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## Fifth Committee

### Summary record of the 7th meeting

Held at Headquarters, New York, on Tuesday, 20 October 2015, at 10 a.m.

*Chair:* Mr. Bhattarai ..... (Nepal)  
*Vice-Chair of the Advisory Committee on Administrative  
and Budgetary Questions:* Mr. Sene

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*The meeting was called to order at 10.10 a.m.*

**Agenda item 143: Administration of justice at the United Nations** (A/70/151, A/70/187, A/70/188, A/70/189 and A/70/420)

1. **Ms. Taylor** (Executive Director, Office of Administration of Justice), introducing the report of the Secretary-General on the administration of justice at the United Nations (A/70/187), said that the report was the result of coordination between the Office of Administration of Justice and all relevant stakeholders. As requested by the General Assembly, it contained observations on the functioning of the formal justice system in 2014 based on the experience of United Nations departments, offices and entities, as well as information and statistics on their activities during that year and since the system had commenced operation in 2009. The report also provided a consolidated response to the requests made by the General Assembly in resolution 69/203.

2. Section I of the report provided an overview of the internal justice system. Section II included observations on the functioning of that system during 2014. Recourse to the formal justice system by several groups of staff members similarly affected by certain administrative decisions had resulted in an increase in the caseloads of the Management Evaluation Unit, the United Nations Dispute Tribunal, the United Nations Appeals Tribunal and the Office of Staff Legal Assistance. Apart from those cases, the number of cases received by the formal system had stabilized. The majority of incoming cases had related to benefits and entitlements, appointment-related matters and separation from service. A slight majority of staff members filing cases before the Tribunals had been self-represented. Thanks to coordinated efforts by all system actors, more than 200 cases pending in the formal system had been resolved without the need for final adjudication on the merits, and the Office of Staff Legal Assistance had acted on behalf of staff members in 110 cases settled in the formal and informal systems. Section II also provided statistics and information on the activities of the various entities involved in the formal system. In addition, the Secretary-General had identified the need to maintain the ability of the Dispute Tribunal to manage its caseload by extending the positions of the ad litem judges and their supporting staff until the end of 2016, and had also recommended that the experimental period for the voluntary supplemental

funding mechanism established to provide additional resources for the Office of Staff Legal Assistance should be extended until the end of 2016. Both recommended extensions were pending consideration during the interim independent assessment of the internal justice system.

3. Section III of the report and the annexes provided responses to specific requests by the General Assembly, including a report on progress made toward implementing recommendations to address systemic and cross-cutting issues contained in the report of the Secretary-General on the activities of the Office of the Ombudsman and Mediation Services (A/69/126); information on the settlement of disputes within the formal system as a result of proactive case management by Dispute Tribunal judges; information on incentives for staff not to opt out of the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance and data on the operation of that mechanism; a report on the status of the issuance of lessons-learned guides; a report on the implementation of amendments to the statutes of the Dispute Tribunal and Appeals Tribunal approved by the General Assembly in 2014; a review of the issue of harmonization of the privileges and immunities of the judges and a proposal by the Secretary-General with respect thereto; information on incentives for volunteers for the Office of Staff Legal Assistance; a refined proposal with regard to the mechanism to address complaints under the code of conduct of judges; and a report on efforts to strengthen accountability where violation of rules and procedures had led to financial loss. As requested by the General Assembly in its resolution 69/203, preparation of a single code of conduct for all legal representatives was under way and would be ready for presentation at the Assembly's seventy-first session.

4. Section IV referred to Annex VI, which provided information on compensation paid in accordance with recommendations of the Management Evaluation Unit and awarded by the Tribunals. Section V indicated that, as resource requirements for the system of administration of justice, including for the continuation of the three ad litem judges and their supporting staff, were reflected in the proposed programme budget for the biennium 2016-2017, no additional resources were requested. In section V, the Secretary-General set out his conclusions and recommendations for action to be taken by the General Assembly. The annexes to the report contained

various proposals and other information cross-referenced in the relevant sections of the report.

5. Lastly, she drew the Committee's attention to the report of the Secretary-General on the amendment to the rules of procedures of the United Nations Appeals Tribunal (A/70/189) and to the report of the Internal Justice Council on the administration of justice at the United Nations (A/70/188). The latter report included the Internal Justice Council's views on the implementation and functioning of the system of administration of justice pursuant to its mandate, as well as the views of the judges of the Appeals Tribunal and Dispute Tribunal.

6. **Mr. Barkat** (United Nations Ombudsman), introducing the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/70/151), said that a core aspect of the Office's mandate was to provide staff with easy access to informal conflict resolution services. Collaborative approaches to resolving workplace concerns, which affected both the individuals involved and the task at hand, were essential to promoting an effective work environment. In turn, productive collaboration among colleagues improved motivation, enhanced system functioning and advanced the goals of the Organization. The Office was particularly committed to building resilience capacity for staff and managers in deep-field locations or hazardous areas and to serving as a sounding board that reflected the Organization's support for its personnel.

7. In 2014, the Office had provided assistance in over 2,000 cases, most of which had been received from Secretariat staff, including those in field missions. The increase in the number of cases by 7 per cent from 2013 represented an encouraging trend in the number of staff voluntarily seeking mediation. The main trends in case demographics remained unchanged, with more than 80 per cent of cases emanating from offices away from Headquarters, country and field offices, and field missions. The most prevalent concerns remained job and career issues, and evaluative relationships.

8. The Office had been increasing its emphasis on the skills which helped staff and managers to better manage conflict, known as conflict competence. In 2014, it had conducted more than 200 outreach activities designed to foster a deeper understanding of workplace conflict and specific skills that could be

applied in everyday conflict situations. The Office had also continued to analyse and provide feedback on the root causes of conflict, including through engaging with relevant departments to identify opportunities for organizational improvements in policies, regulations, rules or processes. The report provided an update on the systemic issues identified during that process, including abusive behaviour and incivility, the particular situation of staff serving in dangerous environments and the tendency of deficient or absent internal communications to contribute to conflict, particularly in times of change. In 2014, the many changes that had affected the Organization and its field missions, often in the form of downsizing, streamlining and reconfiguration processes, had generated increased tension and conflict, resulting in greater demand for the Office's work.

9. The Office continued to explore innovative approaches to provide conflict resolution services for staff in deep-field locations, both in peacekeeping and special political missions. While the use of videoconferencing technology had facilitated progress toward addressing the growing demand for conflict assistance, particularly from Africa and the Middle East, in-person outreach had been broadly determined to be the more effective approach.

10. **Mr. Sene** (Vice-Chair of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/70/420), said that the report addressed the data on the activities of the system of administration of justice in 2014 as well as the responses of the Secretary-General to the requests contained in General Assembly resolution 69/203. Because the number of cases received by the formal system continued to fluctuate from year to year, conclusions with regard to the normal level of recourse to that system and, consequently, whether the system's caseload had stabilized, were premature. On the other hand, the Advisory Committee welcomed the establishment of the interim independent assessment of the justice system as a valuable tool for ensuring that the system was meeting its objective as a mechanism for the effective resolution of labour disputes.

11. Because contributions to the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance had been considerable enough to recruit a number of staff, despite significant opt-out rates in some entities and geographic regions, the Advisory Committee did not object to the extension of its experimental period until 2016, pending the

completion of the independent interim assessment and consideration of any recommendations relating to the functioning and funding of the Office of Staff Legal Assistance. With regard to the resources requested, the Advisory Committee had no objections to the proposed extension of the three ad litem judges of the Dispute Tribunal.

12. The report also contained recommendations on measures to encourage informal dispute resolution, including through enhanced cooperation between the formal and informal justice systems. In that regard, the Advisory Committee supported the continued involvement of the Office of the Ombudsman and Mediation Services in the progressive development of human resources policies and practices. However, it noted with regret that the Secretary-General had not yet complied with the request of the General Assembly to finalize the terms of reference for the Office and trusted that the ongoing consultations would be concluded expeditiously and the related bulletin of the Secretary-General promulgated by the end of February 2016.

13. **Ms. Lingenfelder** (South Africa), speaking on behalf of the Group of 77 and China, said that the administration of justice was an integral part of human resources management. The Group therefore supported the system established pursuant to General Assembly resolutions 61/261, 62/228, 63/253, 64/233 and 65/251, which was envisaged as an independent, transparent, professional, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. Despite the difficulties encountered by the system, the Group welcomed its achievements in reducing the backlog of cases and addressing new ones. The strengthened operational capacities of the Tribunals would allow them to make further progress in handling all pending cases in a timely manner. However, any reduction of their judicial capacity would lengthen the time required to adjudicate cases.

14. Since the informal resolution of disputes remained essential to avoiding unnecessary litigation, the Group commended the efforts of the Office of the United Nations Ombudsman and Mediation Services in resolving disputes and assisting staff and managers. It was regrettable, however, that the Secretary-General

had not yet responded to the requests of the General Assembly regarding the promulgation of its revised terms of reference and guidelines. The Group likewise regretted that a single code of conduct for all legal representatives had not yet been established.

15. The increase in the number of applications received by the system reflected poorly on management and on relations between staff and management. Particularly in view of the anticipated impact on staff of large-scale initiatives such as Umoja and mobility, ongoing dialogue with relevant stakeholders should be maintained to promote inclusiveness and prevent future conflicts. The Group welcomed the establishment, pursuant to General Assembly resolution 69/203, of a panel of independent experts to conduct an interim assessment with the goal of improving the current system of administration of justice. It looked forward to reviewing the panel's recommendations, together with its final report and the comments of the Secretary-General, at the seventy-first session of the General Assembly.

16. The increase in the level of recourse to the informal system was an apparent testament to the effectiveness of the Assembly's repeated calls to encourage informal settlement of disputes. In that regard, Group commended the enhanced cooperation between the formal and informal systems. It had carefully examined the proposals of the Secretary-General made in accordance with General Assembly resolutions to strengthen the internal system of administration of justice, including with regard to the mechanism for addressing complaints against judges and the harmonization of the privileges and immunities of judges, and would consider each of them on its own merits. An independent, effective and transparent system of administration of justice was essential to ensuring due process and guaranteed accountability and transparency in decision-making by holding managers accountable for their actions, in accordance with the relevant resolutions of the General Assembly.

17. **Mr. Kisoka** (United Republic of Tanzania), speaking on behalf of the Group of African States, said that the system of administration of justice played an essential role in resolving issues involving staff. Although the increase in the number of applications and interlocutory motions received were a testament to the level of trust built by the current system, the implications of that trend with respect to the quality of management and relations between staff and

management merited close attention. Noting the significant number of cases that had been resolved in the formal and informal systems prior to litigation, including at the management evaluation stage, the Group encouraged further efforts in that regard.

18. The Group of African States took note of the Secretary-General's findings relating to the formal system of justice, including the significantly lower number of judgements and orders issued and court sessions held in the Dispute Tribunal in Geneva compared with New York and Nairobi, partly owing to the mid-year resignation of one of the judges in Geneva. In that regard, it welcomed the proposed extension of the three ad litem judges and their supporting staff with a view to ensuring the timely adjudication and disposition of cases.

19. The Group looked forward to further discussion of measures undertaken to address the main categories of issues raised by the cases filed in 2014, as well as the systemic issues of abusive behaviour and incivility in the workplace and the situation of staff serving in dangerous locations. It would also seek further clarification on efforts undertaken in light of the increase by 20 per cent in the number of cases involving non-staff personnel. The Group commended the continued involvement of the Office of the United Nations Ombudsman and Mediation Services in the development of human resources policies and practices. While it welcomed the efforts undertaken toward the implementation of General Assembly resolution 69/203, it was concerned at the lack of information regarding the revision of the terms of reference for the Office and would seek clarification on that matter during informal consultations. Lastly, the Group urged the Secretary-General to encourage the implementation of measures to ensure the amicable and timely resolution of conflicts between staff and management, including in the context of recent cases relating to the Economic Commission for Africa, a source of particular concern.

20. **Mr. Dettling** (Switzerland), speaking also on behalf of Liechtenstein, said that the delegations of Switzerland and Liechtenstein looked forward to reviewing the comments of the Sixth Committee on the legal aspects of the report of the Secretary-General (A/70/187) in accordance with General Assembly resolution 69/203. They welcomed the establishment of the independent panel to conduct the interim assessment of the system of administration of justice

and trusted that its recommendations would cover all major aspects of the system, including its scope, as well as the issue of access of non-staff personnel, including United Nations interns, to effective legal recourse. While the two delegations respected the relevant decision of the Appeals Tribunal, they concurred with the Internal Justice Council on the need to subject to judicial review the determinations of the Ethics Office with regard to retaliation against whistle-blowers, and, in that context, encouraged the panel to address the effectiveness of the whistle-blower protection scheme.

21. The provisional establishment of the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance represented a major achievement and its experimental period should therefore be extended, with a view to reaching a final decision regarding its adoption in 2016. Switzerland and Liechtenstein commended the excellent work of the Office of the Ombudsman and Mediation Services in reporting on the root causes of conflict and supported its continued involvement in the development of human resources policies and practices.

22. **Mr. Conroy** (United States of America) said that his delegation supported a transparent, impartial and efficient internal justice system that was capable of resolving employment-based grievances and disputes, including disputes relating to the imposition of disciplinary measures for misconduct by staff and officials or for wrongful or actionable negligence in the performance of duties and obligations.

23. His delegation was grateful for the efforts of staff and managers to facilitate rapid and fair outcomes to disputes under the reformed system of administration of justice established pursuant to General Assembly resolution 61/261. The United States welcomed measures aimed at resolving cases informally and preventing litigation, and encouraged continued progress in that regard. In particular, it commended the work of the Office of the United Nations Ombudsman and Mediation Services to promote the informal resolution of disputes and looked forward to the finalization of its revised terms of reference.

24. The United States was concerned that many cases received by the system had resulted from performance management issues. In that context, coordinated efforts between the justice system and human resources management to develop outreach and training resources

for dispute resolution should be strengthened. Similarly, increased feedback between staff and managers should be encouraged to promote early resolution of disputes. Despite the significant management evaluation caseload, his delegation remained concerned by unmet statutory deadlines for completing those evaluations, which were instrumental in resolving disputes prior to litigation. With a view to reducing that caseload, greater efforts should be undertaken to ensure that managers and staff understood their rights and obligations under staff rules and regulations.

25. Acknowledging the important work of the United Nations Dispute Tribunal and Appeals Tribunal, he underscored the importance of developing a clear body of precedent to serve as a basis for their adjudication of cases and of ensuring that the respective roles of the General Assembly, as the legislative organ, and of the independent judges of the Tribunals were respected. In that connection, he welcomed the establishment of the panel of experts to conduct the interim assessment of the system and looked forward to reviewing the panel's recommendations, together with its final report and the comments of the Secretary-General.

26. **Mr. Fukuda** (Japan) said that his delegation welcomed the efforts undertaken to resolve cases prior to litigation and encouraged further efforts in that regard. Japan particularly appreciated the efforts of the Office of the United Nations Ombudsman and Mediation Services to promote conflict competence and strengthen resilience at all levels of the Organization.

27. The increase in the number of pending cases before the Dispute Tribunal was a matter of concern. In that context, Japan supported the extension of the three ad litem judges and encouraged proactive case management by Tribunal judges in promoting the settlement of disputes within the formal system. His delegation welcomed the establishment of the panel of experts to conduct an interim assessment of the justice system and trusted that its recommendations and the related comments of the Secretary-General would cover all major aspects of the system, including the continuation of the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance.

*The meeting rose at 11 a.m.*