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Administration of justice at the United Nations

Letter dated 11 November 2013 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith, a letter from the Chair of the Sixth Committee, Palitha T. B. Kohona, on the administration of justice at the United Nations (see annex).

(Signed) John W. Ashe



Annex

I have the honour to write to you with regard to agenda item 143, “Administration of justice at the United Nations”.

It will be recalled that at its 2nd plenary meeting, on 20 September 2013, the General Assembly, upon the recommendation of the General Committee, referred the agenda item to both the Fifth and Sixth Committees. In paragraph 59 of resolution [67/241](#), the Assembly invited the Sixth Committee to consider the legal aspects of the comprehensive report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibility for administrative and budgetary matters.

The Sixth Committee considered the item at its 27th plenary meeting, on 6 November 2013, as well as in informal consultations, held on 6 and 7 November. In addition to considering the report of the Secretary-General on the administration of justice at the United Nations ([A/68/346](#)), the Committee had before it the report of the Internal Justice Council ([A/68/306](#)), which included annexes containing the memorandums from the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; and the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/68/158](#)). I should draw your attention to a number of specific issues relating to the legal aspects of those reports, as discussed in the Sixth Committee.

Delegations thanked the Secretary-General for his comprehensive report submitted pursuant to resolution [67/241](#) and for the facts and figures provided therein on the work of the different parts of the system. Delegations noted with satisfaction that the new system is stabilizing and enjoys the trust and confidence of staff members.

Concerning the Management Evaluation Unit, the Sixth Committee noted with appreciation the high number of complaints disposed of every year and commended the Unit for the work it had done, despite the very tight timelines established for the delivery of decisions and recommendations. Delegations expressed their satisfaction that ultimately only a limited proportion of the total number of requests had been formally decided upon, whereas the bulk of the requests had been dealt with through other means. The fact that a large majority of all the decisions taken by the Unit subject to an appeal before the United Nations Dispute Tribunal had been confirmed or partly confirmed indicated the accuracy of the decisions taken by the Unit.

The Sixth Committee recalled that the informal resolution of work-related disputes is a crucial element of the system of administration of justice. Delegations acknowledged the important functions of the Office of the Ombudsman, the Management Evaluation Unit and the Office of Staff Legal Assistance in that regard. The Committee took note of the information provided by the Secretary-General on measures to encourage informal dispute resolution and urged further efforts to solve conflicts at the lowest possible level, without prejudicing, however, the basic right of staff members to pursue a case also in the formal system. Attention was also drawn to measures developed by the funds and programmes for the purpose of managing and settling conflicts.

In respect of the work of the United Nations Dispute Tribunal, delegations noted that the number of new cases, as well as the number of judgements delivered in the three locations, appeared to be stabilizing. Delegations expressed satisfaction

that this had brought the time needed for deciding a case at the first instance down approximately to 12 months. In order to be able to keep up that level of success, however, the Sixth Committee reaffirmed that the Tribunal needed continuity in the number of judges working in the different duty stations. As the Committee had underlined in 2012, any reduction in the judicial capacity of the Tribunal would lead to a significant increase in the length of time needed to conclude a case; the Committee also emphasized the need to find a solution to the question so as to guarantee the sustained efficiency of the formal system.

The Sixth Committee noted with appreciation the investments made over the past year in improving the Tribunals and the courtrooms. The technical improvements, including the case management system, will allow the Tribunal to work even more efficiently, with the potential of further reducing the time needed to decide a case. Delegations also supported further measures to improve the availability of, and easy access to, the decisions of the Tribunals since this would help staff, managers and all parts of the informal system to establish the relevant jurisprudence in a given case.

In respect of the work of the United Nations Appeals Tribunal, some delegations expressed concern about the relatively high number of United Nations Dispute Tribunal decisions and judgements appealed to the United Nations Appeals Tribunal — two thirds by staff and about one third on behalf of the Secretary-General, with markedly different success rates. The Sixth Committee took note of the United Nations Appeals Tribunal's own assessment that, if nothing were to be done, the steady influx of new cases might push the new system into crisis. The Committee agreed with the position of the United Nations Appeals Tribunal that the accumulation of a backlog of appeals, which had plagued the old system, needed to be avoided, and it encouraged the Fifth Committee to consider the proposals made by the judges of the United Nations Appeals Tribunal.

Concerning the issue of moral damages and compensation for non-pecuniary losses, delegations thanked the Secretary-General for the summary of practice of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. Some delegations took careful note of the principles developed by the United Nations Appeals Tribunal in its jurisprudence over the past four years, and encouraged the further study of relevant national legislation and practice. Delegations pointed out that the figures provided deserved very careful consideration, which should not simply focus on the amount of compensation awarded.

Delegations welcomed the proposals for carrying out an interim independent assessment of the formal system of administration of justice. Such an assessment was considered useful in order to take stock of developments after five years of the system's operation since it might help delegations to take decisions on a number of pending issues. The Sixth Committee stressed that the assessment should also take up the question of the relationship between the formal and informal systems and should examine questions related to non-staff personnel. Delegations agreed that the assessment, as envisaged by the General Assembly, called for, *inter alia*, an analysis of the functioning of the Tribunals, which might require the consideration of their jurisprudence and working methods under the statutes and the rules of procedure. The Committee recommended that the entity to be charged with carrying out the assessment be enabled to draw upon independent legal expertise, as necessary, and that it be given the time necessary to conduct the interim independent assessment.

Some delegations requested additional information from the Secretariat on the criteria to be applied by the entity when measuring the “cost effectiveness of the formal system”.

The Sixth Committee underlined that providing sound and independent legal advice to staff in all phases of a dispute was necessary. Delegations commended the staff of the Office of Staff Legal Assistance, to whom staff members turn for advice and whose counsel helps to prevent mistakes and misunderstandings and, ultimately, a lot of unnecessary work. The Office was, as the Secretary-General had stated, an important filter in the system. The Committee recalled its view, already expressed in 2012, that the Office has an important role in representing staff before the Tribunals. Delegations encouraged all staff members to avail themselves of the services of the Office.

The Sixth Committee took note of the information on non-staff personnel provided in the report of the Secretary-General and the report on the activities of the Office of the Ombudsman. Delegations recalled that the Committee, in its debate held in 2012, had highlighted that the United Nations should ensure that effective remedies were available to all categories of United Nations personnel.

Concerning the report of the Internal Justice Council, the Sixth Committee underlined that the Council has an important function in ensuring independence, professionalism and accountability in the system of the administration of justice. A functioning Council was, in the eyes of many, an indispensable body for guiding the formal part of the system; the views and advice provided by the Council to the General Assembly were deemed essential for the proper maintenance and improvement of the system. The Committee noted the long-term work programme that the Council had laid out for the remainder of its term of office, until 2016. Delegations further noted, however, that parts of the work programme might overlap with the mandate to be given to the interim assessment and urged close coordination.

Delegations also noted the remark by the Internal Justice Council that a number of problems currently faced by the system were not legal in nature, but could be addressed through technical or administrative measures; whereas the concrete proposals made in that regard by the Council were for the Fifth Committee to examine and to decide, the overall concern about the efficiency of the system and the timely and professional disposal of cases at all its levels was also a legal concern.

Regarding the issue of the privileges and immunities of the judges of the two Tribunals, some delegations saw merit in the proposal of the Internal Justice Council to treat the judges of both Tribunals equally since they perform the same kind of work. Delegations also shared the view of the Council that — for the sake of legal clarity — the immunities of the judges should be clearly specified. The Sixth Committee concluded that the issue required further examination before a decision were taken.

Delegations thanked the Internal Justice Council for its proposal to broaden the criteria for the eligibility of persons for the post of United Nations Appeals Tribunal judge. Some delegations supported the proposals of the Council to amend the statute accordingly, whereas others recalled previous discussions in the Sixth Committee that had not led to an agreement on the issue. While it was considered

helpful for United Nations Appeals Tribunal judges to possess any of the qualifications listed by the Council in addition to the judicial experience required by the statute, those delegations expressed preference for not changing the respective provisions of the statute.

Delegations thanked the Internal Justice Council for its very thoughtful analysis of the current practice of both Tribunals concerning measures against the abuse of proceedings. It was recalled that this was an issue of considerable concern for the General Assembly. The Committee noted the Council's conclusion that, up to this point in time, the absence of a comprehensive definition of the term "abuse of proceedings" had not created any difficulties since the judges had handled the issues carefully and according to the practical needs of each individual case. Some delegations noted that the rules of procedure of the United Nations Appeals Tribunal were adequate for dealing with manifestly inadmissible cases. Concerning further practical measures to reduce the abuse of proceedings, the Committee agreed with the Council that simply ignoring the problem would be undesirable. Some delegations expressed interest in the three options submitted by the Council, in particular because they could be implemented in practice without additional costs to the system. Others, however, expressed doubt as to whether additional measures were called for.

In respect of the code of conduct for external counsel, the Committee underlined that, for the sake of legal clarity and predictability, clear rules were needed as a matter of urgency. The Sixth Committee recalled General Assembly resolution 67/241, in which the Assembly stressed the need to ensure that all individuals acting as legal representatives were subject to the same standards of professional conduct. Delegations welcomed that the Secretariat had started its work on a draft and on consultations with all stakeholders, and encouraged early submission of the draft to the Assembly, with a view to the Assembly taking a decision at its next session.

Concerning the different reports considered by the Sixth Committee and the additional information provided in the course of its deliberations, delegations regretted that not all entities of the formal system had had the opportunity to consider, and eventually to react to, the reports of their respective counterparts in the system. The Committee encouraged all parts of the system to better interact with one another and to share any information relevant to the conduct of their business so as to ensure the smooth functioning of the system in its entirety.

The Sixth Committee recommended that the General Assembly include the item "Administration of justice at the United Nations" in the provisional agenda of its sixty-ninth session.

It would be appreciated if the present letter could be brought to the attention of the Chair of the Fifth Committee, and be circulated as a document of the General Assembly, under agenda item 143, "Administration of justice at the United Nations".

(Signed) Palitha T. B. **Kohona**
Chair of the Sixth Committee at the
sixty-eighth session of the General Assembly