

Follow-up report on staff costs in the United Nations Secretariat

Prepared by
Alexander S. Efimov
Nasser Kaddour

Joint Inspection Unit



Geneva
1985

FOLLOW-UP REPORT ON STAFF COSTS IN
THE UNITED NATIONS SECRETARIAT

Prepared by
Alexander S. Efimov
Nasser Kaddour
Joint Inspection Unit

Table of Contents

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION	1 - 5	1 - 2
II. CONSIDERATION OF JIU REPORT ON STAFF COSTS BY ICSC	6 - 24	3 - 7
III. THE ICSC DECISION AND ITS IMPLICATIONS	25 - 51	8 - 15
A. Interpretation of Article 11(c) of the ICSC Statute	27 - 28	8
B. Implementation of the General Assembly resolution concerning undue widening of the margin	29 - 31	8 - 9
C. The meaning of the "Anomalous Situation"	32 - 39	9 - 11
D. "Taking United Nations General Assembly to Court"	40 - 51	12 - 15
IV. STAFF ACTIVITIES	52 - 74	16 - 21
V. CONCLUSIONS AND RECOMMENDATIONS	75 - 78	22 - 23

I. INTRODUCTION

1. At its thirty-ninth session, the General Assembly had before it the JIU report entitled "Staff costs and some aspects of utilization of human and financial resources in the United Nations Secretariat" (JIU/REP/84/12). The problem of remuneration of staff in the professional category and above appeared the most controversial. In this connection, it will be recalled that the Inspectors recommended that "the General Assembly should not increase either salaries or post adjustment for professional and higher categories but request the ICSC to reconsider the whole question of remuneration of these categories of staff" (Recommendation 1). The Inspectors considered that the margin of 24 per cent, by which the remuneration of United Nations officials exceeded that of their counterparts in the United States Federal Civil Service, as reported by ICSC to the same session of the Assembly, was too high. Moreover, according to their own estimates, the margin would have amounted to 127.6:100 (net base remuneration comparison) and 133.0:100 (total remuneration comparison) by the end of 1984 had the 9.6 increase in post adjustment index for New York been fully implemented. In another document circulated by the ICSC secretariat during the session of the Assembly upon the request of a Member State the margin was even more significant in favour of United Nations staff. The Inspectors believed that the undue widening of the margin was the result of non-compliance with the Noblemaire principle which provided that remuneration of international civil servants should be calculated on the basis of salaries granted in the best paid national civil service. It had been the practice in the United Nations that the margin should remain within a range of 15 per cent. However, in recent years, it has become evident that the margin has been allowed to grow beyond this range.
2. Having considered the report of ICSC (A/39/30 and Corr. 1) and being aware of the estimates of the margin as contained in the JIU report, the General Assembly, in its resolution 39/27, requested ICSC "to take necessary measures to suspend implementation of the increase in post adjustment for New York as envisaged for December 1984, pending the receipt by the General Assembly at its fortieth session, and action thereon, of the Commission's recommendation regarding the margin and other measures referred to" in that resolution.
3. By the same resolution the General Assembly decided to refer the JIU report on staff costs to the International Civil Service Commission, related comments of the Administrative Committee on Co-ordination and the views of Member States, and requested the Commission to report thereon to the General Assembly at its fortieth session.
4. The present report contains a summary of consideration of the JIU report by ICSC (Chapter II) as well as an analysis of the ICSC decision taken in 1984 and its implications (Chapter III). The Inspectors find it necessary to present their views on the points made by ICSC, CCAQ and staff bodies in the course of the discussion of the report, which they consider unacceptable. They also wish to dwell on the activities of the staff bodies which intentionally misinterpret the concepts of the administration of United Nations professional salaries, and which have reacted negatively towards decisions taken by the General Assembly at its thirty-ninth session. Their campaign to "take United Nations General Assembly to the Court" for its allegedly "illegal action" is under way. Obviously, the Inspectors could not disregard these activities which create illusions and lower staff morale, leaving aside the many hours spent on often futile discussions. They believe that careful consideration should be given to the activities of staff bodies and possibly to establishing their terms of reference clearly laying down both their rights and responsibilities (Chapter IV).

5. The Inspectors decided to use the same procedure of distributing their report, i.e. to the Executive Head of the United Nations for action and to those of other organizations for information, as in the case of their previous report on staff costs. They believe that the United Nations General Assembly is the only legislative body responsible for taking decisions with regard to the questions of salaries, post adjustments and other benefits, despite the fact that these decisions affect the entire United Nations system. Another body which is able to take decisions in this field is ICSC, but its responsibility is limited to post adjustments. In principle, the specialized agencies cannot adopt decisions on remuneration conflicting with those of the General Assembly, since such separate decisions would mean a violation of the Agreements signed between the United Nations and specialized agencies. In order to avoid such actions the General Assembly, in its resolution 33/119, called upon Member States "to ensure that their representatives in the governing organs of the specialized agencies do not take, on matters of concern to the common system, positions conflicting with those which they took in the General Assembly."

II. CONSIDERATION OF JIU REPORT ON STAFF COSTS BY ICSC

6. In accordance with the decision of the General Assembly contained in resolution 39/27, ICSC, at its twenty-second session, considered the JIU report on staff costs. During the discussion, ICSC secretariat, CCAQ Secretary, FICSA and some other bodies presented, orally and in written form, their views, which can be summarized as follows:-

a) The report "directly challenges the work of ICSC in regard to remuneration of the United Nations common system", despite the fact that at the meeting of the Chairmen and Executive Secretaries of ICSC and JIU held late in 1983, they agreed that "there was quite enough for both bodies to do in their respective fields and that any competitive or rival efforts of the kind that had arisen in the past which had been the cause of General Assembly resolution 37/126 should be avoided"; 1/

b) The consultation procedure requested by the General Assembly in Section V of resolution 37/126 and specified in JIU Statute (Art. 11(e)) has not been observed by the Inspectors who decided to submit the report directly to the General Assembly of the United Nations;

c) On the basis of comments by ICSC secretariat and FICSA, CCAQ Secretary stated that the JIU report "is flawed to such an extent that it cannot be used as the basis for any action or decision on the United Nations remuneration" 2/. Therefore the Secretary concluded that "it would be important for the Commission to stress that it makes it more difficult for it to carry out the mandate entrusted to it under its Statute in the face of the confusion caused by the reports such as the one under review, and that the General Assembly should avoid basing policy decisions on reports which may be seriously flawed, and are, in any case, prepared outside the framework of consultation foreseen by the Assembly itself"; 3/

d) CCAQ Secretary also referred to the ACC decision 1984/20 presented to the thirty-ninth session of the General Assembly whereby ACC stated: "The role of the JIU is presumably to consider the implementation of policies established on the basis of ICSC recommendations or decisions, rather than the substance of these policies. The intervention of JIU in such policy matters, therefore, undermines the authority of the Commission and introduces elements of uncertainty and a confusion of responsibilities with regard to the common system." 4/

7. It may be concluded that the views expressed by the above bodies during the last session of the General Assembly and thereafter have not changed at all despite the position of delegates in the Fifth Committee which led to the adoption of resolution 39/27, and ICSC's decision to suspend the implementation of the second part of the post adjustment increase for New York at the request of the Assembly. Accordingly, they have maintained an adverse attitude towards the JIU report, despite the fact that the report's conclusions and recommendations coincide, to some extent, with those reflected in this resolution. Thus, the insistence of these bodies on sending the report to ICSC before it can be considered by the General Assembly can be explained by their intention to gain time and arrange implementation of the second part of the post adjustment increase, and to prevent JIU from being concerned with remuneration questions.

1/ ICSC/22/R.8, paras. 3 and 5.

2/ ACC/1985/PER/R.24, para. 4.

3/ Ibid., para. 7.

4/ Ibid., Annex, para. 4.WX

8. On their part, the Inspectors, in a written statement and replies to the questions put by the Members of the Commission, explained the main issues of their report and the JIU mandate to make investigations "in all matters having a bearing on the efficiency of the services and the proper use of funds." 5/

9. Firstly, it was stated that the report was not a rival one, as the ICSC secretariat called it, and was not intended to cause confusion, as the CCAQ Secretary put it. It has been prepared in accordance with JIU Statute and was intended to provide an independent critical view of the remuneration problem, the view which Members States expect from JIU. The Inspectors believe that "the proper use of funds" starts not with the implementation of the budget but with the earliest stages of its preparation. In this sense, ICSC has a very important role to play since the remuneration of staff, which is the largest item of the Organization's expenditures, is inseparable from the problem of proper use of funds made available to it. For example, using the methodology developed by its secretariat, ICSC decided to increase the margin between the United Nations remuneration and that of the comparator service to 24 per cent or by 9 per cent over the range of 15 per cent which it has been in the past. By the Inspectors' calculations, this decision resulted in a 33 per cent margin or in an increase of 18 per cent.

10. Secondly, the Inspectors decided not to reply to each comment contained in the documents of ICSC secretariat and FICSA which, in their opinion, were neither fair nor objective and intended to confuse the readers. Instead, they concentrated on the three main arguments put forward against those of the Inspectors, namely: ten days' annual leave, calculation of sick leave, and difference in career lengths.

11. Thirdly, despite the fact that three important questions (the JIU's right to deal with the United Nations remuneration, presentation of the JIU report directly to the General Assembly instead of to ICSC, and close co-ordination with ICSC on personnel matters) have been clarified in the Inspectors' statement before the Fifth Committee 6/, these questions were raised again. Therefore, the Inspectors decided to distribute that statement among Members of the Commission, which in brief contained the following:-

a) JIU's right to deal with the United Nations remuneration: It has been implied that only ICSC has the right to deal with remuneration matters, and that no other body, including JIU, has such a right. As emanates from the statutes of those two bodies and General Assembly resolution 37/126, Section V, ICSC has no monopoly on personnel matters, including those of remuneration. Besides, ICSC needs the benefit of a critical view, since any deviation from the Noblemaire principle and relevant General Assembly resolutions or any error in its calculations might result in an increase of millions of dollars in the contributions of Member States. However, despite the criticisms and challenges made by a number of delegations, ICSC continued to submit figures which justified overstatement of remuneration against the Noblemaire principle.

b) Presentation of JIU reports: Nothing in the statute of JIU indicates that it is responsible to ICSC or that it should submit its reports to that body. The Inspectors are of the opinion that it was not necessary to seek the views of other organizations with regard to the five per cent increase in salaries and the 9.6 per cent increase in post adjustment, since those views had already been presented by ACC. On the contrary, they thought it would be more useful for the report to be referred to ICSC together with the views of members of the Fifth Committee;

5/ JIU Statute, Art. 5.1

6/ A/C.5/39/SR.37, paras. 19-21.

c) With regard to co-ordination with ICSC, the Inspectors have done their best to remain in close contact with the ICSC secretariat and duly submitted the preliminary and final drafts of their report to it. It would have been difficult to go further and to co-ordinate the proposals which have been submitted, since ICSC and JIU have reached radically different conclusions, even though they have based their work on the same statistical data.

12. Special attention should be paid to the ACC statement quoted above in paragraph 6 that "the role of the JIU is presumably to consider the implementation of policies established on the basis of ICSC recommendations or decisions, rather than the substance of these policies." In the Inspectors' opinion, this statement implies that JIU has the right to consider the activities of any body except ICSC's. They cannot accept this restrictive interpretation of the JIU mandate because the General Assembly and other participating organizations of JIU gave it the right to make a critical evaluation of the activities of every body in the United Nations system when it comes to "the proper use of funds".

13. This is also relevant to ICSC and its "implementation of the policies" established for it by the General Assembly. Otherwise, ICSC recommendations or decisions might be taken in excess of powers and lead to unnecessary extra costs for Member States as was the case with its decision on 9.6 per cent increase of post adjustment index for New York. A detailed analysis of this decision and its implications are given in Chapter III of this report.

14. From the analysis of the section of the ICSC report devoted to its consideration of the JIU report on staff costs, one can see that the Commission fully associated itself with the views expressed by ACC, OCAQ, ICSC secretariat and staff bodies which were referred to above and appeared to be unable to find anything positive in JIU report which, nevertheless, is reflected in other sections but without any reference to it.

15. At this point it should be recalled that the JIU report has the following main goals. First, using mostly the ICSC secretariat statistical data to show that the United Nations professional staff are overpaid in comparison to their United States counterparts and that the Noblemaire principle was not strictly observed. Secondly, to show what the main elements of the total compensation methodology (annual leave, sick leave and career differences) need further development, namely:

a) Not 20 days, as the ICSC secretariat suggested, but all 30 days of annual leave on United Nations side should be included in compensation comparisons;

b) Sick leave should be calculated on a comparable basis. By comparing the whole workforce in the comparator service with only professional staff in the United Nations, the ICSC secretariat lowered the figure from 10.7 days to 4.75 days which puts the United Nations professionals in a less favourable position and provides a basis for further increases in their remuneration. The proper method of comparison would be to relate the whole workforce in the comparator service to the whole United Nations workforce, i.e. including both professional and general service staff;

c) Contrary to the ICSC secretariat's view, the career difference element should be excluded from compensation comparisons 7/.

16. The Inspectors would like to believe that their report was to some extent helpful for the General Assembly in adopting its resolution 39/27 which became the basis for the ICSC decision on suspension of the second part of post adjustment index increase for New York and recommending to the General Assembly a range of 110 to 120 for the net remuneration margin with a mid-point of approximately 115.

7/ For more details, see JIU report A/39/522, paras. 48-54.

17. They also believe that ICSC excluded the career difference element from compensation comparisons while taking into account the arguments presented in the JIU report. As for the other two elements, annual and sick leave, the Inspectors hope that they will eventually be reconsidered along the lines contained in their report.

18. The Inspectors would like to draw attention to one of the latest examples of calculations used by the secretariat. In its document ICSC/22/R.3, Annex III, the secretariat recalculates leave entitlement and comes to the conclusion that the weighted average leave entitlement for United Nations staff should be 25 days a year, instead of 20 days as previously calculated. Nevertheless, the method of calculating raises some questions:-

a) It is not clear how some leave allowance of 12 days was obtained. If they combine 10 days of annual leave, considered by the ICSC secretariat to be an expatriate benefit or home leave, and two days' average travel time, then the corresponding figure should be six days, since home leave entitlement is only granted once every two years;

b) The number of United Nations expatriate staff given as 36 per cent is not correct, because the number of the professional staff in the United Nations Secretariat, including project personnel, who are mostly expatriates, stands at 36.15 per cent ^{8/}. With the United States nationals at Headquarters and local professional staff at other duty stations excluded, the correct figure will not be more than 35 per cent;

c) Following the secretariat's pattern but using correct figures, weighted average leave entitlement will not be 25 days per year but 17.4.

19. Thus it may be concluded that all three elements have been inconsistently and inaccurately developed by the ICSC secretariat and that on a number of occasions doubtful arguments and non-comparable data have been used as a basis for these elements. In this connection another question arises: whether secretariat officials being staff members themselves, and therefore interested in higher remuneration, have a bearing on the method of calculations.

20. The Inspectors do not intend to comment on all the points made by ICSC concerning the JIU report because the Inspectors' views on many of these are presented above. But one more deserves special attention. For this purpose it is necessary to quote from both JIU and ICSC reports.

a) JIU report reads: "Recommendation 2: The General Assembly should request all organs which deal with the determination of salaries, post adjustment and other benefits to observe strictly the Noblemaire principle and the relevant General Assembly decisions."

b) ICSC report reads: "Recommendation 2: The intent of this recommendation is unclear. Not only the United Nations General Assembly but also the legislative bodies of other organizations have observed the application of the Noblemaire principle and have always taken into account relevant General Assembly decisions."

21. The JIU recommendation implies that, through the General Assembly, it was addressed to organs such as ACC, CCAQ and, above all, ICSC. It was also understood that there was no necessity to address it to the General Assembly, as ICSC suggests, because the Assembly itself has repeatedly requested organs concerned to observe the Noblemaire principle. There is no logic either in recommending, as ICSC suggests, that the General Assembly should observe its own decisions.

^{8/} Statistical data is taken from document ACC/1985/PER/R.34.

By these suggestions ICSC gives the impression that the recommendation is of no concern to it and that it observes both the Noblemaire principle and relevant General Assembly decisions. In fact, this is not the case, as will be seen in the next chapter of this report.

22. As for the ACC statement, which is shared by the Commission, that "the intervention of JIU in such policy matters, therefore, undermines the authority of the Commission and introduces elements of uncertainty and a confusion of responsibilities with regard to the common system", the Inspectors would like to emphasize that the Commission's authority depends solely on its own activities and, as stated above, no intention was made to impinge upon ICSC's responsibilities, despite the fact that the remuneration problems which in part concern the "proper use of funds" fall into the field of JIU competence.

23. In its resolution 37/126, the General Assembly noted "difficulties in the ICSC in the interpretation and application of the Noblemaire principle". Further evolution of these difficulties has resulted in the so-called "pragmatic" approach towards remuneration problems which practically has replaced the principle and relevant General Assembly resolutions. Application of this approach has led to a decision on the 9.6 per cent increase of post adjustment index for New York taken by ICSC in July 1984, which favours the interests of staff at the expense of those of Member States. Only after the Assembly, in its resolution 39/27, reaffirmed the Noblemaire principle as the basis for determining the level of remuneration and requested ICSC to take necessary measures to suspend implementation of the increase envisaged for December 1984, ICSC, at its twenty-first session, took a decision on the margin range which made its previous decision void and which might be considered a step in the right direction. However, much more should be done for the proper application of the Noblemaire principle and relevant General Assembly resolutions, as well as for further development of the methodology of compensation comparisons between the United Nations and United States systems of remuneration. The Inspectors believe that ICSC takes not objective decisions on remuneration problems not only under the influence of the views of the staff and administration which are usually reflected in its secretariat's recommendations, but also due to the fact that the Commission has rather limited time (two three-week sessions a year) for consideration of numerous and complicated questions. In view of the above, they recommend that the General Assembly should establish, as in the past, a Special Committee composed of governmental experts to assist ICSC in undertaking a thorough and objective review of all aspects of the United Nations system of remuneration and its comparison to the one in the United States Federal Civil Service.

24. The Inspectors would like to point out that the conclusions and recommendations contained in their report on staff costs are still valid. Besides, since the Commission drops one of three main elements (career difference) and is hesitant about the other two (annual and sick leave) the entire system of total compensation comparison will need further consideration. In its present form it seems to be developed and introduced to the General Assembly merely to show that the United Nations professional staff are underpaid in comparison to their United States counterparts. However, such a system of comparison has not so far proved to be feasible or necessary. Therefore the Inspectors would like to recommend that the comparison between the two systems of remuneration should be based on the net one with a total compensation comparison being further developed, if found necessary. But while determining the net remuneration for the United Nations professionals and above, it should be remembered that they work 10.3 per cent hours less than their counterparts in the United States civil service 9/.

9/ For more details, see JIU report A/39/522, para. 51.

III. THE ICSC DECISION AND ITS IMPLICATIONS

25. At its twentieth session ICSC decided: "under Article II(c) of its Statute to increase the New York post adjustment by 9.6 per cent to bring it to the level of 170.86 as of October 1982 as recommended by ACPAQ" 10/, its subsidiary body. The Commission also decided "that the adjusted index for New York should be used for the determination of post adjustment classifications of all stations with effect from 1 August 1984" 11/. This decision was taken to eliminate the "anomalous situation" which had taken place "over a period of more than 25 years" and resulted in widening the margin of United Nations net remuneration over that of the comparator civil service to 24 per cent.

26. This decision was challenged in the General Assembly and eventually its implementation in part suspended. Nevertheless, there are at least three aspects of this decision which require serious consideration: a) interpretation of Article 11(c) of the ICSC Statute; b) implementation of General Assembly resolution concerning undue widening of the margin, and c) the meaning of the "anomalous situation".

A. Interpretation of Article 11(c) of the ICSC Statute

27. The Article reads: "The Commission shall establish ... the classification of duty stations for the purpose of applying post adjustments." It is understood that ICSC has the mandate to classify all duty stations, including New York, the base city, in two stages. The first stage is to classify New York and in the process to compare the remuneration of United Nations civil servants stationed in New York to that of the comparator service, i.e. United States Federal Civil Service. The comparative study should then take the Noblemaire principle into account and lead to the setting of an appropriate margin between the two systems of remuneration. In the past, this margin has been within a reasonable range of 15 per cent. The second stage is to classify all other duty stations against New York, which as the base city, should always be "0" or "100" in comparison to others, with plus or minus post adjustment wherever appropriate. This means that there should be no "under-statement" or "over-statement" in the post adjustment index for New York in comparison to other duty stations, though there might be such a comparison with the comparator service.

28. In view of the above, there are strong doubts that ICSC has acted under Article 11(c) correctly. To begin with, the ICSC decision is a contradictory one: the Commission decided (i) "to increase the New York post adjustment by 9.6 per cent" after comparing it not to United States Federal Civil Service, but to other duty stations, and then (ii) that other duty stations should be compared to New York, an action which led to the adjustment of the index. Therefore, the Inspectors believe that if Article 11(c) were applied correctly, the post adjustments of other duty stations should have been corrected against New York's, after New York's had been settled by comparison with the comparator service.

B. Implementation of the General Assembly resolution concerning undue widening of the margin

29. It should be recalled that the Noblemaire principle provides for a level of salaries for international civil servants based on the highest paid national civil service with the factor of expatriation reasonably taken into account. This means that the levels of salaries in both services should correspond or be equal. Nevertheless, in 1972 the Special Committee on Salary Review by virtue of "the predominantly expatriate character of United Nations service" recommended a 15 per cent increase in remuneration on the United Nations side, which it called "excessive". Although the General Assembly at that time took note of

10/ A/39/30, para. 163.

11/ Ibid., para. 165.

this recommendation, it was understood, and the Assembly confirmed the recommendation in its resolution 39/27, noting that the margin had been in the past within a reasonable range of 15 per cent. The Inspectors believe that only with the above in mind the Assembly resolution 31/141 should be read whereby the Assembly decided that at any time when the ICSC considered corrective action was necessary "it should either recommend such action to the General Assembly or, if urgent conservatory action was necessary between sessions of the Assembly to prevent undue widening of the margin of United Nations remuneration over that of the comparator civil service, take appropriate measures itself within the operation of post adjustment system" (emphasis added).

30. However, the ICSC reading of this resolution was quite different. Having been "out and out pragmatists" 12/, the Commission used the so-called "pragmatic" approach to the margin and took a decision on 9.6 per cent increase of post adjustment for New York, the base city. Thus, instead of preventing or recommending it to the General Assembly, it widened the margin, even by its own calculations, to 24 per cent. In the opinion of the ICSC secretariat, it "could not be considered to be too high" 13/. Even more so, the secretariat goes on to defend a 24 per cent margin recommending the Commission to state that the decision to freeze the New York post adjustment at the current levels "is taken not on technical grounds but on political considerations on the part of the General Assembly" 14/. It seems that these "technical grounds" have no legal basis such as the Noblemaire principle and General Assembly resolutions and might lead to any margin.

31. Another example should be cited to the effect that the Commission, and especially its secretariat, do not pay due attention to the relevant General Assembly resolutions. Just before the secretariat started to prepare the question of post adjustment index for New York, the General Assembly adopted a resolution, 38/232, whereby it expressed concern that ICSC "was unable to make corrections in the current post adjustment classification at certain duty stations in spite of the fact that the post adjustments were found to be higher than those which the results of the new cost-of-living survey could justify." Thus, it was expected that the secretariat would abide by this resolution and present the Commission with the recommendations to decrease post adjustments at those duty stations to the appropriate levels and thus save money for Member States. But instead, again acting "pragmatically" and disregarding the resolution, it decided otherwise - it recommended to ICSC an increase of post adjustment for New York to 24 per cent, leaving those duty stations practically intact. As is well-known, the Commission adopted this recommendation without any changes.

C. The meaning of the "Anomalous Situation"

32. In its tenth annual report ICSC noted the finding of ACPAQ that the results of the analysis carried out using three different approaches had led to the same conclusions that the events which had taken place over a period of more than 25 years "had resulted in under-statement of the post adjustment index at the base of the system". Following a detailed discussion of the issues involved, the Commission agreed "that the anomalous situation with regard to the post adjustment index for New York must be corrected" 15/. The Commission decided to increase this index by 9.6 per cent, as recommended by ACPAQ, so as to normalize "the anomalous situation" concerning professional staff stationed in New York.

12/ ICSC Chairman's statement before the Fifth Committee on 27 November 1984, para. 34.

13/ ICSC/21/R.4, para. 13.

14/ ICSC/21/R.4, para. 14.

15/ A739/30, para. 161.

33. There are several points in this matter which require clarification from ICSC and its secretariat.

First, ACPAQ and then ICSC stated that despite the results of place-to-place surveys taken in 1959, 1964 and 1969 the Expert Committee on Post Adjustments (ECPA) decided each time on a lower post adjustment for New York. It is not clear on what ground ICSC put into question the ECPA credibility and practically over-ruled its decisions. But since these decisions have already been taken note of by the General Assembly, ICSC also over-ruled the Assembly less than two months before its session.

Second, notwithstanding the explanations contained in ICSC report 16/, it is still not clear why in recent years prices were being collected directly by the ICSC secretariat, which may be considered an interested party, and why those collected by the United States Bureau of Labour Statistics are allegedly no longer reliable.

Third, how was it possible for ICSC to take a decision on the post adjustment index in October 1982 by using for comparison price data provided in October 1977 and even in 1974? 17/

Fourth, why was New York compared to Geneva even after 1974 when it again became the base city, but not to the comparator service in accordance with the Noblemaire principle?

Fifth, despite the ICSC Chairman's explanation given to the delegate in the Fifth Committee 18/, it is still not clear why former staff members could not claim compensation for the "loss" resulted from "under-statement" of post adjustment index for New York during the last 25 years, since the first phase of 9.6 per cent increase has been implemented, and why present staff members could legally challenge the non-implementation of its second phase.

Sixth, is it certain that another "anomalous situation" will not be discovered?

34. In the Inspectors' view, this very liberal or so-called "pragmatic" approach to the decisions of the General Assembly and its organ (ECPA), the Noblemaire principle and statistical data which created this "anomalous situation" gives no guarantee against another attempt to revise the previously taken decisions under the same pretext.

35. The Inspectors conclude that by taking its decision on a 9.6 per cent increase of post adjustment index for New York and implementing the first phase of it without the General Assembly's approval ICSC has exceeded the mandate contained in its statute and relevant General Assembly resolutions. ICSC, acting upon the advice of its secretariat:-

a) Applied Article 11(c) of its statute incorrectly while comparing New York, the base city, not to the comparator service but to other duty stations, thereby ignoring the Noblemaire principle;

b) Did not take the General Assembly resolution 31/141 into account and has not prevented the undue widening of the margin. It also completely ignored its resolution 38/232;

16/ Ibid., para 162.

17/ Ibid., para. 160.

18/ A/C.5/39/SR.34, para. 53.

c) Practically over-ruled the General Assembly resolutions which took note of the ECPA decisions;

d) Implemented the first part of its decision despite the above (a, b, c) reasons which require the General Assembly's consideration and action. This resulted in unnecessary extra costs to Member States.

36. In its turn, this decision and especially its promotion have spread confusion among the staff and administration concerning the role and relationships between the General Assembly and ICSC. It triggered an active campaign by the staff bodies of "taking United Nations General Assembly to Court" 19/ for non-implementation of the second part of the post adjustment increase. The delegates in the Fifth Committee have even been warned that non-implementation of the ICSC decision could disrupt the common system.

37. In view of the above, the General Assembly should take a clear-cut position on the ICSC mandate and its arbitrary actions, and instruct the Commission to act only within the limits of the mandate. The Inspectors believe that it would not be necessary to amend the ICSC statute but a detailed General Assembly resolution would serve this purpose. What is needed in the first place is that this resolution should contain confirmation of the Noblemaire principle and definition of the margin, or range for the margin. This would exclude the so-called "pragmatic" approach, which is at the root of the problem, from the operation in the future and "technical grounds" would always be kept within the mandate or legal limits. By adopting such a resolution the General Assembly would strengthen the common system, since any misunderstanding or misinterpretation of its actions would thus be prevented.

38. In this connection, it is necessary to draw attention to the ACC position concerning the General Assembly decisions which affect the common system as a whole. It was expressed in its statement on personnel questions adopted on 4 July 1985 20/-:

"In adhering to the statute of the ICSC - and in joining the Pension Fund by decisions of their respective governing bodies - the specialized agencies expected, and continue to expect, that their participation in this machinery will be carefully respected. Therefore, the Executive Heads strongly believe that if the General Assembly cannot agree with a decision or recommendation of ICSC or of the Pension Board, rather than take a decision that is significantly different, it should refer the matter back to the body concerned for further consideration in the light of the views of the General Assembly. In this manner an opportunity would be provided for a proper examination of the technical and administrative consequences of alternative measures. This will also avoid anomalies which may invite litigation or require retroactive correction, while at the same time allowing account to be taken of the views and concerns of all parties concerned and hence contribute to the preservation of the common system."

39. The Inspectors fully share ACC's concern, and its interest in the preservation of the common system. However, they believe that the matter could be referred to the body concerned for further consideration only in the case of recommendations. As for decisions of subsidiary bodies, it might be too late for the General Assembly to refer them for further consideration, since they might have already been implemented due to the established practice, as was the case with the first phase of the ICSC decision on 9.6 per cent increase of post adjustment index for New York.

19/ United Nations Special, February 1985, p.22.

20/ ACC/1985/14, Annex IV, para. 4.

D. "Taking United Nations General Assembly to Court"

40. The fact that the staff bodies have been campaigning in favour of the ICSC decision and against the General Assembly resolution 39/27 deserves special attention. The main role in this campaign is played by FICSA, which incorporates some staff associations of the United Nations Secretariat. In order to finance this campaign, and particularly appeals "en masse" against the decisions by the General Assembly, which "suspended" a cost-of-living increase and cut pension benefits across-the-board, FICSA established a US\$ 250,000 Legal Defence Fund.

41. It should be noted from the very beginning that in its document made available to the delegates in the Fifth Committee last year, and then to the members of ICSC at its twenty-first session 21/, FICSA states that, "even though there is no doubt concerning the intrinsic illegality of General Assembly resolution 39/27 and of the ... decisions taken by the Chairman of the ICSC on behalf of the Commission, it would not be opportune to begin legal action by calling for the rescission of such measures" because "such an initial approach would be most likely to embarrass the Tribunals and, depending on the case, the ICJ". However, FICSA comes to the conclusion that the legal grounds for possible appeals by staff members to Administrative Tribunals, United Nations or ILO, "would be the violation of the Staff Regulations and/or Rules of the organizations concerned and of general principles of law". Acting on these premises, FICSA distributed a draft letter of appeal to the Secretary-General of the United Nations prepared by its legal adviser.

42. FICSA's reasoning is as follows: The General Assembly, by establishing ICSC as one of its subsidiary organs, gave it the decision-making authority in matters specified in its Statute (Art. 11(c)). Accordingly, the power of the Assembly became limited "by the legal obligation of the Organization to give effect to those decisions, at least for as long as the Commission has not been abolished and for as long as the Statute from which it derives its authority has not been modified". This implies, therefore, that any refusal by the General Assembly to apply a decision adopted by ICSC would violate a general principle of law within the meaning of Article 38 of the Statute of the International Court of Justice - that any authority is bound by the rules it has itself laid down for as long as it has not modified or abrogated them.

43. Coming to the question of post adjustment, FICSA argues that when a decision is taken by ICSC and implemented by the Secretary-General and subsequently appears in Annex I to the Staff Regulations, it becomes an integral part of these regulations and consequently of staff members' contracts 22/. Therefore, a failure to apply this provision by the Organization would be sufficient legal ground for those staff members to appeal to the United Nations Administrative Tribunal (UNAT). In other words, if FICSA's position is accepted, it would mean that the General Assembly by creating its subsidiary bodies "for the performance of its functions" 23/ puts itself completely into their hands, without any possibility of reviewing their decisions and that these bodies have more powers than the Assembly itself. In relation to ICSC it would mean that the General Assembly has no choice but to implement any ICSC decisions, right or wrong, taken under Article 11(c) of its Statute, which would create an abnormal situation.

21/ ICSC/21/CRP.11.

22/ The relevant provision of contracts reads that an appointment in the Secretariat of the United Nations is offered, "in accordance with the terms and conditions specified below as amended by or as otherwise provided in the relevant Staff Regulations and Staff Rules, together with such amendments as may from time to time be made to such Staff Regulations and such Staff Rules."

23/ United Nations Charter, Art. 22.

44. In the Inspectors' opinion, there are no legal grounds for appeals for the following reasons:-

a) Even FICSA concedes that the actions taken by the General Assembly and the ICSC Chairman are not opportune for legal action since, as can be understood, the decision to suspend implementation of the second part of the post adjustment increase for New York was taken not by the Assembly but by ICSC itself. At its twenty-first session ICSC took a decision on margin range which practically made void the one on suspension;

b) ICSC acted arbitrarily while taking a decision on classification of New York, not proceeding according to the Noblemaire principle or in accordance with its statute (Art. 11(c)) but "pragmatically" and thus has exceeded the powers given to it by the General Assembly;

c) ICSC, in taking a decision on the 9.6 per cent increase in post adjustment for New York, which broadened the margin, even by its own calculations, to 24 per cent, has gone beyond its mandate to keep it within a reasonable range of 15 per cent and thereby went counter to the Assembly resolution 31/141;

d) The second part of the 9.6 per cent increase in post adjustment index for New York was suspended by ICSC and was not implemented by the Secretary-General as Annex I to the Staff Regulations, so as to become "an integral part of these regulations and consequently of staff members' contracts";

e) FICSA incorrectly states that staff members are entitled to require application of the four-month rule whereby "the entitlement to a higher class becomes due as soon as the relevant index has remained above the threshold level over four consecutive months." 24/

45. It should be noted that the ICSC secretariat also applies this rule "pragmatically", without any reference to the Noblemaire principle and relevant General Assembly resolutions. Even more so, claiming that non-compliance with the rule "could form the basis of a legal challenge" 25/, gives the impression that its application is automatic and can widen the margin without limits (24 per cent is not too high). This would produce the untenable situation of determining the cost-of-living index for the base city and then the margin could climb to any height.

46. The Inspectors believe that this approach is hardly sensible. They cannot agree to the above interpretation of the rule. They believe that it should be applied only within the limits of the margin, and that it should not be widened, even if the cost-of-living index exceeded the required level for the change. Besides, it should be remembered that the implementation of the rule still requires an action on the part of ICSC and the Secretary-General. Therefore they believe that the four-month rule cited by FICSA in favour of appealing to UNAT is not relevant.

47. In conclusion, the Inspectors would like to express their own views which the Administrative Tribunal may wish to take into account when considering the appeals concerning the above matter, if such is the case.

24/ ICSC/21/CRP.11, Annex II, para. 10.

25/ ICSC/21/R.4, para. 9.

First, in this particular case, the post adjustment index for New York concerns not only professional staff and above but the general service category (through pensionable remuneration). "The case" involves the United Nations Secretariat as a whole and may be regarded as the one between two principal organs of the United Nations - the General Assembly and the Secretariat. However, taking into account the fact that suspension of the second part of the post adjustment index for New York also affects the staff in specialized agencies, it may be concluded that "the case" is not an individual one in accordance with the UNAT statute, but the one which involves the entire United Nations common system.

Second, under the United Nations Charter only the General Assembly has budgetary powers and it is not allowed to delegate these to any of its subsidiary bodies. All budgetary questions are decided by Member States, and by a two-thirds majority. The Assembly, however, can allow its subsidiary bodies to operate and take decisions with financial implications within certain limits. In the case of ICSC, this limit is the margin set for the differential between the remuneration systems, which is around 15 per cent. Therefore, any ICSC decisions surpassing this established limit should be presented for General Assembly consideration and action. It also implies that the Assembly can review those ICSC decisions which are taken in excess of powers, and adopt its own.

48. It is understood that UNAT judgements result in payments to staff members as awards of compensation by the Organization. And in this case the General Assembly has also set the limits within which these awards may be paid without being reviewed by itself. In 1954, it established a Special Indemnity Fund of US\$ 250,000 which it continues to replenish. Since then there has not been a single occasion for reviewing UNAT judgements, because they never had financial implications of more than US\$ 250,000. But if UNAT entertained an appeal concerning suspension of the second part of the post adjustment index for New York and passed a judgement favourable to staff members, then the awards of compensation might reach millions of US dollars per year system-wide. The Inspectors have no doubt that under these circumstances the General Assembly has to review this judgement and take its own decisions. Otherwise, it would mean that not the General Assembly, or Member States, had control over financial resources of the Organization, but UNAT, its subsidiary body.

49. There is a wide-spread contention that UNAT judgements "are final and without appeal" and that for this particular reason the General Assembly has no right to review them but only to pay the amount of money due. In the Inspectors' opinion, it needs to be clarified.

50. First of all, UNAT judgements are not "final". They are "subject to the provisions of Articles 11 and 12" of its statute. They can also be appealed to the International Court of Justice. But the most important aspect of the matter is the intention of the General Assembly in establishing UNAT. In this connection, events of the meeting of the Fifth Committee on 15 November 1946 should be recalled. The Representative of Belgium asked the rapporteur of the Advisory Committee "Whether the decisions of the Administrative Tribunal would be final or whether they would be subject to a revision by the General Assembly". The answer was "That according to the draft Statute, as prepared by the Advisory Committee, there could be no appeal from the Administrative Tribunal. The Advisory Committee feared an adverse effect on the morale of the staff if appeal beyond the Administrative Tribunal delayed the final decision in a case which had already been heard before organs within the Secretariat created for that purpose." 26/

51. It is obvious that the Advisory Committee recommended, and the Assembly agreed, to make judgements "final and without appeal" in order not to delay final decisions. But this did not exclude the possibility of the Assembly reviewing those judgements, if necessary, especially when they were based on decisions taken with excess of powers. Taking into consideration the creation of a Special Indemnity Fund, it may be concluded that the General Assembly had no intention to leave Member States to the mercy of any subsidiary body, UNAT and ICSC included, in such very important matters as their finances.

IV. STAFF ACTIVITIES

52. The campaign of "taking the United Nations General Assembly to Court", which partly resulted from the ICSC decision on the 9.6 increase of post adjustment for New York, is an unprecedented one among those organized by staff bodies to put pressure on the delegates in the General Assembly, in order to achieve their goals. It is being waged, as in similar cases, on a financial basis, but this time it has acquired political dimension: the intention to take the General Assembly to the Court, or "teach it a lesson", as well as to put the General Assembly and Secretariat in confrontation, threats to disrupt the United Nations common system. In order to influence delegates, staff bodies proclaim the right to strike, and allege to be the masters of the Organization. "Again, it is the staff who are the United Nations" 27/, declared the President of FICSA.

53. It is not surprising that staff bodies are vigorously supported by Administration. There is, in fact, no dividing line between them, which means that the Administration, composed of the same staff members, is equally interested in increases in salaries and other benefits. In other words, the United Nations Secretariat must be seen as a unique group of international civil servants with more commonality of interests uniting them, than with any divergence of interests dividing them.

54. The staff activities involve too many people, both from the staff and the Administration, who devote too much of their working time to problems not directly related to the proper terms of reference of staff bodies, thus introducing a certain disorganizing element into the normal functioning of the whole Secretariat, and adversely affecting its efficiency. In the Inspectors' opinion, these activities pose a very serious problem and should be analyzed in more detail.

55. There are several staff associations in the United Nations Secretariat in New York with a similar array of activities. An analysis of the largest, the Staff Union, will serve as a general analysis of others 28/.

56. The Staff Council, a legislative body of the Staff Union, is composed of 120 members. It has approximately 20 committees engaging about 200 people 29/. The Council holds about 60 meetings a year, or one meeting every 4-5 days. Committees also meet very frequently. Meetings are usually held during working hours, with more than 80 subjects on the work programme to be discussed. As for the time spent at these meetings, the President of the Staff Committee, 28th Staff Council, made it clear in one of his statements: "The Staff Council has passed untold resolutions on every conceivable subject ... We often spend so much time in meetings discussing resolutions that we have little time and energy left to work on implementation with the Administration." 30/. It is understood that the implementation of resolutions takes additional working time both from the staff representative and the Administration.

27/ UN Special, January 1983, p. 11.

28/ See Annual Report of the Staff Council, 28th session, 1980-1981.

29/ Staff Regulation 8.1(c) stated: "The Staff Council of Headquarters shall be composed of from 39 to 41 representatives ...". However, this regulation was cancelled upon the Secretary-General's recommendation.

30/ Annual Report of the Staff Council, 28th session, 1980-1981, p.2.

57. Another body engaged in staff activities is the Joint Advisory Committee which consists of 15 persons, together with four subsidiary bodies and six working groups, making a total of more than 100 people involved in staff deliberations. It holds many meetings annually with the Administration at medium and senior levels.

58. In June 1980, a new joint body was established - the Staff Management Co-ordination Committee - for consultations between the Administration and the staff of all the Secretariat offices throughout the world. It holds two one-week meetings a year, with participation of 35-40 representatives from the staff and the highest echelon of the Administration from all those offices.

59. All these meetings are lengthy, which result in long absences, by the participants, from their normal office duties. Added to which, other staff members cannot effectively carry out their own duties because of the absence of staff members at the meetings, more especially when Administration officials are occupied in the meetings, thus making consultation about general office duties impossible. Staff representatives at these meetings often request so much information from offices and departments that preparation of replies takes a great deal of time and energy, and prevents staff members from carrying out their normal office duties. (The OPS received over 70 such requests in 1983, and about the same number was received by the OFS). Staff members in many departments, especially in the Office of Legal Affairs, Personnel and Financial Services, prepare position papers and other information for staff bodies and, again, this is done in their working time. The author of the already quoted report stated: "There is no one more keenly aware than I am that any achievement, however small, is the result of many, many people's labour and dedication, most of them working quietly behind the scenes." ^{31/} Thus, the so-called "chain reaction" is costly for Member States, both financially and in quality of work. For example, delays in submitting documents by departments for translation and reproduction, which is partly caused by these staff activities, increase costs by about US\$ 450,000 annually.

60. The main thrust of the activities is directed at getting still higher salaries and new financial benefits. Some major examples to this effect are given below:-

First, Despite the fact that the United Nations staff ~~are~~ largely overpaid in comparison to the United States Federal Civil Service, staff bodies have been very active in their efforts for increases in salaries of the professional staff category and above, by 10 per cent, effective 1 January 1982. If adopted by the General Assembly, this increase would have resulted in US\$ 90 million additional costs for Member States system-wide. It seems that they succeeded to some extent in promoting this idea, since ACC recommended a five per cent increase, effective 1 January 1983. Due to the failure of staff bodies to get an increase in salaries and later in post adjustment rates, they suggested taking the General Assembly to Court.

Second. The single personnel structure was abolished by the General Assembly in 1950 due to unjustified great costs. However, the staff representatives have been pressing for its reintroduction practically since those times. The main purpose of it is to eliminate the present distinction between the "professional" and "general service" categories and to create "a single personnel structure and compensation plan including a schedule of salaries, allowances and benefits which can be applied to all employees of the United

^{31/} Annual Report of the Staff Council, 28th session, 1980-1981, p.8.

Nations system at all duty stations". 32/ In support of this claim they refer to Article 9 of ICSC Statute 33/ and completely distort it since "the development of a single unified international civil service," as envisaged by the General Assembly, has nothing to do with "a single personnel structure". The staff representatives also show no concern with the costs of reintroducing such a structure which would cost approximately \$135 million a year system-wide.

Third. Contrary to numerous General Assembly resolutions on the equitable geographical distribution of posts and balanced composition of the Secretariat, the staff bodies are very active in promoting "the independent nature of the international civil service" with the idea of making it its own domain. Consequently they demand:

a) A reduction in outside recruitment to the P-1/P-2 levels and at the same time to earmark 50 percent of these posts to G-to-P promotions;

b) That not less than 75 percent of all geographical posts including all posts of higher levels be filled through career appointments;

c) One percent of all Professional posts should be reserved exclusively for the General Service staff and extensive preparatory training introduced (3-4 months) for all eligible general service staff members to fill these posts. This approach does not only preclude the use of valuable outside expertise but also implies substantial expenditures on training.

Fourth. The United Nations staff receive much larger pensions compared with the counterpart civil service; nevertheless, staff bodies are still claiming a further increase.

61. It should be emphasized that to great extent, all these demands are being cultivated by the staff representatives who thus spread false expectations among the staff and affect their morale and ultimately the efficiency of the Secretariat. However, in their statements before ACC, ICSC and the Fifth Committee, the staff representatives spared no efforts to convince members and delegates of these bodies to adopt the above measures. At the same time they argue that the staff's morale is very low and that discontent is increasingly turning to militancy. They also claim that refusal of Member States to heed to their demands is the main reason for the Secretariat's inefficiency. In his address before the Fifth Committee one of staff representatives put it as follows: "Yes, it (the Secretariat) is inefficient... I could fill hours and hours of examples of inefficiency, and costly inefficiency ... To a large extent the inefficiency of the Secretariat is caused by the decisions you (Member States) have taken". 34/

62. On the other hand, the staff representatives try to make an impression that all their activities are aimed at improvement of the Secretariat efficiency, that they "can make a valuable contribution" to it but provided that they are given "freedom of action" and that there will be no "interference" both "from the Organization" and from "the Member States". It is worth mentioning that during the period covered by the above report, the Staff Council discussed more

32/ A/C.5/38/29, paras. 18-20.

33/ The article reads: "In the exercise of its function, the Commission shall be guided by the principle set out in the agreement between the United Nations and other organizations which aims at the development of a single unified international civil service, through the application of common personnel standards, methods and arrangements."

34/ Statement made at the 26th meeting on 4 November 1982.

than 80 subjects, adopted 61 resolutions and issued nearly 50 bulletins but in none of them the question of efficiency of the staff or the way of contributing to it has been raised.

63. It should be emphasized that staff members join the international civil service with full knowledge of their present and future conditions of service. However, with the time they, or rather staff representatives, come out with the above and other demands which are inconsistent with the General Assembly resolutions. If they are met, there would be a risk of transforming the international civil service into some kind of a closed system which would substantially reduce control on the part of Member States. In other words, they act as though staff are made for the Organization but the Organization is made for the staff. In this connection, it will be recalled what the Director-General of the United Nations Office at Geneva stated in his address to the staff on 9 February 1983: The Secretariat is not master of its own fate, it is the servant of the Member States of the Organization as a group and, consequently, it is subject to the collective will of those same Member States as expressed when they come together in the General Assembly". 35/

64. Despite this obvious fact, staff bodies are engaged in various kinds of activities which go beyond the limits set for them by the General Assembly. Even more so, in promoting their demands the staff representatives are trying to equate staff bodies like Staff Union with trade unions functioning outside the United Nations system. There are attempts to establish ties with some of those trade unions and introduce "trade unionism" into the staff activities of the United Nations Secretariat.

65. At this instance, it should be emphasized that the essence of trade unions is to defend the rights (salaries, number of working hours, working conditions, etc) of employees against any attempts to impinge upon them. Therefore, such means as the negotiating with employers and concluding agreements, binding on both sides, as well as the right to strike used by trade unions are self-explanatory. As for the international civil service, there is no necessity in such means and unions since all conditions of employment (duties, obligations, privileges, salaries and related allowances, leave and social security) are explicitly specified in the Staff Rules and Regulations and there is no attempt whatsoever on the part of the employer, i.e. Member States, to encroach upon them. It should be added that trade unions are organizations with a rigid structure and well known membership. They are financially independent and rely only on their members' fees. This is not the case with the Staff Union since the majority of staff do not contribute to the staff activities and therefore they are mostly financed from the regular budget (working time, paper, typing, reproduction, even travel to outside meetings), or by Member States. Despite the claims made by staff representatives to the effect that they represent all staff members, the Staff Union, in fact, is rather a loose organization with many staff members staying outside who even do not participate in the election of those representatives.

66. Despite what is said above, the staff representatives do claim the right to strike. In one of their papers, "Regulations on Representation of the Staff of the United Nations at Geneva" they even included the provision that "the staff members may resort to direct actions, including strikes, when other means of reaching agreement with the employers or their representatives are failed" (Art. 16.1) (emphasis added). Sometimes staff representatives refer in this respect to the General Assembly resolution 31/193 regarding the strike at the United Nations Office at Geneva, and interpret it in their own way. In their

view, staff has the right to strike, whereas there is no reference whatsoever to strikes in this resolution. 36/

67. It should be pointed out that strikes in the international civil service are contrary to the spirit and provisions of the United Nations Charter and the Staff Regulations due to its very specific nature. In accordance with the Regulations 1.1, 1.2, 1.4 and 1.9 "the whole time of staff members shall be at the disposal of the Secretary-General". On their part, staff members "pledge themselves to discharge their functions and regulate their conduct with the interests of the United Nations only in view" and they "shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations". In this connection, it is necessary to quote the Under-Secretary-General and Legal Council who said that "the international civil servants should not even consider a strike!".

68. More often than not, staff representatives, when they find no support for their demands in the United Nations Charter, General Assembly resolutions and Staff Regulations, in their own interpretation, make resort to some ILO conventions and recommendations in particular to Convention No. 151 (Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service, 1978), No. 98 (Application of the Principles of the Right to Organize and to Bargain Collectively, 1979) and some others. However, all these and similar instruments concern only national public services and are inapplicable to the staff of international organizations. Firstly because in none of them is the international civil service mentioned and secondly, each of these documents has a final clause that provides that it is binding only "for those Members of the ILO whose ratifications have been registered with the Director-General".

69. Therefore, even if the ILO adopted a convention on international civil servants or it were considered expedient to apply some specific provisions of any convention or recommendation already in force in respect of one or another international organization, including the ILO itself, they must be endorsed as Staff Regulations by the legislative body of that organization. But this had not happened up to now and therefore any references to the ILO conventions or recommendations are not valid. It should be noted that freedom of association is applied in the United Nations not because it is reflected in some international instruments but because it is in the Staff Regulations.

70. The Inspectors consider it imperative to address the staff representatives instead to another, most relevant document, namely to the Report on standards of conduct in the International Civil Service, 1954", prepared by the ICSAB in response to a request made by the Administrative Committee on Co-ordination. It has played an important role in the personnel policy and especially in increasing the efficiency of the United Nations Secretariat. The authors of this report (ICSAB) proceeded from the assumption that "high standards of conduct are best attained by a universal understanding among staff members of the relations between their conduct and the success of the international organizations, and by the development of a strong tradition among men and women who are jealous of the reputation of the organizations they serve and are anxious to safeguard it."

71. Whereas the United Nations Charter and the General Assembly resolutions reflected in the Staff Regulations are binding in the field of personnel policy,

36/ The resolution reads: "The General Assembly ... decides that no salary shall be paid to staff members in respect of periods of unauthorized absence from work unless such absence was caused by reasons beyond their control or duly certified medical reasons".

the ICSAB report mostly deals with the moral aspects of the international civil service. Nonetheless, being developed on the basis of the above-mentioned documents, it still serves as an additional guide both for the personnel and for the administration for increasing the efficiency of the United Nations Secretariat.

72. In the opinion of the executive heads of the organizations of the United Nations system, the basic guidance set out in the ICSAB report has lost none of its validity and pertinence of the international civil service despite the fact that much has changed in the world and in the organizations. However, the need for the highest standards of efficiency, competence and integrity has remained the same. It is, therefore, suggested that additional efforts should be made not only to distribute this report but actively promote it among the staff members, whether newly-appointed or stayed with the Secretariat for a long time.

73. Under the above circumstances the Inspectors recommend that the General Assembly should consider the entire range of the staff activities and take a firm position with a view to improving the situation. For this purpose it will be necessary to request the Secretary-General to undertake a comprehensive review of the matter with the views of each Member State (through a questionnaire) taken into account and submit a report to the General Assembly, or first to the Special Committee of governmental experts, if created by that time. In the meantime, Inspectors would like to suggest the following measures to be considered in the process of preparing the report.

a) The number of recognized staff representatives should be limited to reasonable size;

b) The working time spent by any member of staff bodies secretariats should not exceed 30 percent of the working time; if heads of executive committees and their secretaries devote all working hours to their representational duties, they should be paid from the fees of staff bodies' members but not from the regular budget;

c) Meetings of executive committees may be held not more than once every two weeks and consume not more than one and a half hours of working time;

d) General meetings of staff bodies may take place in time agreed with the administration and consume not more than two hours of working time;

e) All the expenses for staff activities should be covered by the fees of staff bodies' members; the administration may arrange for subscription to the staff bodies to be made by monthly deductions from their members upon their written authorization.

74. It is also suggested that the General Assembly should request the Secretary-General to ensure that terms of reference of staff bodies and their representatives should not contradict the Staff Regulations and not include provisions, such as use of strike, etc. Considering that the staff representatives make much more stress on rights than on obligations, appropriate balance between the two should be established and the interests of both staff and Member States be taken into account.

V. CONCLUSIONS AND RECOMMENDATIONS

75. In July 1984, ICSC, upon the recommendations of ACPAQ, its subsidiary body, and its secretariat, as well as the views of ACC, CCAQ and staff bodies, took a decision on the 9.6 percent increase of post adjustments index for New York which was based on the so-called "pragmatic" approach and thus was contrary to the Noblemaire principle and relevant General Assembly resolutions. Therefore, this decision was not objective because the interests of Member States have not been taken into account. Due to the fact that the Commission has rather limited time (two three-week sessions a year) for consideration of numerous and complicated questions, it mostly relies upon its secretariat's advice and recommendations which in many cases reflect the interests of staff only.

Recommendation No. 1

The General Assembly should establish, as in the past, a Special Committee composed of governmental experts to assist ICSC in undertaking a thorough and objective review of all aspects of the United Nations system of remuneration for staff in the Professional and above categories and its comparison to the one in the United States Federal Civil Service. This comparison should reflect the difference in working hours which is 10.3 percent in the United Nations favour.

76. The Inspectors are of the opinion that in July 1984, ICSC applied Article 11(c) of its statute incorrectly, as well as disregarded the General Assembly resolutions 31/141 and 38/232, and overruled some others. As a result of this "pragmatic" approach, it took a decision on the 9.6 percent increase of the post adjustment index for New York in excess of powers.

Recommendation No. 2

The General Assembly should take a clear-cut position on the ICSC mandate and its arbitrary actions taken in July 1984. It should confirm the validity of the Noblemaire principle and define the margin, or range for the margin and instruct the Commission to act in the future only within the limits of the mandate. It would exclude the so-called "pragmatic" approach towards the remuneration problems from its activities and "technical grounds" would be always kept within legal limits.

77. The methodology used by ICSC for comparison purposes is still inadequate and its application results in unjustifiable costs to Member States. Introduction of a number of elements tends to artificially narrow the margin between the United Nations and United States remunerations. The fact that ICSC discarded one element (career difference) and is hesitant about the other two (annual and sick leave) proves that the entire system of total compensation comparison needs further consideration.

Recommendation No. 3

The comparison between the two systems of remuneration should be based on the net one with the total compensation comparison being stopped until it is further developed, if found necessary.

78. The arbitrary decision by the ICSC has at least two serious implications: unnecessary extra costs to Member States due to the implementation of the first part of the decision taken in July 1984, and staff bodies campaign of "taking the United Nations General Assembly to Court". This campaign confuses the staff and lowers their morale, disorganizes the work of the Secretariat thus diminishing its efficiency. Besides, it is fueling the entire staff activities which, in the Inspectors' view, deserve more attention from Member States.

Recommendation No. 4

The General Assembly, or a Special Committee, if established, should look into the entire range of the staff activities and take a firm position with a view to improve the situation. For this purpose, the Secretary-General should be requested to undertake a comprehensive review of the matter with the views of all those concerned taken into account (staff, administration, and especially Member States- through questionnaire) and to submit a report to the Committee or to the General Assembly.

