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Administration of justice at the United Nations

Administration of justice at the United Nations and activities of the Office of the United Nations Ombudsman and Mediation Services

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on administration of justice at the United Nations ([A/77/156](#)) and on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/77/151](#)). The Committee also had before it the report of the Internal Justice Council on administration of justice at the United Nations ([A/77/130](#)). During its consideration of the reports, the Committee received additional information and clarification, concluding with written responses dated 20 October 2022.

2. In his report on administration of justice at the United Nations, the Secretary-General provides information on the functioning of the system of administration of justice in 2021, including statistical data and a consolidated response to the requests of the General Assembly contained in its resolution [76/242](#). The report on the activities of the Office of the United Nations Ombudsman and Mediation Services contains information on the activities of that Office in 2021.

II. Administration of justice at the United Nations

A. Trends and observations on the formal system of administration of justice in 2021

3. The information provided by the Secretary-General in section II of his report shows the following trends regarding cases brought to the attention of the entities of the formal system of administration of justice by staff members of the United Nations Secretariat:

(a) The Office of Staff Legal Assistance received 1,123 requests in 2021, compared with 1,728 requests in 2020, reflecting a decrease of 605 requests (35 per



cent). The annual number of requests has been declining since 2018, when the Office received 3,216 requests. In 2021, the Office closed 792 requests (compared with 891 requests in 2020), filed 163 requests for management evaluation (compared with 120 requests in 2020) and 66 applications to the United Nations Dispute Tribunal (compared with 79 applications in 2020), and represented staff before the United Nations Appeals Tribunal in 5 instances (compared with 574 instances in 2020). In 2021, 67.5 per cent (758) of the 1,123 new requests were treated through summary advice (A/77/156, paras. 46–47 and table 10, and A/76/99, paras. 41–42 and table 10);

(b) The Management Evaluation Unit received 652 requests in 2021, compared with 404 requests in 2020, reflecting an increase of 248 requests (41 per cent). Except for that recent increase, overall, the number of requests decreased over the past years, following a peak of 1,888 requests in 2017. Of the 652 requests received in 2021, 600 had been closed by 31 December 2021. Most requests received in 2021 involved separation from service (approximately 26 per cent), appointment and promotion (approximately 18 per cent) and staff relations, primarily made up of a group case regarding an increase in workload (16 per cent) (A/77/156, para. 4). Upon enquiry, the Advisory Committee was informed that the group case had been initiated by 94 staff members challenging the decision to implement the recommendations of the working group established for the purpose of implementing the mandate of the General Assembly to increase the workload standards for the translation services as of 1 May 2021. The Management Evaluation Unit had determined that the requests were not receivable, as decisions of the General Assembly were binding on the Secretary-General and, therefore, the administrative decision under challenge must be considered lawful, having been taken by the Secretary-General in accordance with the content of higher norms;

(c) The Dispute Tribunal received 215 new cases in 2021, compared with 216 new cases in 2020. As at 31 December 2021, the Dispute Tribunal had 131 pending cases, compared with 189 cases as at 31 December 2020. The number of pending cases at year's end has been decreasing since 2018, when it peaked at 404 cases. The Tribunal issued 168 judgments in 2021, compared with 221 judgments in 2020. It disposed of 278 cases, compared with 352 cases in 2020 (A/77/156, para. 18 and table 4). Upon enquiry, the Committee was informed that the fluctuation in the number of cases disposed of by the Dispute Tribunal in a calendar year was due to the complexity and nature of cases, the amount of litigation of legal and factual issues, disciplinary cases that generally required hearings and much more work and logistical matters, and the introduction of remote simultaneous interpretation, which was more complicated and took longer. Upon enquiry, the Committee was also provided with information showing that, between 2017 and 2021, the applicant's case had been partially or fully granted by the Dispute Tribunal in 194 judgments. The Committee was further informed that, in 2021, applicants had wholly or partially obtained the remedy they had sought in 16 per cent of the cases; 15 per cent of applications had been withdrawn; and the applicants' cases had either been rejected on receivability or on the merits in 68 per cent of cases. A higher number of cases tended to come from staff members located in field-based entities;

(d) The Appeals Tribunal received 140 cases in 2021, compared with 159 cases in 2020, representing a decrease of 19 cases (13.5 per cent). The Appeals Tribunal issued 109 judgments in 2021, compared with 100 judgments in 2020. The number of judgments has been increasing since 2018, when 86 judgments were issued. The Tribunal disposed of 122 cases in 2021, compared with 118 cases in 2020. The number of cases disposed of has been increasing since 2018, when 89 cases were disposed of. The number of pending cases at year's end increased from 105 cases in 2020 to 123 cases in 2021. This number has been increasing since 31 December 2018, when there were only 35 pending cases. Upon enquiry, the Committee was informed that, since late 2020, the Appeals Tribunal had been operating with six judges, instead of seven.

4. The Advisory Committee notes the information provided regarding the emerging trends, as indicated by the data presented on the workload and backlog of the Tribunals, along with the explanation of the contributing factors, including the logistical challenges presented during the period, and trusts that the Secretary-General will include information in the next report on the measures taken to address them.

B. Responses to questions related to the administration of justice

Accountability of managers

5. In paragraph 8 of its resolution [76/242](#), the General Assembly requested the Secretary-General to continue to hold managers accountable when their decisions had been established to be grossly negligent and have led to litigation and subsequent financial loss. Upon enquiry, the Advisory Committee was informed that, from 2011 to 2021, there had been no findings that a manager had been grossly negligent in a decision leading to litigation and subsequent financial loss. In one case closed in 2022, a staff member had been held liable for a small portion of the loss to the Organization resulting from an award for compensation against the Organization by the Dispute Tribunal. The practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, including those involving managers, for the period from 1 January to 31 December 2020, is set out in the report of the Secretary-General ([A/76/602](#)).

6. The Secretary-General indicates that the Office of Human Resources in the Department of Management Strategy, Policy and Compliance launched a new, more agile performance management approach for the 2021–2022 cycle. The multi-rater/360-degree feedback methodology and the related people management index lets Director-level staff receive feedback from their first or second reports. The functionality has been rolled out in the 2022–2023 performance cycle to all first reporting officers with four or more first reports and second reports, if applicable, to enable upward feedback. The ultimate aim of including this feedback methodology in the new performance management approach is to support the Organization in creating a culture of two-way feedback, building accountability for effective people management and helping managers to cultivate a mindset oriented towards growth. The results of the assessment are one element that provides input into the performance rating of the first reporting officer ([A/77/156](#), paras. 51 and 53).

7. **The Advisory Committee notes that, between 2011 to 2021, there was not a single manager who was found grossly negligent in a case leading to litigation and subsequent financial loss for the Organization. The Committee encourages the Secretary-General to strengthen the accountability of managers, including in financial terms. The Committee also notes the new performance management approach, which includes the introduction of a 360-feedback methodology and trusts that these efforts will contribute to effective people management and an enabling and safe work environment (see also para. 63 below).**

Multilingualism

8. In paragraph 9 of its resolution [76/242](#), the General Assembly commended the Secretary-General for ensuring the availability of outreach documents in all six official languages and requested the Secretary-General to continue to take measures to implement multilingualism within the system of administration of justice.

9. The Secretary-General indicates that the internal justice system website is available in the six official languages of the Organization. Since May 2021, the Office of Administration of Justice has been publishing relevant documentation in the

six languages on the website ([A/77/156](#), para. 65). Upon enquiry, the Advisory Committee was informed that the case dashboard had been made available in all six official languages on the website of the Office of Administration of Justice and that other website content, such as the tribunal practice directions and the court calendar, were not yet available in languages other than English. Translation efforts were ongoing, utilizing available resources.

10. The Secretary-General also indicates that the Caselaw portal, which was launched in October 2022, includes search criteria, filters and case judgment summaries available in English and French ([A/77/156](#), para. 63). Upon enquiry, the Advisory Committee was informed that, after conducting the required analysis and cost assessment, it had been assessed that it would not be feasible to translate the large volume of documents – mainly more than 3,500 judgments and 9,003 orders since July 2009 – into all six official languages within a reasonable time frame or without additional financial resources.

11. The Secretary-General further indicates that article 8.6 of the statute of the Dispute Tribunal provides that an application and other submissions are to be filed in any of the official languages of the United Nations; and that article 11 of the statute provides that judgments of the Dispute Tribunal are to be drawn up in any of the official languages of the United Nations and that the applicant is to receive a copy in the language in which the application was submitted, unless he or she requests a copy in another official language. However, counsel representing the Secretary-General before the Dispute Tribunal conducts proceedings in English or French, which are the two working languages of the Tribunals ([A/77/156](#), paras. 66–68). Upon enquiry, the Advisory Committee was informed that, as at 21 September 2022, the Office of Staff Legal Assistance was able currently to provide assistance in English, French, Russian and Spanish, but was not able to provide assistance in the other official languages, namely, Arabic and Chinese, because its current staff were not proficient in those languages.

12. The Advisory Committee acknowledges the significant efforts made as well as the remaining challenges, including financial limitations, to ensure the availability of documents in all six official languages and encourages the Secretary-General to continue to pursue efforts to implement multilingualism within the system of the administration of justice and to report thereon in his next report.

Protection against retaliation

13. In paragraph 10 of resolution [76/242](#), the General Assembly requested the Secretary-General to provide information on the implementation of the policy on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations for all categories of personnel covered in his next report. The Secretary-General indicates that his bulletin on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations ([ST/SGB/2017/2/Rev.1](#)) applies to any staff member, intern, United Nations volunteer, individual contractor or consultant. The Ethics Office is responsible for the implementation of the policy ([A/77/156](#), para. 72). Upon enquiry, the Advisory Committee was informed that the Ethics Office conducted preliminary reviews of requests for protection against retaliation and reports on its reviews (see [A/77/75](#), paras. 44–55).

14. The Advisory Committee was informed, upon enquiry, that the Secretary-General reviewed and assessed the terms and implementation of the policy on protection against retaliation on an annual basis. Following a series of annual reviews in 2019, 2020 and 2021, the current proposed changes aimed at the following:

aligning the protection against retaliation policy with other policies recently issued; providing clarification about the scope of protection provided, the burden of proof and the standard of review at different stages in the process; reflecting the delegation of authority to heads of entity; and providing clarification on the roles of Ethics Office, the Office of Internal Oversight Services and the Ethics Panel of the United Nations in the process. In its report, the Internal Justice Council recommended that, in conjunction with the revision of the relevant policies, additional steps should be undertaken to raise the awareness of all categories of personnel on the existence and substance of the whistle-blowing policy and protections against retaliation ([A/77/130](#), paras. 35–36 and recommendation 7).

15. The Advisory Committee notes the annual review of the policy on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations and trusts that further efforts will be made to raise awareness of all categories of personnel on the existence and substance of the policy, as recommended by the Internal Justice Council, and that an update on the revised policy will be provided to the General Assembly at the time of its consideration of the present report and in the next report of the Secretary-General.

Remedies available to non-staff personnel

16. The Secretary-General recalls that, further to requests by the General Assembly in its resolution [73/276](#) for new proposals to improve the prevention and resolution of disputes involving non-staff personnel, the Secretariat has brought to the attention of the Assembly a plan to simplify and streamline the existing dispute settlement procedure available to consultants and individual contractors (see [A/74/172](#), para. 95, and [A/77/156](#), para. 113). The Secretary-General indicates that the new dispute settlement procedure will include a phase comprising strengthened informal amicable dispute resolution and, if that fails, procedures for a streamlined and simplified expedited arbitration to be adjudicated by a sole arbitrator, based on the recently adopted expedited arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The Permanent Court of Arbitration would support the conduct of arbitration proceedings between the United Nations and non-staff personnel under the UNCITRAL Expedited Arbitration Rules for a fee of 3,000 euros per case. The Court's support would include appointing a sole arbitrator and providing administrative and registry services to the parties and the arbitrator during the arbitration. The sole arbitrator appointed by the Court would take on the case pro bono or for a reduced fee of approximately \$10,000. The arbitrator's fees would be shared equally between the parties, pending the allocation of costs in the arbitral award (see [A/77/156](#), paras. 114 and 116). Upon enquiry, the Advisory Committee was informed that, as at 21 September 2022, the Secretariat was still working on streamlining the existing dispute settlement procedure available to consultants and individual contractors and that this work was expected to be completed in early 2023. The Committee was also informed, upon enquiry, that non-staff personnel already had access to arbitration under the UNCITRAL Arbitration Rules. However, during the past five years, the Office of Legal Affairs had acted as the counsel of the Organization in only four arbitrations involving non-staff personnel, of which two were concluded and two were still ongoing. Of those four arbitrations, three cases concerned challenges by former United Nations Volunteers to disciplinary measures imposed on them for misconduct, and one case concerned a claim by a consultant for payment of a consultancy fee withheld by the Organization on grounds of unsatisfactory work. In contrast, upon enquiry, the Committee was informed that, over the past five years, 1,537 staff members had brought cases before the formal justice system.

17. The Advisory Committee was further informed that, currently, if an arbitration was initiated by non-staff personnel, the arrangements to support the arbitrator's

running of the proceedings were agreed between and shared by the parties in each case on an ad hoc basis, pending the allocation of costs in the arbitral award. In response to its request for a table showing the analysis of the costs and benefits of maintaining the current arrangements and those to be put in place should the offer of the Permanent Court of Arbitration be accepted, the Committee was informed that each case was treated on an ad hoc basis and was provided with the information presented in table 1 below on the respective costs of the current arrangements and the arrangements to be put in place should the Permanent Court of Arbitration support the arbitration proceedings between the United Nations and non-staff personnel.

Table 1
Respective costs of the current and proposed arbitration arrangements

	<i>Current ad hoc arrangements</i>	<i>Arrangement proposed by the Permanent Court of Arbitration</i>
Arbitrator fees	– 1 arbitrator: 0 to 38,800 euros ^a – 3 arbitrators: SwF 60,000 to \$82,968	– 0 to \$10,000 – N/A
Permanent Court of Arbitration fees	Secretariat/admin/registry: 0 to 13,390 euros ^a appointing fee: 3,000 euros	3 000 euros

^a Indicative range based on past experience; figures may vary depending on each case.

18. With regard to access to the United Nations justice system, the Advisory Committee was informed, upon enquiry, that non-staff personnel had access to the ombudsman and mediation services, while interns, type II gratis personnel and volunteers (other than United Nations Volunteers) had access to the management evaluation process.

19. Upon enquiry, the Advisory Committee was also provided with information on the number of non-staff personnel during the period 2017–2021, as presented in table 2 below.

Table 2
Number of non-staff personnel in Secretariat entities, 2017–2021

<i>Type of personnel</i>	<i>2016–2017</i>	<i>2018–2019</i>	<i>2020–2021</i>
Intern	4 339	4 445	3 707
Technical cooperation expert	56	74	102
Gratis type II personnel	171	113	121
Consultant	7 692	8 977	11 562
Individual contractor	20 857	17 737	12 351
Government provided personnel	Data not available	Data not available	529 ^a
United Nations Volunteer	Data not available	3 679 ^b	4 270 ^b
Fellow	Data not available	Data not available	237 ^c
Total	33 115	35 025	32 969

^a Based on the number of government provided personnel as at 31 December 2020 and 31 December 2021.

^b The figures for the United Nations Volunteers represent the number of engagements and include only those hosted by Secretariat entities.

^c The figure for the fellows is based on the number of fellows engaged by the Economic Commission for Africa, the Department of Economic and Social Affairs and the Office of the United Nations High Commissioner for Human Rights.

20. The Advisory Committee notes the additional information provided and that the Secretariat continues to work on streamlining the existing dispute settlement procedure. While the Committee considers that all types of personnel should have access to a fair and easily accessible justice system, it reiterates its view that more information is needed before accepting the offer of services of the Permanent Court of Arbitration. The Committee, therefore, recommends that the General Assembly request the Secretary-General to conduct a fuller analysis of the offer of the Court and expedite his work on streamlining the existing method for the conduct of arbitration cases under the current ad hoc system (UNCITRAL), including the underlying reasons for the very low number of arbitration cases, and to include this analysis in his next report (see also [A/76/499](#), para. 13).

Voluntary supplemental funding mechanism for the Office of Staff Legal Assistance

21. In its resolution [68/254](#), the General Assembly approved the supplemental funding mechanism through voluntary contributions by staff members, effective 1 January 2014. A fund was established by the General Assembly on an experimental basis, and has been extended periodically by the Assembly, most recently in its resolution [76/242](#), for three years from 1 January 2022 to 31 December 2024.

22. Following a recommendation of the Advisory Committee endorsed by the General Assembly, the Secretary-General conducted an assessment of the provision of legal assistance to staff in several international organizations. The assessment shows that the voluntary supplementary funding mechanism is unique to the United Nations (see [A/77/156](#), para. 84, [A/76/99](#), para. 19, and resolution [76/242](#), para. 2). Upon enquiry, the Committee was informed that no extensive survey had been conducted on the staff's views on the Office of Staff Legal Assistance. The Committee was also informed, upon enquiry, that the Office of Staff Legal Assistance took every opportunity to encourage staff to contribute to the voluntary supplemental funding mechanism and to refrain from opting out, in particular by asking for contributions from staff during its outreach work, but also by including the publication of articles about its mandate on the intranet and distributing information on the internal justice system. In addition, the Office of Administration of Justice was currently updating its communication strategy with a primary objective to raise awareness and improve the knowledge of staff, especially in field locations, about the internal justice system, the new Caselaw portal and how to effectively access the justice system and related services, such as staff legal assistance. Communication activities would also continue to include encouraging staff to contribute to the voluntary fund.

23. The Advisory Committee was further informed, upon enquiry, that the position of the Secretary-General had consistently been that the costs of the Office of Staff Legal Assistance, as currently established and mandated, constituted "expenses of the Organization" to be borne by Member States, in accordance with Article 17, paragraph 2, of the Charter of the United Nations. As the Office was not fully funded under the regular budget, the additional funding from the voluntary mechanism enabled it to hire additional staff to meet the needs of staff seeking legal assistance. If that additional funding was unavailable, the Office would need additional resources from the regular budget. Upon enquiry, the Committee was also provided with information on the total amount of voluntary staff contributions at the end of year since 2017 and for 2022 as of August 2022, which is contained in table 3 below.

Table 3
Contribution to the voluntary funding mechanism of the Office of Staff Legal Assistance, 2017–2022^a

(United States dollars)

<i>Staff contribution</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022^b</i>
	881 111	1 085 807	1 194 066	1 264 208	1 286 170	893 353

^a Including the funds and programmes.

^b As of August 2022.

24. The Advisory Committee recalls that, on its recommendation, the General Assembly approved, in its resolution [76/242](#), the continuation of the extension of the voluntary supplemental funding mechanism and requested the Secretary-General to provide in his next report on the administration of justice an assessment of the mechanism, including alternative options and information on the best practices of other organizations, if any. The Committee reiterates its recommendation and encourages the Office of Staff Legal Assistance and the Office of Administration of Justice to continue their outreach efforts in support of the voluntary funding mechanism.

Recommendation to appoint the presidents of the Tribunals for seven-year terms.

25. In paragraph 18 of its resolution [76/242](#), the General Assembly requested the Secretary-General, in consultation with the United Nations Tribunals, to present his views regarding the recommendation of the Internal Justice Council for the appointment of a president for a term of seven years. The presidents of the Tribunals would be selected by the Council and recommended to the General Assembly (see [A/77/130](#), paras. 17–18 and recommendation 2).

26. The Secretary-General indicates that the judges of the Dispute Tribunal do not support the recommendation and are of the opinion that the president must be elected among them. They consider that a seven-year term is too long and would prevent any rotation. The judges of the Appeals Tribunal also oppose the recommendation. They consider that the rotation of presidents on an annual or other regular basis allows judges to become familiar with the unique role of the Appeals Tribunal before becoming president, usually after serving a term as a vice-president. The current system ensures that the president has the appropriate previous experience and enhances collegiality and solidarity among the Tribunal's judges (see [A/77/156](#), paras. 75–77).

27. The Secretary-General recalls that previous recommendations to extend the president's term from one to two years were not followed by the General Assembly (see [A/73/218](#), recommendation 12, and [A/74/169](#), recommendation 10). The Secretariat fully acknowledges the need to maintain the operational efficiency of the Tribunals, including through the prompt assignment of cases to judges, a timely delivery of judgments by means of rigorous internal time limits and the prevention of case backlog. However, according to the Secretary-General, it remains unclear why an extension of the president's term to seven years would be necessary to improve case management systems case backlogs. The Secretariat would support a more flexible approach based on renewable shorter terms of office ([A/77/156](#), paras. 80, 82 and 83). Upon enquiry, the Advisory Committee was informed that the Secretary-General was not requesting any action on the recommendation.

C. Other matters

Amendments to the statute of the United Nations Dispute Tribunal

28. The Secretary-General proposes to add a paragraph 4 to article 9 of the statute of the Dispute Tribunal as follows: “In hearing an application to appeal an administrative decision imposing a disciplinary measure, the Dispute Tribunal shall pass judgment on the application, determining whether the decision was a reasonable exercise of the Secretary-General’s authority based on the evidence before the Secretary-General at the time the administrative decision was taken. The applicant shall bear the burden of showing that the decision was not a reasonable exercise of the Secretary-General’s authority.”

29. According to the Secretary-General, in a significant departure from past jurisprudence, recent judgments of the Appeals Tribunal that address the authority of the Secretary-General to impose disciplinary measures are inconsistent with the regulatory framework established by the General Assembly.¹ The Secretary-General considers that, in those judgments, the Tribunal significantly redefines the authority of the Secretary-General under staff regulation 10.1 to impose disciplinary measures on staff who have engaged in misconduct. In so doing, the Tribunal has effectively rewritten staff regulation 10.1, thereby usurping the authority of the General Assembly to establish regulations governing the staff and the Secretary-General as chief administrative officer under Article 97 of the Charter of the United Nations. The Secretary-General also considers that the recent judgments of the Appeals Tribunal demonstrate that the Tribunals no longer view their role as being limited to a judicial review of his decisions to impose disciplinary measures. Instead, the Tribunals see themselves as conducting a *de novo* trial, which they liken to a criminal trial (A/77/156, paras. 121 and 126).

30. With regard to the administrative and judicial authority in disciplinary cases, upon enquiry, the Advisory Committee was informed by the representatives of the Secretary-General, that, in accordance with chapter X of the Staff Rules and other administrative issuances, the decision to impose disciplinary measures by the Secretary-General was preceded by a disciplinary process. According to article 2.1 (b) of the statute of the Dispute Tribunal, the Tribunal had jurisdiction to consider appeals by a staff member against administrative decisions by the Secretary-General imposing disciplinary measures. The Committee was also informed, upon enquiry, that the General Assembly, in its resolution 66/237, had reaffirmed that the Dispute Tribunal was not to have any powers beyond those conferred under its statute. The Committee was further informed by the Dispute Tribunal, upon enquiry, that the Dispute Tribunal had proposed an article codifying what judicial review implies for disciplinary proceedings and clarifying that it was not a trial *de novo*. This proposal did not attract support from the respondent offices and thus had not ultimately been included in the draft submitted to the General Assembly.

31. Upon enquiry, the Advisory Committee was further advised by the Internal Justice Council that, given the potential impact of the change, the matter would benefit from the consideration of the Sixth Committee.

Amendments to the rules of procedure of the United Nations Dispute Tribunal

32. In its resolution 74/258, the General Assembly urged the Tribunals to review and amend their respective rules of procedure, subject to the approval of the Assembly, with a view to streamlining and harmonizing their approach to case management, including by ensuring that the first judicial action in a case is taken no

¹ Judgments No. 2022-UNAT-1187 and No. 2022-UNAT-1210.

later than 90 days from the date on which an application is filed. Under article 7.1 of its statute, the Dispute Tribunal is to establish its own rules of procedure, which are subject to approval by the General Assembly. The Dispute Tribunal is proposing amendments to 27 of the 38 articles of its rules of procedure and 6 new articles (see [A/77/156](#), para. 118 and annex II).

33. The legal offices representing the Secretary-General are concerned that some of the proposed amendments affect substantive matters that should be addressed only by the General Assembly through changes to the statute of the Dispute Tribunal. Those amendments relate to issues of transparency, appellate authority and evidentiary standards and require consideration of their impact on the entirety of the system of administration of justice, including the Appeals Tribunal. Of particular concern for the legal offices representing the Secretary-General are the proposed amendments to article 18 and the proposed addition of article 18 bis on evidence that address issues, which, according to these offices, could only be addressed by the General Assembly in amendments to the statute of the Dispute Tribunal; as well as the proposed addition of article 26 bis on the anonymization of judgments that would likely make redaction of the names of applicants and of managers responsible for contested decisions the norm. In addition, the legal offices representing the Secretary-General expressed concern about articles 7, 11, 16, and 17 ([A/77/156](#), annex II, paras. 6 and 8).

34. The Office of Administration of Justice indicates that it was not consulted and provided comments on articles 3, 4, 7, 9 and 19 (see [A/77/156](#), annex III). Upon enquiry, the Advisory Committee was informed by the Dispute Tribunal that the consultative process had begun in 2020 and that a decision had been made to form a working group on the rules of procedure, under the auspices of the Executive Director of the Office of Administration of Justice. According to the Dispute Tribunal, the respondent offices were represented by 16 persons and the Office of Staff Legal Assistance by 2 persons. The Dispute Tribunal had also invited four private counsels, who routinely represented staff members at the three seats of the Tribunal. The Office of Administration of Justice had designated the New York registrar as its representative. From 22 April 2021 to 14 April 2022, the working group had held 14 virtual consultative sessions.

35. Upon enquiry, the Advisory Committee was provided with the view of the Secretariat regarding the following proposed amendments to the following rules of procedure of the Dispute Tribunal:

(a) The proposed amendment to article 7.2 of the rules of procedure provides that “Where a deadline relevant for receivability of an application is triggered by a receipt of communication transmitted by email, absent electronic communication of receipt, it will be considered that the communication was delivered on the next calendar day following the dispatch.” The Secretariat considers that, by creating a presumption that communications sent by email are received on the next calendar day, this amendment effectively extends the time limit for filing applications to the Tribunal, which is inconsistent with article 7, paragraph 1, of the statute of the Dispute Tribunal;

(b) The current article 16.2 of the rules of procedure provides that an oral hearing “shall normally be held” in cases contesting “an administrative decision imposing a disciplinary measure”. The Dispute Tribunal’s proposed amendment to article 16.2 would provide that a hearing “shall be held” in such cases, “unless the Tribunal decides ... that it is not necessary”. The Secretariat considers that the rules of procedure should not contain a presumption in favour of holding a hearing in cases contesting an administrative decision imposing a disciplinary measure;

(c) The proposed article 26 bis of the rules of procedure provides that the name of the applicant is redacted “in the published version of [the Tribunal’s]

decisions where disclosure of identity is likely to be prejudicial to the applicant". According to the Secretariat, the proposed article 26 bis would render the anonymization of Dispute Tribunal judgments the rule rather than the exception, in particular in disciplinary cases. The Secretariat indicates that, in these cases, the applicant is a staff member who has been found to have engaged in misconduct. The Secretariat considers that the interest of the applicant should not be the only factor that is considered in determining whether to anonymize judgments, and that considerations such as transparency and accountability should be taken into account.

36. The Advisory Committee is of the view that, pursuant to paragraph 21 of General Assembly resolution 76/242, the proposed amendments to the statute and the rules of procedure of the Dispute Tribunal should be considered by the Sixth Committee, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.

D. Conclusion

37. The actions to be taken by the General Assembly are contained in paragraph 129 of the report of the Secretary-General ([A/77/156](#)).

III. Activities of the United Nations Ombudsman and Mediation Services

A. Statistical overview of cases and trends in the Secretariat

38. The Secretary-General indicates that, in 2021, the Office of the United Nations Ombudsman and Mediation Services opened a total of 1,611 cases, including mediation, which represents a decrease of 269 cases (or 14.3 per cent) compared with 2020. The number of cases has been decreasing since 2018, when it peaked at 2,776 cases (see [A/77/151](#), para. 16 and fig. I). Upon enquiry, the Advisory Committee was informed that several factors could contribute to the continuing reduction in the number of cases, including the ongoing hybrid working model that required staff to prioritize other demands and delay addressing troubling work-related issues. Some personnel experienced technical challenges in gaining access to the virtual tools that would allow them to contact and engage with the Ombudsman and Mediation Services. In addition, ongoing travel restrictions due to the pandemic and political upheavals prevented the staff of the Office from conducting in-person mission visits that would have provided personnel in remote locations with direct access to case officers.

39. The Secretary-General also indicates that, in 2021 as in the previous years, the three categories of issues most frequently reported were: evaluative relationships; job and career; and compensation and benefits. In terms of the distribution of cases by location in 2021, 765 cases (47 per cent) were brought to the attention of the Office by staff located in field operations; 603 cases (38 per cent) emanated from staff serving in offices away from headquarters; and 243 cases (15 per cent) concerned staff serving at headquarters ([A/77/151](#), para. 17 and fig. II).

40. In terms of the utilization rate by gender, the data shows that, in 2021, female staff members were more likely than their male counterparts to use the services of the Office, both at non-field duty stations and in the field. For example, in field operations, where women represent 24 per cent of the total staff population, they accounted for 30 per cent of cases received by the Office ([A/77/151](#), para. 19).

41. The Advisory Committee notes the decrease in the number of cases opened by the Office of the United Nations Ombudsman and Mediation Services over the last three years. The Committee recalls that the General Assembly has repeatedly emphasized that all possible use should be made of the informal system of administration of justice in order to avoid unnecessary litigation (see resolutions [76/242](#), para. 12, [75/246](#), paras. 14–15, [74/258](#), paras. 13–14, and [73/276](#), paras. 12–13).

B. Mediation

42. The Secretary-General indicates that, in 2021, 170 mediation cases were opened in the Secretariat, compared with 167 mediation cases in 2020 and 190 mediation cases in 2019. In his previous report, the Secretary-General reported 112 mediation cases in 2019 and 96 mediation cases in 2020. The Office of the United Nations Ombudsman and Mediation Services now reports both formal and informal mediations cases (see [A/77/151](#), para. 26 and fig. III, and [A/76/140](#), fig. VI).

43. With regard to the proposal of the Internal Justice Council for a 12-month pilot project to test judicial mediation, it could be noted that the Dispute Tribunal referred 10 cases to the Office for mediation in 2018, 2 cases in 2019, 5 cases in 2020 and 7 cases in 2021 ([A/77/130](#), para. 14, and [A/77/151](#), fig. III). Upon enquiry, the Advisory Committee was informed that the Office encouraged judges to refer cases for mediation and that it was the only designated neutral in the Organization mandated to engage in the mediation of workplace conflicts.

44. In his report on the administration of justice, the Secretary-General considers opportunities to increase the use of mediation, including the possibility of establishing a mandatory conversation to explore informal resolution, including mediation, as a first step early in the dispute resolution process and, where feasible, before the initiation of a formal process, when parties may become fixed in their positions ([A/77/156](#), para. 106). Upon enquiry, the Advisory Committee was informed that the Office of the United Nations Ombudsman and Mediation Services would support procedures that required an initial meeting with a mediator to ensure that the parties made an informed decision, including a mandatory first joint meeting when a party requested mediation and the mediator deemed that mediation would be appropriate for the case. However, as per the Office's terms of reference ([ST/SGB/2016/7](#)), informal conflict resolution services, including mediation, are always voluntary.

45. The Advisory Committee recalls that, in his previous report on the activities of the Office of the United Nations Ombudsman and Mediation Services, the Secretary-General mentioned the signature of a mediation pledge by the United Nations funds and programmes, which commits the organizations to an initial discussion hosted by their dedicated ombudsman for any workplace conflict between the organization and its personnel ([A/76/140](#), para. 94).

46. The Advisory Committee notes the potential benefits of a mandatory conversation on informal resolution mechanisms, including mediation, and recommends that the General Assembly request the Secretary-General to further study the value and feasibility of this option and provide information thereon in his next report. The Committee reiterates its view that the specific requirements of formal mediation vis-à-vis other forms of informal dispute resolution should be preserved and reported (see [A/76/499](#), para. 34).

C. Non-staff personnel

47. In its resolution [73/276](#), the General Assembly requested the Secretary-General to establish a pilot project to offer access to informal dispute resolution to non-staff personnel. In its resolution [74/258](#), the Assembly requested the Secretary-General to prepare an overview on the functioning of the pilot project. In its resolution [75/248](#), Assembly encouraged the Secretary-General to continue the pilot project within its existing resources and requested the Secretary-General to report thereon in his next report.

48. The Secretary-General indicates that, in 2021, the Office opened 114 cases involving non-staff personnel, compared with 195 cases in 2020 and 332 cases in 2019. In the non-staff category, 54 per cent of visitors were male (61) and 46 per cent (53) were female. Of the number of non-staff visitors, 34 per cent (39) were United Nations Volunteers and 29 per cent (33) were contractors ([A/77/151](#), para. 29 and fig. IV).

49. The Secretary-General also indicates that, as the workplace stabilizes following the disruptions during the pandemic, the Office anticipates that more non-staff personnel will reach out for services. However, it is difficult at this stage to predict a reliable post-pandemic trend that would allow the Office to carry out any definite forecasting of future usage, along with the possible financial implications of formally including non-staff personnel in the mandate of the Office. It is therefore recommended that the current modality continue ([A/77/151](#), para. 31). Upon enquiry, the Advisory Committee was informed that, under the pilot project as initially proposed to the General Assembly, the Office was committed to providing services in up to 300 cases from non-staff personnel, within its existing resources and without soliciting cases through proactive outreach. Should access of all non-staff personnel to the informal system be regularized and the number of cases increase, the Office would require additional resources.

50. The Advisory Committee considers that the pilot project has played a useful role in providing a recourse mechanism to non-staff personnel and reiterates its recommendation that the General Assembly request the Secretary-General to provide further information, including on the financial implications, of expanding the mandate of the Office to include non-staff personnel in his next report (see [A/76/499](#), para. 40) and taking into account the experience since the inception of the pilot project.

D. Systemic observations

51. Systemic observations are contained in section IV of the Secretary-General's report on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/77/151](#)). Upon enquiry, the Advisory Committee was informed that the last response of the Secretary-General to the observations contained in the report of the Secretary-General on the activities of the Office had been submitted to the General Assembly at its seventy-fourth session (see [A/74/172](#), annex III). It was considered that the previous practice should be resumed as a matter of priority, so that the General Assembly could be apprised in a timely manner of the actions taken by the Secretary-General in response to the systemic observations made by the Office. **The Advisory Committee encourages the Secretary-General to resume his practice of providing information on measures taken to address the systemic issues identified in the report of the Office of the United Nations Ombudsman and Mediation Services.**

Anti-racism efforts

52. In paragraph 14 of its resolution [76/242](#), the General Assembly noted the efforts of the Secretary-General to promote knowledge and awareness of and action on racism within the Organization and reiterated its request to the Secretary-General to include information on racism and cases involving racial discrimination in the context of his next report on the activities of the Office of the United Nations Ombudsman and Mediation Services.

53. The Secretary-General indicates that United Nations personnel who wish to discuss issues of real or perceived discrimination of all kinds can approach the Office under the provisions set forth in Secretary-General's bulletin [ST/SGB/2019/8](#), which addresses instances of possible discrimination, including racial discrimination. The Office's role is to help visitors explore possible options, including how to report and seek formal recourse. The Office does not replace the formal reporting channels, as it was not meant to be an office of record ([A/77/151](#), para. 53).

54. The Secretary-General also indicates that, as part of his United against Racism campaign, the Office organized two very well-attended global conversations with experts. The conversation on the topic "What is racism?" was viewed live by over 2,000 staff members, who sent more than 190 questions and comments; as well as the conversation on implicit bias and microaggressions, which was watched by some 7,000 United Nations personnel from all over the world. In addition, the Office convened 38 dialogues on racism in the United Nations workplace for offices in all duty stations. Over 1,500 participants joined these dialogues, which provided them with a space to share their perspectives on racism within the United Nations workplace and to listen to each other ([A/77/151](#), paras. 55–56).

55. In its report, the Internal Justice Council noted that the General Assembly has repeatedly reiterated the need for the Office of the United Nations Ombudsman and Mediation Services to report detailed information on the efforts to address racism and the cases involving racial discrimination and recommended that data related to cases involving racial discrimination be provided by the Office of the United Nations Ombudsman and Mediation Services (see [A/77/130](#), para. 32 and recommendation 5). Upon enquiry, the Advisory Committee was informed that the Office was not an office of notice or record and that it only collected information that helped to provide feedback to stakeholders, as well as share overall aggregate patterns and trends to the General Assembly. The Office did not receive allegations, nor did it make definite determinations on the nature of issues.

56. While acknowledging the need to preserve confidentiality, the Advisory Committee is of the view that the Office of the United Nations Ombudsman and Mediation Services should be able to report on trends regarding cases involving racial discrimination and, therefore, reiterates its trust that, in accordance with General Assembly resolution [76/242](#), information on racism and the cases involving racial discrimination will be included in the next report on the activities of the Office (see also [A/76/499](#), para. 46, and [A/75/560](#), para. 23).

Mental health and well-being

57. The Secretary-General indicates that the continued adverse impact of the lingering pandemic on the mental health and well-being of United Nations staff worldwide was noticeable in many conflict situations that were brought to the attention of the Office. The second year of the pandemic illustrated the destructive effects of prolonged exposure to health risks, safety concerns, loss and grief combined with general uncertainty about the future. The Office observed that this continual exposure to stressors weakened the resilience of staff and had a significant impact on

their mental health and well-being, leading to longer periods of sick leave, difficult conversations with managers and peers, and lower productivity levels in some areas (A/77/151, para. 70).

58. Upon enquiry, the Advisory Committee was informed that a United Nations Secretariat mental health and leadership team had been established within all Secretariat entities, along with a staff counsellor and medical staff, the Staff Union and the Office of the United Nations Ombudsman and Mediation Services. The focus of the team was to implement the United Nations system workplace mental health and well-being strategy, which focused on prevention and creating a healthy work environment, as well as ensuring that there was support for staff who were experiencing a mental health condition. Resources had been developed to reduce stigma and create a healthy working environment. An administrative working group had been established to look at issues surrounding sick leave, the return to work and insurance issues. However, resources to undertake that work were extremely limited, which had an impact on the ability to implement actions in a timely manner.

Access to staff counselling services

59. The Secretary-General indicates that the Office referred visitors to staff counselling services to receive psychosocial support more often than before the pandemic. Several visitors noted that there were insufficient resources for immediate counselling services, especially outside headquarters duty stations. Often, staff expressed fear of exposure to the virus in the workplace affecting their readiness to return to the physical workspace, especially where staff did not have access to individual offices. Some of these situations were especially challenging for staff serving in high-risk and hardship duty stations. Staff counselling services appeared to be planned for and budgeted differently from entity to entity, creating disparity in access and support. The Ombudsman considers that it would be important for the Organization to continue to implement the mental health and well-being strategy and make staff counselling services easily available (A/77/151, paras. 72 and 77).

60. Upon enquiry, the Advisory Committee was informed that counselling services were available through the Staff Counselling Office and the Critical Incident Stress Management Section. Resources continued to be limited and not distributed equally across the Secretariat. Secretariat entities were responsible for funding resources in this area. Limited resourcing had an impact on the capacity to meet the mental health and well-being needs of staff.

61. The Advisory Committee emphasizes the importance of meeting the mental health and well-being needs of the staff and considers that efforts should be made to ensure, to the greatest extent feasible, equal access of staff to the support they require and recalls its view that greater clarity is required on the division of labour between the Department of Safety and Security and the Department of Operational Support on staff counselling (see A/77/7, para. XII.9).

Return to work and flexible work arrangements

62. The Secretary-General indicates that one recurring theme of conflict was the need to find flexible work solutions and work modalities on a case-by-case basis. According to many staff who reached out to the Office for help, there seemed to be a lack of willingness on the part of managers to use their discretionary authority to grant flexible work arrangements, whether for self-care, family or other obligations. Managers referred staff to the medical service to receive approval for workplace accommodation when the issue was in the medical realm, as they found themselves having to handle complex administrative and personnel questions while managing an already difficult and emotionally challenging situation (A/77/151, paras. 74–75).

Upon enquiry, the Advisory Committee was informed that, according to the Ombudsman, it may be helpful to clarify which functions could potentially be carried out remotely.

63. The Advisory Committee was also informed, upon enquiry, that the Office of Human Resources in the Department of Management Strategy, Policy and Compliance and the Office of Support Operations in the Department of Operational Support continued to work together to provide entities with the necessary guidance on the implementation and mainstreaming of the policy on flexible working arrangements, in an effort to address questions raised by staff and managers, including on the most common issues such as, for instance, personal compelling circumstances and adjustments to entitlements when telecommuting outside the duty station. The Committee was further informed, upon enquiry, that any flexible working arrangement needed to prioritize the needs of the organization first and foremost. Each request for telecommuting should be reviewed on a case-by-case basis, taking into consideration not only the functions of the staff member, but also the potential impact of the arrangement on the rest of the team and the team dynamics. A predetermination would limit the managers' ability to exercise their judgment as to the best arrangement for their team considering the exigencies of service.

64. The Advisory Committee notes the information provided regarding factors impacting on the workplace environment and considers that all United Nations personnel should be able to work in a safe and enabling environment, and that they should be able to come forward without fear of retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations. The Committee trusts that the Secretary-General will continue his efforts and report on the measures taken towards in his next report.

65. The Advisory Committee notes the information provided and acknowledges the efforts and important contribution of the Office of the United Nations Ombudsman and Mediation Services.
