

the power to invite, inform or attach ICSC statements or to “determine that there are special circumstances precluding the attachment of the statement or other information submitted by ICSC...”. CCISUA is concerned that despite its stated reservations about the inclusion of such

member with no effective remedy to compel potentially relevant evidence/testimony, in violation of the principle of equality of arms and basic notions of fairness.

CCISUA believes that such a heavy burden should not be placed on staff to move the tribunal to request such evidence. If proposal 1 were adopted and the evidence from ICSC not attached, it would be unlikely that the Tribunal would be favourably disposed to a staff motion to hear further evidence from the ICSC.

Proposal 1 calls for the respondent organizations to take decisions regarding the inclusion in their reply of a statement of the ICSC. CCISUA contends that this creates a role of communication “gatekeeper” for the responding legal office. While the intention behind Proposal 1 might not have been to create a gatekeeping or filtering of ICSC decisions, the practical effect is that the ICSC will not be independently communicating its decisions. This gatekeeping effect may appear to be streamlining but is unjustifiable.

On the issue of confidentiality, CCISUA notes that the final proposal 1 in paragraph 11 includes the point that “the Commission and its Secretariat would maintain the strict confidentiality of any information and documents shared by the responding legal office at all times.” CCISUA views this as an unacceptable, closed channel of joint communication, which would not be verifiable to the other parties to disputes. Without transparency of the reasoning of the respondent legal office concerning the right to discard from attachment ICSC statements, there is a high risk of relevant evidence being shielded from the other parties. There is no justification for the blanket confidentiality provision in paragraph 11 of Proposal 1. The way Proposal 1 is worded, there will be confidentiality of “any information and documents.” With such a degree of confidentiality, there can be no scrutiny on the failure of the respondent to attach the ICSC submission.

CCISUA’s suggestions on Proposal 1

CCISUA recommends keeping the status quo and argues for the rejection of Proposal 1 within the framework and alternatives described below:

CCISUA recommends keeping the status quo to avoid joining the respondent organization and the ICSC together in the submission process. CCISUA contends that this would constitute a process that would not be legally sound nor appropriate. Proposal 1 results in a de facto tying of the respondent organization and the ICSC through the submission modalities.

1. The respondent organization should limit itself to informing the ICSC of any complaint challenging the implementation of its recommendation/decision but allow

Under the proposal, the respondent legal office would notify the ICSC. Then the primary purpose for this proposal would be to have the ICSC attachment as a bolstering of the position of the respondent organization, thereby diminishing the independent voice of the ICSC. It is the matter of “whether and to what extent the respondent legal office considers the view of the ICSC” that is the issue. It is for this reason that CCISUA does not see the need to tie any process of ICSC submission to the views of the respondent office.

6. Alternatively, the ICSC could be consulted by either party to the proceedings (staff member or respondent organization) on effectively equal terms. Proposal 1

5. CCISUA recalls that when an application or a complaint is filed before the Tribunal, the impugned decision is the administrative decision taken by the Executive Head of the respondent organization, meaning the “implementation of the ICSC recommendation”. It is the respondent organization that should effectuate the execution of a final judgment and not the ICSC. CCISUA is concerned by the fact that the ICSC would be notified about the Tribunal’s decision by the respondent organization and not by the Tribunal’s registry.

CCISUA insists that when judgments are delivered concerning ICSC decisions or recommendations, social dialogue with all stakeholders, including staff federations, be prioritized within the UN Common System.

II. CCISUA’s suggestions on Proposal 2

Following the first round of discussions held with staff federations in February 2022 on this proposal, CCISUA tentatively supports the proposal.

2. The joint Chamber would likely incur higher costs due to the processes and considerable difficulties with implementation in practice.
3. The creation of a Joint Chamber risks undermining the principle of the stability of legal relationships. The interpretative and preliminary rulings would serve as a serious limitation to the

6. Requiring tribunals

While the end result of the current proposal may be one judgment, it would not appear that it would leave unscathed the independence of the tribunals, which would be compelled to stay proceedings due to the actions of the other.

IV. Appellate rulings:

Proposal 3 explains that appellate rulings are intended to resolve divergence in cases where the UNAT and ILOAT reach inconsistent conclusions on a legal question relevant to an ICSC recommendation or decision. The authoritative legal value of the appellate ruling on the tribunals is once again uncertain. In option 1, the ruling could be binding or given due consideration. In option 2, the joint Chamber would take the necessary action, such as ordering appropriate remedies, and the ruling will not be transmitted to the tribunals.

CCISUA's comments on appellate rulings:

1. CCISUA is concerned about the use of the following vague words and/or phrases: divergent, contradictory decisions, and or inconsistent judgments. What definitions or procedures will be used to determine whether a decision/judgement is divergent, contradictory, or inconsistent? It was noted during the briefing to CCISUA on 28 February 2022 that there were no agreed definitions, and instead perceived to be more of a common "shared perception". CCISUA regrets that despite its comments about the lack of clarity in usage of significant terms, Proposal 3 was not revised.
2. It is indicated in paragraph 36 on referral for appellate rulings, that the tribunal issuing the later judgment will *automatically* request the joint Chamber to issue an appellate ruling. CCISUA is unsure that the tribunals are fully apprised of the inconsistency of conclusions. This requirement on the tribunal issuing the later judgment may be onerous or unrealistic.
3. If option 2 is adopted, it interprets

