisions on implementing ICSC recommendations or decisions.

16. A substantive legal element mentioned was that the creation of a common chamber would imply an amendment of the statutes of the courts, to which ILOAT had been averse throughout its seventy-year history. For its part, UNAT had not expressed any interest in the three proposals.

17. Several participants highlighted that the Working Group’s analysis seemed to lack a definition of the law to be applied, so it would be legitimate to ask what reasoning and principles the joint chamber would apply when ILOAT and UNAT issued opposite judgements. The Working Group document did not answer that question. Further, the new institution would create more delays and procedural complications, which would introduce additional uncertainty and burdens.

18. In line with Mr Fauth’s analysis and in correspondence with participants’ comments, the FICSA President explained that the three federations had agreed to reject all three proposals as unsatisfactory and failing to resolve the problem of disharmony in the system’s jurisprudence with respect to ICSC recommendations and decisions.

### **Recommendation**

19. **LEG recommended that ExCom should continue to keep members informed, to encourage them to engage in dialogue with their respective administrations with regard to the jurisdictional review and to report to ExCom.**

## **Establishing a FICSA working group for members whose organizations have left ILOAT**

20. Several FICSA members had expressed concern about some administrations' recent decisions to move from ILOAT to UNAT jurisdiction, and requested FICSA to establish a working group to monitor procedures and respect for the consultative process, to avoid arbitrariness and to support members in uncertain and disadvantaged positions.

21. The main general principle was respect for the consultative process. Staff associations should be consulted before such a decision was made. Staff representatives should be informed in detail about the content of the initial agreement between the organizations and ILOAT, which their organization sought to terminate, as well as the obligations that must be respected. In case a transfer to UNAT was confirmed, staff representatives should have access to the signed agreement to understand its scope. If an organization did not subscribe to UNDT, a first level of justice (internal appeal committee) had to be set up, which should be independent, neutral and competent to issue decisions, not recommendations. For example, it could be composed of an external judge and representatives of the administration and staff. Nevertheless, staff representatives confronted with this dilemma should insist on the full package (Ombudsman and access to OSLA and UNDT) before appealing to UNAT. That would make it possible to determine the magnitude of the costs to expect, as UNAT is often claimed to be "cheap and quick". Finally, cases already logged at ILOAT must remain there, instead of being transferred to UNAT.

### **Recommendation**

22. **LEG recommended that ExCom should:**

- **establish at the earliest opportunity a working group of member organizations that had recently transferred jurisdiction from ILOAT to UNAT to monitor procedures, respect for the consultative process and other relevant rules, and to provide support to staff representatives; and**
- **maintain close contact with ICAO in particular, sharing lessons learned and the outcome of its negotiations with OSLA, comparing its case with those of other agencies that moved from ILOAT to UNAT, so that the appeals of its members within the two-tiered system would be admissible in UNAT.**

## **Latest updates on legal topics**

### **Teleworking**

23. The legal adviser, Ms Ludovica Moro, participated in a meeting and reported on some recent cases to LEG. She pointed out the need to distinguish alternative working from flexible working. For example, an administration may request alternative working to restrict access to the premises and reduce the risk of disease transmission. Flexible working is a voluntary arrangement between staff and their managers.

24. Many aspects of teleworking needed consideration, such as duration, and the duty stations or locations where staff were allowed to work. That led to issues with health insurance, as mentioned. Because of the implications for personnel management, the Standing Committee on Human Resources Management comprehensively considered that matter.

## Protecting staff representatives

25. LEG considered that all administrations of the organisations should be aware that discrimination, reprisals, retaliation and harassment against staff-association representatives were not only against the basic general principle of the right to representation and freedom of association, but also against the internal rules of the organizations and the respective Codes of Ethics.

26. A healthy, collaborative and constructive relationship between staff associations and management improved transparency, ensured due process and improved staff engagement. Management needed reminding that staff association representatives were entitled to career development opportunities and promotion similar to all staff and not be targeted with career stagnation.

### Recommendation

27. **LEG recommended that ExCom should issue a statement making all administrations aware of the need to avoid discrimination, retaliation and harassment against staff association representatives; and to protect their rights to career development and to proper release conditions while carrying out their functions, reminding participating organizations of UN administrative instruction [ST/AI/293](#) of 15 July 1982 on facilities to be provided to staff representatives, which showed how staff representations should be considered.**

## HLCM cost-sharing agreement for elected FICSA officers

28. An interagency agreement to share the cost of release for the FICSA President and General Secretary was close to being concluded in HLCM, with the participation of 30 organizations. In addition, future full members of FICSA would be required to obtain agreement from their organizations, before admission to membership, to comply with the HLCM agreement to facilitate the conclusion of the agreement.

### Recommendation

29. **LEG recommended the FICSA ExCom should start as soon as possible to amend Article 6 of the FICSA Statutes, through a postal vote in accordance with Article 25, to specify that new applicants for full membership of the Federation must possess agreement from their organization to participate in the HLCM Cost-Sharing Agreement to cover the cost of releasing the FICSA President and General Secretary from their regular duties.**

## Nomination of SC officers and core group members

30. LEG nominated the following officers:

- Andres Orías-Bleicher (WMO) as Chair
- Charles Forrest (IFAD) as First Vice-Chair
- Daniela Salmon (WHO/HQ) as second vice-chair (elected as Executive Committee member)

31. The following were nominated as members of the core group:

- Steven Geoffrey Eales (UNIDO)
- Susan Murray (FAO/WFP-UGSS)
- Viera Seben (ICAO)

- Birahim Fall (UPU)

## Appendix 1. Participants

### Officers

Chair/Coordinator	Andres Orias-Bleichner (WMO)
Vice-Chair/Vice-Coordinator	Jakob Skoet (AP-in-FAO), Charles Forrest (IFAD)
Rapporteur	Birahim Fall (UPU)
FICSA President	Tanya Quinn-Maguire (UNAIDS)
FICSA General Secretary	Cosimo Melpignano (WHO/HQ)
FICSA ExCom Members	Véronique Allain (SCBD), Tracy Tollman (UNFCCC) Pilar Vidal (PAHO)
FAO/WFP-UGSS	Dina Franchi, Susan Murray, Paola Franceschelli
ICAO	Sanya Dehinde, Andrew Brown, Viera Seben
IMO	Shereen Barry, Elene Sarria, Ivana Goode
PAHO/WHO	Daniela Cracel, Glenda Moreira Lopez
SCBD	Lisa Pedicelli
UNAIDS	Emilie Christie
UNFCCC	Mary Jean Abrazado
UNIDO	Steven Eales, Osadolor Akpata
UNICTF	Maria Del Rocio Martin
UNGSC	Cosimo Lunedi, Cosimo Chimienti, Salvatore Brunori
UPU	Stéphane Vuillemin, Birahim Fall
WHO/AFRO	Hamidou Bague, Harris Benito Koubemba Mona, Sympllice Mbola
WHO/EMRO	Wallaa El-Moawen
WHO/GSC	Aizat Khalid
WHO/HQ	Pippa Haughton, Jerome Zanga Foe
WHO/SEARO	Sungchol Kim
WHO/WPRO	Ada Moadsiri, Kristel Ann Dena Siaga

### Members with associate status

CERN	Joel Lahaye
CTBTO	David Applbaum, Michelle Delinde
OPCW	Linda Moyo

### Associations with consultative status

EMBL	Maria Cerezo
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