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## **WIPO Coordination Committee**

**Eighty-Second (54<sup>th</sup> Ordinary) Session**  
**Geneva, July 6 to 14, 2023**

### **AMENDMENTS TO THE STATUTE OF THE INTERNATIONAL CIVIL SERVICE COMMISSION (ICSC)**

*Document prepared by the Secretariat*

#### **I. INTRODUCTION**

1. On December 30, 2022, the United Nations (UN) General Assembly decided to amend Articles 10 and 11 of the Statute of the International Civil Service Commission (ICSC) in relation to the issue of the ICSC's authority to take decisions on the amounts of post adjustments.<sup>1</sup> The amendments to the ICSC Statute are provided in the Annex.
2. The amendments are not automatically applicable to the specialized agencies and other international organizations that participate in the UN common system and that have accepted the Statute of the ICSC. Acceptance of the amendments is required by the aforementioned agencies and organizations, following approval or endorsement by their respective governing bodies, as relevant, which is provided through a formal notification of acceptance by the respective executive head.
3. Accordingly, it is proposed that the amendments to the ICSC Statute are endorsed by the WIPO Coordination Committee, prior to the submission, by the Director General, of a notification of their acceptance by WIPO.

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<sup>1</sup> UN General Assembly Resolution 77/256.

## II. DIVERGING JUDICIAL INTERPRETATIONS OF THE ICSC STATUTE

4. The need to amend the ICSC Statute arose because Articles 10 and 11 thereof were interpreted differently in final, non-appealable, judgments rendered by two tribunals at the apex of their respective jurisdictions in the UN common system, namely, the Administrative Tribunal of the International Labour Organization (ILOAT) and the United Nations Appeals Tribunal (UNAT).

5. Prior to December 30, 2022, Articles 10 and 11 of the Statute provided, in relevant part:

### Article 10

The Commission shall make recommendations to the General Assembly on:

[...]

(b) The scales of salaries and post adjustments for staff in the Professional and higher categories;

[...].

### Article 11

The Commission shall establish:

[...]

(c) The classification of duty stations for the purpose of applying post adjustments.”

6. These two Articles conferred different powers on the ICSC. In relation to the matters outlined in Article 10, the ICSC was granted the power to make recommendations to the UN General Assembly, thereby preserving the authority of the latter to take a decision thereon. In contrast, Article 11 conferred decision-making authority on the ICSC with respect to the matters mentioned therein.

7. For over 25 years, the ICSC determined, and decided itself, the level of the post adjustment multipliers, and thus their effect on staff salaries.

8. In 2018 and 2020, the ILOAT and the UNAT, respectively, were seized of the issue of whether the ICSC had the authority to decide post adjustment multipliers pursuant to its Statute.

9. In five judgments rendered in 2019 on the matter,<sup>2</sup> the ILOAT ruled that the ICSC did not have the authority to decide post adjustment multipliers under Article 11(c) of its Statute.<sup>3</sup> In the ILOAT’s view, deciding on the amounts of post adjustments remained “the preserve of the General Assembly”.<sup>4</sup> Furthermore, the ILOAT held that if the UN General Assembly wished to grant decision-making power to the ICSC, it would need to amend the Statute in accordance with Article 30 thereof.<sup>5</sup> In relation to the ICSC’s practice referred to in paragraph 7 above, the ILOAT had occasion to recall, in one of the five judgments, its consistent case law according to which “a practice cannot become legally binding if it contravenes a written rule that is already in force”.<sup>6</sup>

10. In contrast, the UNAT determined, in its judgment issued in 2021, that the ICSC had the authority to decide post adjustment multipliers. The UNAT found that the subsequent endorsement by the UN General Assembly of the ICSC practice over the years “corrected in

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<sup>2</sup> The defendant organizations in those judgments were the ILO, IOM, ITU, WHO, and WIPO.

<sup>3</sup> In the judgment concerning WIPO, this pronouncement is found at consideration 36 of ILOAT Judgment No. 4138.

<sup>4</sup> At consideration 40 of ILOAT Judgment No. 4138.

<sup>5</sup> At consideration 39 of ILOAT Judgment No. 4138.

<sup>6</sup> At consideration 39 of ILOAT Judgment No. 4134, in which the ILO was the defendant organization.

law” “[a]ny *ultra vires* action of the ICSC” on post adjustment multipliers.<sup>7</sup> Nevertheless, the UNAT confirmed that, “[t]o bring clarity and to avoid future similar misconstructions”, the text of Articles 10 and 11 of the Statute was required to be “formally update[d]”, to align it with “the current operational reality”.<sup>8</sup>

11. While the ILOAT and the UNAT diverged on the issue of the ICSC’s authority, they did converge, however, on the need to amend the Statute (as explained in paragraphs 9 and 10 above).

12. The foregoing provides the background to the decision of the UN General Assembly, taken in December 2022, to amend the Statute of the ICSC. Since then, and at the time of drafting this document, a number of specialized agencies have either accepted the amendments adopted by the UN General Assembly to the ICSC Statute, or are currently in the process of similarly seeking endorsement by their respective governing bodies.<sup>9</sup>

### III. PROCESS TO ACCEPT THE STATUTE AMENDMENTS

13. The ICSC Statute contains provisions on the process of accepting Statute amendments made by the UN General Assembly. Pursuant to Article 30 thereof, “[a]mendments shall be subject to the same acceptance procedure as the present statute”. Article 1(3) in turn provides that “[a]cceptance of the statute” by a specialized agency or another organization participating in the UN common system “shall be notified in writing by its executive head to the Secretary-General”.

14. In 1975, the WIPO Coordination Committee endorsed the acceptance by WIPO of the Statute of the ICSC, which the then Director General formally notified to the UN Secretary-General.<sup>10</sup>

15. Consequently, the WIPO Coordination Committee is invited to similarly endorse the acceptance by WIPO of the Statute amendments, which will be duly notified by the Director General to the UN Secretary-General in writing, and which completes the acceptance procedure of the amendments to the ICSC Statute.

16. *The WIPO Coordination Committee is invited to endorse the amendments to the Statute of the International Civil Service Commission as provided in the Annex of document WO/CC/82/3, to be notified by the Director General in writing to the Secretary-General of the United Nations.*

[Annex follows]

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<sup>7</sup> At consideration 55 of UNAT Judgment No. 2021-UNAT-1107.

<sup>8</sup> See footnote 50 of UNAT Judgment No. 2021-UNAT-1107.

<sup>9</sup> For example, the FAO, ILO, ITU, UNESCO, WHO and WMO.

<sup>10</sup> WO/CC/IX/7, at paragraph 42.

**AMENDMENTS TO STATUTE OF THE ICSC**

Original Text	Amendments ("tracked changes")	Final "clean" Text
<p>Article 10</p> <p>The Commission shall make recommendations to the General Assembly on:</p> <p>(a) The broad principles for the determination of the conditions of service of the staff;</p> <p>(b) The scales of salaries and post adjustments for staff in the Professional and higher categories;</p> <p>(c) Allowances and benefits of staff which are determined by the General Assembly;*</p> <p>(d) Staff assessment.</p>	<p>Article 10</p> <p>The Commission shall make recommendations to the General Assembly on:</p> <p>(a) The broad principles for the determination of the conditions of service of the staff;</p> <p>(b) The <del>salary scales of salaries</del> and <del>the value of the post adjustments</del> <b>multiplier</b> for staff in the Professional and higher categories;</p> <p>(c) Allowances and benefits of staff which are determined by the General Assembly;*</p> <p>(d) Staff assessment.</p>	<p>Article 10</p> <p>The Commission shall make recommendations to the General Assembly on:</p> <p>(a) The broad principles for the determination of the conditions of service of the staff;</p> <p>(b) The salary scale and the value of the post adjustment multiplier for staff in the Professional and higher categories;</p> <p>(c) Allowances and benefits of staff which are determined by the General Assembly;*</p> <p>(d) Staff assessment.</p>
<p>Article 11</p> <p>The Commission shall establish:</p> <p>(a) The methods by which the principles for determining conditions of service should be applied;</p> <p>(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;</p> <p>(c) The classification of duty stations for the purpose of applying post adjustments.</p>	<p>Article 11</p> <p>The Commission shall establish:</p> <p>(a) The methods by which the principles for determining conditions of service should be applied;</p> <p>(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;</p> <p>(c) The <del>classification of duty stations for the purpose of applying</del> <b>post adjustments applicable to each duty station.</b></p>	<p>Article 11</p> <p>The Commission shall establish:</p> <p>(a) The methods by which the principles for determining conditions of service should be applied;</p> <p>(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;</p> <p>(c) The post adjustment applicable to each duty station.</p>

[\* Footnote omitted]

[End of Annex and of document]