

REPORT OF THE STANDING COMMITTEE ON LEGAL QUESTIONS

Officers

Chair	Andrés Orías (WMO)
Rapporteur	Juan José Coy Girón (FAO)
FICSA President	Brett Fitzgerald (WIPO)
FICSA General Secretary	Evelyn Kortum (WHO/HQ)
Member, FICSA Executive Committee	Pilar Vidal Estévez (PAHO/WHO)

Participants

AP-in-FAO	Jakob Skoet, Line Kaspersen, Ny You
FAO/WFP-UGSS	Susan Murray
IARC	Cécile Le Duc
ICAO	Sanya Dehinde, Viera Seben
IFAD	Lixia Yang
ILO ITC	Jesus García Jiménez, Rute Mendes
IMO	Shereen Barry, Newsheen Mahfuz Bhatti, Juan Lyu, Fola Odulana, Alfredo Parroquin-Ohlson, Elene Sarria
ITU	Christian Gerlier
UNAIDS	Andrea Palazzi
UNFCCC	Santhosh Thanjavur Prakasam
UNIDO	Osadolor Akpata, Steven-Geoffrey Eales
UPU	Birahim Fall, Franck Landauer, Stéphane Vuillemin
WHO/AFRO	Hamidou Bague, Guy Parfait Elenga, Symplice Mbola Mbassi

WHO/EMRO	Metry El Ashkar, Salwa Hassan, Tonia Rifaey
WHO/EURO	Antonella Biasiotto
WHO/HQ	Catherine Kirorei Corsini
WHO/SEARO	Ritesh Singh
WHO/WPRO	Bess Bodegon, Priya Mannava
WIPO	Ben Helal Najib
WMO	Jalil Housni

Members with associate status

OPCW	Romina Catera, Alberto Fernández
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Federation with consultative status

EMBL	Thomas Heinzmann
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Guest

WMU	Anne Pazaver
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Adoption of the agenda (agenda item 1)

1. The Standing Committee on Legal Questions approved the following agenda:
 1. Adoption of the agenda
 2. Election of the rapporteur
 3. Follow-up of 72nd Council resolutions relating to the Committee
 4. Update on the collective legal insurance contract negotiated by FICSA for international officials
 5. Updates on commissioned legal studies through FICSA
 6. Update of the Legal Defence Fund Rules
 7. Other matters brought forward by other standing committees
 8. Workshops and other business
 9. Nomination of Standing Committee officers and core group members

Election of the Rapporteur (agenda item 2)

2. The Standing Committee on Legal Questions appointed Mr. Juan José Coy Girón as Rapporteur.

Follow-up of 72nd Council Decisions relating to the Committee (agenda item 3)

3. The Chair of the Standing Committee reminded the participants that at the 72nd Council (2019) the Committee had approved four decisions relating to the Committee.
 - a. The FICSA Executive Committee should write a letter to the Legal Advisor of the International Labour Organization (ILO) and stress five points relating to: the withdrawal process per se, the manner in which notifications of withdrawals were given, the effectiveness of withdrawals, the consultations with staff representatives and proposals advanced by member organizations.
 - b. The FICSA Executive Committee should seek the opinion of a renowned scholar on United Nations Appeals Tribunal (UNAT) Judgment No. 2018/UNAT/841 (*Quijano-Evans et al. v Secretary-General of the United Nations*) and, in particular, its impact on acquired rights.
 - c. The FICSA Executive Committee should prepare an informative document presenting the offer of a collective legal insurance contract negotiated by FICSA for international officials, to be disseminated as soon as possible.
 - d. The FICSA Executive Committee should assess the proposal made by the Standing Committee on Conditions of Service in the Field on the creation of an additional geographical region for the purpose of representing FICSA in the Middle East, North Africa and Arabic-speaking countries and, by virtue of the mandate conferred on it by Article 36 of the FICSA Statutes, pronounce itself and, if deemed appropriate, proceed to a postal vote during 2019 to settle the matter.
4. The Chair then informed the Standing Committee that the first three decisions had been implemented: the letter to the ILO Advisor, and a follow-up letter, had been sent in February and March 2019, respectively; the study on acquired rights had been finalized and would be discussed under agenda item 5; and the informative document about the collective legal insurance contract had been prepared and would be presented under agenda item 4.
5. With respect to the only outstanding decision, the Chair explained that it had not been possible to close it due to the failure of the initiators of this request, within the Standing Committee on Conditions of Service in the Field, to make any concrete proposals.
6. In reply to a query from the WMO delegate about the member associations/unions that had problems paying their dues, the Chair stated that no concrete requests had been received and that, consequently, the matter would be considered under agenda item 7.
7. A delegate from ICAO) referred to the matter of the current composition of the joint appeals boards (JABs) in the UN system and the fact that they did not have decision-making powers as first judicial instance. In response, the Chair said that there was a

recent precedent, established by a UNAT ruling, in the sense that JABs work in a specific organization did not correspond to a neutral intermediary instance when it did not offer a written record and written decision, providing the reasons, based on factual and legal findings, subject to a possible appeal, so there was a conflict of interest when the administration acted as judge and party at the same time. This matter, too, would be discussed under agenda item 7.

Update on the collective legal insurance contract negotiated by FICSA for international officials (agenda item 4)

8. Further to the debates held at the 72nd FICSA Council regarding a collective legal insurance contract for member staff associations/unions and their membership, the FICSA General Secretary (WHO/HQ) provided information and recalled that FICSA had issued a communication in this respect after discussions with the insurance company Fortuna.
9. The cost of the insurance would amount to CHF 100 per person per year if the total number of staff members insured were less than 1,000, and would decrease to CHF 80 per person per year over that number, and pointed out that the contract with Fortuna would be subject to certain restrictions related to coverage, choice of lawyers and procedure.
10. First, while the desire had been to have a global insurance provider, the contract would only cover staff based in Geneva and cases brought before ILOAT or UNAT (irrespective of where the concerned staff were based), on account of Swiss insurance law. In addition, the insurance company would use Swiss lawyers, which raised the question of how familiar they would be with the international jurisdiction. Finally, there were also some issues related to procedure, particularly to delays (deadlines for referring cases to Fortuna and for the insurer to provide an opinion thereon).
11. In conclusion, the Executive Committee had prepared a PowerPoint presentation and a Q&A flier, both available on FICSA's One Drive, which delegates could refer to if they wanted more detailed information.
12. A lengthy discussion followed during which several delegations requested clarifications on different aspects of the insurance contract. The questions referred specifically to:
 - a. whether there was a time limit to sign up for the insurance;
 - b. whether the number of adherents, which would constitute the basis for the calculation of the premium, referred to each individual association/union;
 - c. whether the staff in regional or country offices would be covered and Fortuna could help with regional and global appeals;
 - d. whether the insurance would also cover internal appeals;
 - e. whether it would be necessary to name the staff members insured; and

f. whether retirees could also avail themselves of the coverage through their former staff associations.

13. In response to those questions, the FICSA General Secretary provided the following explanations:

- a. there was no definite limit for signing up, but the sooner it was done, the better;
- b. the number of adherents referred to the total number of people insured: i.e. adding up all the staff signing up from the different associations/unions;
- c. the insurance would cover any case brought before ILOAT or UNAT;
- d. the coverage would apply to internal appeals as well;
- e. according to the latest information it seemed that the insured staff would have to be named; and
- f. retirees could not benefit from the insurance coverage provided by Fortuna.

14. In this latter respect, FICSA President (WIPO) pointed out that the legal protection insurance covered only employer–employee disputes, and highlighted that retirees had no contractual relationship with their former employers.

15. The WMO delegation requested FICSA to provide the full general conditions of the insurance contract so that they could be shared with staff. The Chairman clarified that this was not possible, as the contract with Fortuna was still being negotiated and added that it would be desirable for all the above questions to be sent to the FICSA Secretariat and that the Standing Committee would continue working on this matter throughout the year.

The Standing Committee recommended that FICSA Executive Committee present a summary of the questions sent by staff to FICSA Secretariat during the year, the answers provided, as well as the general conditions that will result from the negotiations for a collective legal insurance contract for international officials.

Updates on commissioned legal studies through FICSA (agenda item 5)

16. The Chairman introduced the authors of the two studies on acquired rights commissioned by the Executive Committee in response to the Standing Committee’s request in 2019, and invited them to present their findings.

17. Mr Rishi Gulati summarized the contents of his memorandum entitled “Steps FICSA could take to protect acquired rights across the United Nations Common System”. The memorandum essentially attempted to establish the nature of acquired rights, the reasons for their importance and the possible ways to enhance and protect them.

18. The study was prompted by the issuance of Judgment No. 2018/UNAT/841, which, in Mr Gulati’s opinion, seriously undermined the acquired rights of staff members of the United Nations by limiting the scope of the acquired rights doctrine (which conventionally protects

both past and future rights based on the classification of a condition of employment as “fundamental and essential”) to the rule against retroactivity.

19. On the other hand, ILOAT took a broader view of the doctrine of acquired rights. Consequently, a fundamental inconsistency in the meaning and scope of acquired rights now existed across the common system. Staff members under the jurisdiction of ILOAT appeared to have their acquired rights better protected.

20. Given this doctrinal discrepancy, Mr Gulati proposed a dual approach for protecting staff rights. With respect to staff of organizations under the jurisdiction of UNAT, FICSA could engage in robust legal and policy advocacy on behalf of staff members; consider intervening in cases through a friend-of-the-court brief; and prepare a model contract containing more substantive protections for staff.

21. With respect to staff of organizations under the jurisdiction of ILOAT, FICSA could provide legal and policy advocacy so as to offer express support for ILOAT jurisprudence; commission fact sheets on ILOAT case law to clarify how the doctrine of acquired rights applied in various fact patterns; consider assisting with litigation before ILOAT where systemic staff rights were at stake; and consider advocating reform in relation to the nature and content of the contract of employment of common system staff.

22. In the ensuing discussion, involving several delegations, the main concern regarding the issue was to ensure uniformity throughout the common system so as to guarantee the achievement of its main goal (ensuring equal treatment of all staff) and avoid the risk that organizations might give in to the temptation of “forum shopping” (i.e. subscribing to the jurisdiction of the tribunal they perceive as being more favourable to their interests, to the detriment of those of staff).

23. Ms Ludovica Moro and Ms Neha Dubey then presented their study, entitled “Consequences of an international organisation leaving the UN Common System and UN Joint Staff Pension Fund & how to protect the acquired rights of staff”.

24. According to the study, the primary legal consequence of any potential departure from the UNCS or the UNJSPF would be a breach or violation of a staff member’s acquired rights. The key acquired rights of staff members at risk of being violated in such a case would be the quantum of base salary, equalization and tax adjustments, and the expatriate premium or post-adjustment multiplier. The right to accrue pension, the contribution ratio and tax adjustments to pension contributions were also acquired rights that could be impacted upon by any departure from the UNJSPF.

25. Should an international organization decide to leave the UNCS or the UNJSPF, the two co-authors recommended several steps that would be crucial to both protect the staff members’ legal rights, and act according to international best practice, on the one hand, and the actions that FICSA could take in respect of staff welfare and their protection, on the other.

26. During the discussion that followed the presentation, it was stressed that the role of FICSA and individual staff associations/unions was based on the obligation of the organizations to consult staff; in that sense, ILOAT's jurisprudence was particularly helpful. Also worth noting in this respect was the ILO Legal Office's definition: "Consultation is neither mere notification nor co-decision but a process where a genuine opportunity is given to all parties to express their views, and a meaningful effort is made to take views so expressed into account".

27. Reference was also made to the dysfunctions of the organizations' internal justice mechanisms, which created additional difficulties, and the desirability of moving to a real and proper two-tiered judicial system, whether by replacing the internal appeals bodies with a true tribunal or by subscribing to the jurisdiction of the United Nations Dispute Tribunal (UNDT). In this respect, the FICSA President suggested that the Executive Committee could prepare a brief explaining the importance of signing to UNDT for those organizations already under UNAT's jurisdiction.

The Standing Committee recommended that FICSA Executive Committee prepare:

- **a brief summary containing guidelines for staff representatives, to defend the legal requirement of a neutral appeal instance process within the internal justice system, including a written record and a written decision providing reasons, facts and law.**
- **a recommendation for staff representatives to include the UNDT as the most appropriate intermediary instance in case of an organization is part of, or become part of, the UNAT two-tiered system of justice.**

Update of the Legal Defence Fund Rules (agenda item 6)

28. The Chair recalled that the matter of the Legal Defence Fund had been debated in 2019 and it had been decided to revise the Guidelines on its use. He reminded participants that the Fund had been established in 1998 pursuant to Article 14 (b) of FICSA's Financial Rules with an authorized level of CHF 60,000. It was a means of promoting collective action, given the fact that the internal appeal bodies of the United Nations and its specialized agencies (ILOAT and UNAT) did not allow for class action but instead considered only complaints filed by individual staff members.

29. At the invitation of the Chair, the FICSA President explained the rationale for the revision and summarized the main changes introduced in the Guidelines. The Fund had been initially set up to provide financial assistance to members of FICSA to cover partial legal costs associated with appeals dealing with general rights and common interests of the majority of its members. These appeals were to have been brought as "trial cases" on behalf of individual staff members. The need to revise the Guidelines had arisen out of the fact that, in late years, FICSA had received requests from individuals to avail themselves of the Fund in relation to matters that did not fall under its original purpose.

30. To correct this situation, the language in the Guidelines had been tightened up to clarify that support to individuals would be provided only in exceptional circumstances and when the cases were of general interest to FICSA's membership, and that requests for assistance had to be submitted through the respective staff association/union. Further changes had been introduced to clarify the requirements with regard to the recovery of the monies advanced.

31. In summing up this item, the Chair informed the Standing Committee that an Application Form for Legal Support now complemented these revised Guidelines, which was available in FICSA's One Drive.

Other matters brought forward by other standing committees (agenda item 7)

32. The Chair of the Standing Committee on Professional Salaries and Allowances (ITU), referred to a pilot project related to biometric identification badges that was being implemented in ITU and was expected to be rolled out to all organizations eventually. The issue was worrying because of the absence of a right to privacy and data protection policy in ITU. To compound the matter, the company that supplied the badges had been absorbed by another company, which raised questions about access to the data and confidentiality.

33. A Member of the FICSA Executive Committee (PAHO/WHO) said that PAHO was thinking of developing such a policy and suggested that the Standing Committee on Legal Questions could consider recommending to FICSA's member staff associations/unions to discuss the matter with their respective administrations and encourage them to develop similar policies.

34. The WHO/EMRO delegation informed the Standing Committee that the United Nations Department of Safety and Security (UNDSS) had introduced an application (UNDSS Advisory) the year before to monitor staff in the field that had been flagged by the WHO/EMRO Regional Security Officer, as there was no clear understanding of how staff data would be protected. A written policy on this matter was therefore essential to ensure the safety of staff.

35. In closing this agenda item, the Chair stated that, in the light of the information provided to the Standing Committee, it seemed advisable to analyse the issue and strive to produce some guidance related to right to privacy and data protection policies in the organizations.

The Standing Committee recommended that FICSA Executive Committee provide an informative summary, with guidelines related to the protection of privacy and the security of personal data, based on the best standards currently in force.

Workshops and other business (agenda item 8)

36. Concerning workshops, the WHO/EMRO delegation asked whether training could be provided on the preparation of appeals. In response, the FICSA President replied that relevant materials were already available on the FICSA website.

37. No other business was raised.

Nomination of Standing Committee officers and core group members (agenda item 9)

38. The Chair informed the Standing Committee that he was ready to keep on fulfilling his role until the next (74th) Council, to be held in 2021, but that, for personal and professional reasons, particularly related to his recent transfer to Asunción, Paraguay, he would not be able to continue thereafter.

39. Recognizing the value of his work over the past years, the Standing Committee renewed his mandate as Chair and, at his suggestion, nominated Brett Fitzgerald First Vice-Chair and Gemma Vestal as Second Vice-Chair.

40. Pilar Vidal Estévez (PAHO/WHO), Andrea Palazzi (UNAIDS), Nowsheen Mahfuz Bhatti (IMO), Romina Catera (OPCW), Christian Gerlier (subject to the outcome of the ITU's possible withdrawal from FICSA) and Birahim Fall (UPU) were nominated as core group members.