



# General Assembly

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Seventy-seventh session

**Fifth Committee**

Agenda item 145

**United Nations common system**

## **Exchange of letters between the Chair of the Fifth Committee and the Under-Secretary-General for Legal Affairs, the Legal Counsel**

### **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 Under-Secretary-General for Legal Affairs, the Legal Counsel (see annex I), and the letter dated 18 November 2022 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the Chair, 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 Under-Secretary-General for Legal Affairs, the Legal Counsel**

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

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**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 18 November 2022 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the Chair of the Administrative and Budgetary (Fifth) Committee**

I refer to your letter dated 15 November 2022, in which you indicate that the Administrative and Budgetary Committee (Fifth Committee) of the General Assembly decided at its meeting held on 15 November 2022 to request that the United Nations Legal Counsel provide a legal opinion containing responses to the following elements as set out in the decision of the Fifth Committee:

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.

The responses of the Office of Legal Affairs to each of the elements referred to in your letter are set out below.

**First element: "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."~~

This element is duly noted. We understand that no response is required.

**Second element: “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”**

This element is duly noted. We understand that no response is required.

**Third element: “Inquires whether the amendment, as drafted, preserves the current operational reality, without altering the authority of the General Assembly or the Commission”**

We consider that, subject to our additional explanations below, the amendments set out in the first element (“proposed amendments”), preserve the current operational reality and do not alter the authority of the General Assembly or the Commission.

The General Assembly has the authority under Article 22 of the Charter of the United Nations to establish such subsidiary organs as it deems necessary for the performance of its functions. The Commission was established, and its statute adopted, by General Assembly resolution [3357 \(XXIX\)](#) of 18 December 1974, with the general objective of regulating and coordinating the conditions of service of the United Nations common system. From a legal perspective, the General Assembly retains the authority to amend the statute of the Commission (“statute”) at any time. The Commission remains a subsidiary organ of the General Assembly and, pursuant to article 6 of the statute, is responsible to the General Assembly. The General Assembly may therefore decide, if deemed necessary, to pronounce itself on any matter relating to the authority of the Commission.

The General Assembly, in its resolution [74/255](#) of 27 December 2019, entitled “United Nations common system”, recalled that “in its resolutions [44/198](#) and [45/259](#), it abolished the post adjustment scales mentioned in article 10 (b) of the statute of the Commission” (para. A.2). The proposed amendment to delete the reference to the post adjustment scales in article 10 (b) of the statute is therefore consistent with these General Assembly resolutions. The proposed amendment of article 10 (b) of the statute would confirm that the General Assembly no longer establishes, and the Commission no longer makes recommendations on, the scales of post adjustment, and in that respect aligns the statute’s wording on the authority of the General Assembly with the current operational reality.

In its resolution [74/255](#), the General Assembly also reaffirmed “the authority of the International Civil Service Commission to continue to establish post adjustment multipliers for duty stations in the United Nations common system, under article 11 (c) of the statute of the Commission”. The proposed amendment to article 11 (c) of the statute is to add “The post adjustment applicable to each duty station” and to delete the current text “The classification of duty stations for the purpose of applying post adjustments”. This proposed amendment appears to be sufficiently broad to encompass the General Assembly’s reaffirmation of the authority of the Commission to establish post adjustment multipliers for duty stations in the United Nations common system under article 11(c) of the statute and, as we understand, the current operational reality.

Whether the proposed amendments could be interpreted to alter the authority of the Commission or the General Assembly is further discussed below, under the fourth element.

**Fourth element: “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”**

The statute currently does not expressly address the authority of the General Assembly or the Commission to change the relationship between the post adjustment multiplier and the net base salary. We understand that, when the General Assembly abolished the post adjustment scales, the percentage of net base salary associated with each post adjustment multiplier point became equivalent to 1 per cent of net base salary.

The proposed amendment to article 11 (c) of the statute set out in the first element could conceivably be interpreted as bestowing upon the Commission an authority in relation to this relationship. To address such a possible interpretation, the General Assembly could consider a further amendment to the statute, clarifying the relationship between the post adjustment multiplier and the net base salary. This amendment could specify that the value of each post adjustment multiplier point is set at 1 per cent of net base salary. This option would reduce any perceived legal ambiguity; however, any future revisions to the value of the post adjustment multiplier points would then also need to be effected through an amendment to the statute.

As an alternative to further amending the statute, we recall the Commission’s status as a subsidiary organ of the General Assembly and the General Assembly’s authority to pronounce itself on any matter related to the authority of the Commission. In this respect, should the General Assembly wish to expressly address any question as to the authority of the Commission to set the value of the post adjustment multiplier points, it may do so at any time.

If the amendment to article 11 (c) of the statute were, as proposed in the fourth element, to read “The rates of post adjustment applicable to each duty station”, it could introduce a new concept of “rates” of post adjustment. “Rates of post adjustment” is currently not a concept that is part of the post adjustment system. We therefore do not consider that this option would mitigate the concerns raised.

In response to the other concerns expressed above in the fourth element, the proposed amendments do not appear to grant the Commission the authority to determine whether post adjustment is part of the remuneration package.

We consider that the proposed amendment to article 10 (b) of the statute has no effect on the authority of the General Assembly to determine salary scales and thereby the amount of remuneration paid to staff members. Neither does the proposed deletion of the reference to the scales of post adjustment in article 10 (b) of the statute expand the Commission’s authority with respect to whether post adjustment is part of the remuneration package. Accordingly, we do not consider it necessary to add “Remuneration structure and” or “Salary system and” in article 10 (b) in order to mitigate the concerns raised.

**Fifth element: “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”**

We refer to our response to the fourth element, set out above.

**Sixth element: “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”**

We refer to our responses set out above.

**Seventh element: “Inquires whether the proposed amendment presents any other legal challenges and, if so, requests the Office to suggest measures to mitigate those challenges”**

Article 30 of the statute provides that: “The present statute may be amended by the General Assembly. Amendments shall be subject to the same acceptance procedure as the present statute.” The acceptance procedure referred to in article 30 is set out in article 1 (3) of the statute and provides that: “Acceptance of the statute by such an agency or organization shall be notified in writing by its executive head to the Secretary-General.”

The statute thereby explicitly requires any amendment to be accepted by the other United Nations common system organizations for it to apply to them. The uniform implementation of the proposed amendment across all United Nations common system organizations is therefore conditional upon their written acceptance of this amendment. In order to mitigate legal uncertainty and potential instability in the United Nations common system resulting from written acceptance of the amendment by organizations of the United Nations common system at different times, close coordination between the relevant parties would be essential. In this regard, we note that the Chair of the Fifth Committee has already been asked to request the Commission to consult with the other organizations of the United Nations common system and to invite these organizations to provide their input on (i) whether they would intend to take forward acceptance of the proposed amendment and (ii) the steps and projected timeline for their organization’s acceptance process.

**Eighth element: “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”**

On 3 July 2019, the International Labour Organization Administrative Tribunal (the “ILOAT”) issued five judgments on challenges to the Geneva post adjustment brought by about 1,200 staff members of the International Labour Organization, the World Health Organization, the Joint United Nations Programme on HIV/AIDS, the International Telecommunication Union, the International Organization for Migration and the World Intellectual Property Organization. The ILOAT considered that the Commission did not have the authority in its statute to decide the amount of post adjustment and concluded that the actions of the organizations to pay the reduced post adjustment amounts were legally flawed.

We consider that the wording as currently proposed in the first element would address the concerns expressed by the ILOAT regarding the authority of the Commission to decide, rather than merely make recommendations, on post adjustment.

Other concerns raised by the ILOAT, such as those regarding the stability, foreseeability and transparency of the Commission’s methodology and gap closure

measures, did not relate to the authority of the Commission under the statute and would therefore not be addressed by the proposed amendment.

It should further be highlighted that our views on whether the proposed amendments to the statute would address the concerns of the ILOAT as expressed in its rulings provide no guarantee that the ILOAT would share the same views.

**Ninth element: “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.”**

An amendment of the statute through the addition of interpretative footnotes would require the same process of acceptance by the other organizations of the United Nations common system as an amendment to the text of the articles of the statute. However, such amendments through interpretative footnotes would not provide the same level of legal clarity that would be achieved by amendments made directly in the articles of the statute.

(Signed) Miguel de Serpa Soares  
Under-Secretary-General for Legal Affairs  
and United Nations Legal Counsel

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