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United Nations common system

Comments of the judges of the United Nations Dispute Tribunal on the proposal of the Fifth Committee for the amendment of the statute of the International Civil Service Commission

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Fifth Committee the comments of the judges of the United Nations Dispute Tribunal on the proposal of the Fifth Committee for the amendment of the statute of the International Civil Service Commission ([A/C.5/77/L.5](#)) (see annex).



Annex

Comments of the judges of the United Nations Dispute Tribunal

1. The judges of the United Nations Dispute Tribunal submit their comments on the below proposal of the Fifth Committee for the amendment of the statute of the International Civil Service Commission:

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. The United Nations Dispute Tribunal (UNDT) Judges support the proposed amendments.

3. The UNDT Judges reiterate views, expressed in their comments on the jurisdictional set-up, that, for the prevention of divergence in jurisprudence, and, consequently, for the integrity of the United Nations common system, the clarity of International Civil Service Commission (ICSC)-related regulation is a primary issue. The regulation must be up to date, unambiguous, accessible and transparent. This is essential with respect to the delineation of statutory competencies and highly desirable with regard to parameters guiding ICSC decisions.

4. At present, the ICSC statute misinforms of the relevant competencies of the General Assembly and ICSC regarding post adjustment. The ensuing litigation involved hundreds of cases over the period 2018–2020, with all the associated human and financial costs, and undermined the functioning of the common system. This situation is attributable to the retention in the statute of references to obsolete methodology that had been eliminated over 30 years ago through rolling changes approved by the General Assembly.

Proposed amendment to article 10 (b)

5. Since the scales for salaries and scales for post adjustment have been abolished, the references thereto need to be eliminated from article 10 (b). There is currently a

single salary scale approved by the General Assembly. The proposed strikeout will properly reflect the status quo, as well as correctly reflecting that ICSC has no decisory competence with regard to the salary scale.

6. The same cannot be achieved solely by adding a footnote as contemplated in section I, point 9, of the Fifth Committee's decision: "As decided by the General Assembly, the adoption of the post adjustment scale is subsumed in the adoption of the base/floor salary scale". Inserting such a footnote is not advisable from three points of view: legislative technique, rules of linguistic interpretation and the merits of post adjustment determination.

7. Normative text emanating from the legislative body must be written clearly enough to operate without any footnotes, except, possibly, for source indication, such as the date of adoption, change or abolition. Footnotes in a legislative document carry no normative value. As illustrated by the DGACM Editorial Manual, footnotes are to be used for quotations, the substantiation of statements made in the text, cross-references and explanatory or supplementary information. Interpretive footnotes are not foreseen, as they usually apply to third-party texts, such as literary commentaries, exegesis of scriptures or translations.

8. On the linguistic level, the suggested footnote to article 10 (b) is not interpretive; rather, it belies the notion of "scales" employed in the statute. Inserting it would compound confusion by, on the one hand, retaining the language which misinforms about the continued application of post adjustment scales and the General Assembly's role therein while, on the other hand, cryptically signalling ("is subsumed") that the scales have lost actuality or will lose actuality henceforth, or eventually – that each post adjustment exercise is subject to some kind of recalculation.

9. To the extent that it is intended to imply that there has been no departure from article 10 (b) in the determination of the post adjustment and to now ascribe different content to "scales", this would be materially incorrect. Post adjustment scales had a very precise meaning and were needed to implement the principle of regressivity and to indicate how the post adjustment multiplier would be modified when applied depending on the staff member's grade level and step. In 1989, by virtue of resolution [44/198](#), section I, part D, the General Assembly took note of the ICSC recommendations on the elimination of regressivity from the post adjustment system and discontinued the practice of approving post adjustment. "Scales", therefore, being nothing but a corollary to regressivity, have no *raison d'être* in the statute.

Proposed amendment to article 11 (c)

10. The proposed amendment correctly reflects the current practice and the fact that classes of duty stations have been eliminated from the methodology for establishing post adjustment. Determining classes, that is, clusters of duty stations to which post adjustment was assigned, was replaced in 1993 by establishing a post adjustment multiplier for each duty station (ICSC/38/R.19, para. 72.)

11. The UNDT Judges understand that there is concern that the amendment should not imply authorization for ICSC to depart from the presently applied post adjustment method. For this purpose, the UNDT Judges suggest that inserting a qualifier could be considered in article 11 (c), after the words "applicable to each duty station". The qualifier could be expressed through a reference to a specific method, for example, "in accordance with the principle that one post adjustment multiplier point equals one per cent of base salary", should the General Assembly wish to commit itself to this method, or more generally through adding "in accordance with the parameters (or framework) approved by the General Assembly", should the General Assembly wish to retain flexibility for any future interventions.

12. However, for the reasons outlined above in paragraphs 6 and 7–9, *mutatis mutandis*, solely using a footnote to the current text would not be appropriate.

(*Signed*) Agnieszka **Klonowiecka-Milart**
President, United Nations Dispute Tribunal
