

Fifth Committee
Agenda Item 148: UN common system (jurisdictional setup)

**Statement by Ms. Catherine Pollard, Under-Secretary-General for
Management Strategy, Policy and Compliance**

12 March 2021

Mr. Chairman, Distinguished Members of the Committee,

I am pleased to present the Report of the Secretary-General on the initial review of the jurisdictional setup of the United Nations common system (A/75/690).

In December 2019, General Assembly noted the “challenge of having two independent administrative tribunals with concurrent jurisdiction among the organizations of the common system” and requested the review and a submission of findings and recommendations “as soon as practicable”.

In July 2020, the review commenced under my coordination and under the supervision of the United Nations Legal Counsel. To address the concerns expressed by the General Assembly, we considered it important to understand the historical background of the ILO and UN tribunals and their review of ICSC matters.

Indeed, the concerns expressed by the General Assembly in 2019 have been raised and considered in previous decades. In 1978, only three years after the establishment of the ICSC, the General Assembly requested a study of the “feasibility of establishing a single administrative tribunal”. A year later, the Secretary-General reported that the “concerns that appear to have led the General Assembly to make its request are, in fact, not so compelling as to call for such a step at this time”. However, studies on harmonizing the two tribunals continued for another decade until, many reports and resolutions later, the General Assembly decided in 1989 to retain the statute of the United Nations Administrative Tribunal.

In 1999, the Secretary-General proposed revising the ICSC Statute to create an *ad hoc* advisory panel to provide advisory opinions on the legality of ICSC decisions and

recommendations. Upon consideration of the proposal, the General Assembly took note of concerns raised by the ICSC and reaffirmed the Statute of the ICSC.

The outcome of these initiatives highlights the importance of clearly defining the problem for which a solution is sought. While it would seem that having two tribunal systems would lead to frequent divergence in their jurisprudence on ICSC matters, this has not been the case. The review surveyed the jurisprudence of the tribunals from 1975 to 2016, recognizing that judgments issued after 2016 involve matters that may still be under litigation. During this period, there were only three instances where the same ICSC matter was challenged in both tribunals – and the same conclusions were reached by both tribunals.

Even without divergent jurisprudence, having two tribunal systems can result in inconsistent implementation of ICSC decisions or recommendations across the United Nations common system. Such inconsistency results, for example, when only one tribunal issues a judgment adjusting the implementation of an ICSC decision or recommendation, which does not bind all the organizations of the UN common system.

Our consultations revealed strong differences of opinion on the nature and gravity of the problem and, consequently, on the suitable options.

For some stakeholders, maintaining the status quo is a viable option.

A number of stakeholders supported reviewing the ICSC itself. We are cognizant of ongoing efforts by the ICSC to review its consultative process and working arrangements. Any fuller review of the ICSC would require a mandate from the General Assembly and close consultation with the ICSC.

Few stakeholders affirmatively supported the exploration of a fundamental restructuring of the Tribunals, considering that such changes would be neither warranted nor proportionate to the problem.

Finally, consideration was given to the establishment of a joint chamber composed of ILOAT and UNAT judges with the possibility of issuing rulings at different stages of litigation.

The Report does not present options for a decision by the General Assembly at this stage. The purpose of the Report is, foremost, to convey the complexity of the jurisdictional setup of the UN common system and the multitude of stakeholders who will be affected by any changes.

The future development of options to the point that they are ready for a decision by the General Assembly will involve considerable time and substantial consultations. As seen from previous decades, the General Assembly has not been inclined towards certain proposals. It is for this reason that the Report requests the General Assembly to provide observations or guidance on the options, so that resources are not expended on the elaboration of options that ultimately will not be considered to be viable or feasible. Should the General Assembly request a continuation of the review and further development of the options, a dedicated capacity would be required undertake the process, for which additional resources would be needed.

I thank you for your support and stand ready to answer any questions the Committee may have.