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Administration of justice at the United Nations

Letter dated 13 November 2018 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 13 November 2018 from the Chair of the Sixth Committee, Michel Xavier Biang, on the administration of justice at the United Nations (see annex).

(Signed) María Fernanda **Espinosa Garcés**



Annex

1. I have the honour to write to you with regard to agenda item 147, Administration of justice at the United Nations.
2. As you are aware, at its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, referred the agenda item to both the Fifth and the Sixth Committees. In paragraph 37 of its resolution [72/256](#), the Assembly invited the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.
3. During the present session, the Sixth Committee considered the item at its 12th meeting, on 11 October 2018, as well as in informal consultations held on 12, 17 and 18 October and 2 and 5 November. The Sixth Committee considered the legal aspects of the report of the Secretary-General on the administration of justice at the United Nations ([A/73/217](#) and [A/73/217/Add.1](#)), the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/73/167](#)) and the report of the Internal Justice Council ([A/73/218](#)), which included, in annexes, the views of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal pursuant to paragraph 36 of resolution [72/256](#).
4. During the informal consultations held on 17 October, a representative of the Internal Justice Council, the United Nations Ombudsman and the Executive Director of the Office of Administration of Justice made presentations and remained available, along with representatives of other units of the Secretariat, to provide answers and clarifications to delegations, which were grateful for the opportunity. Delegations also had the opportunity to participate in an informal briefing with the President of the United Nations Appeals Tribunal, the President of the United Nations Dispute Tribunal and a judge of the United Nations Dispute Tribunal.
5. Delegations expressed their appreciation to the Secretary-General for his comprehensive report on the administration of justice at the United Nations submitted pursuant to resolution [72/256](#) and for the report on the activities of the Office of the United Nations Ombudsman and Mediation Services. The Sixth Committee took note of the requests of the Secretary-General to the General Assembly contained in his report ([A/73/217](#), paras. 119 and 120). Delegations also took note of the report of the Internal Justice Council and the recommendations contained therein.
6. I should draw your attention to a number of specific issues related to the legal aspects of those reports, as discussed in the Sixth Committee.

Independence of the judiciary

7. While emphasizing the need for effective cooperation and coordination between the Fifth Committee and the Sixth Committee, the Sixth Committee once more underlined that, under paragraph 4 of its resolution [61/261](#), the General Assembly had decided that the new system of administration of justice should be independent, transparent, professionalized, adequately resourced and decentralized, 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. Delegations were therefore of the view that, when considering the various proposals set out in the above-mentioned reports that might have financial implications, the Assembly should take duly into account paragraph 4 of its resolution [61/261](#). In this regard, the Committee noted the report of the Internal Justice Council, in which the Council made recommendations

pertaining to the independence of the United Nations Dispute Tribunal ([A/73/218](#), recommendations 5 and 6).

Knowledge of the system and outreach activities

8. Recalling the Sixth Committee's recommendations of 2016 and 2017 (see [A/C.5/71/10](#), annex, and [A/C.5/72/10](#), annex), in which it urged the Secretariat to further strengthen and increase outreach activities, delegations welcomed the continued and increased efforts reported by the different parts of the system of administration of justice in that regard, including regular visits and briefings to field offices and peacekeeping operations, as well as workshops conducted via video- and teleconferencing (see [A/73/217](#), paras. 66–69, and [A/73/167](#), paras. 27, 29–30 and 45–48). The Committee also welcomed the information provided by the Secretary-General on the development of an outreach strategy by the Office of Administration of Justice and on the redesign of the website of the Office, as well as efforts to correct issues affecting the search engine, although further enhancements could not be implemented owing to resource issues (see [A/73/217](#), paras. 66 and 70–73). The Committee emphasized the important role of those activities in ensuring universal accessibility to the system of administration of justice at the United Nations. Delegations noted that the Internal Justice Council observed that staff, in particular those locally engaged by the Organization, still appeared to have limited awareness of the system (see [A/73/218](#), para. 44). The Committee urged the Secretariat to continue its outreach activities, with a view to providing information on the role and functioning of the various parts of the system and the possibilities it offered to address work-related complaints, including to non-staff personnel, paying particular attention to field missions and offices.

Transparency and consistency of judicial directions

9. The Sixth Committee recalled that it had previously noted the important legal dimension of full and accurate availability of and easy access to the jurisprudence of the Tribunals since they allowed staff and management, as well as anyone acting as a legal representative, to inform themselves about the latest developments of the jurisprudence, to establish precedents that could guide the assessment of other cases and to better understand relevant rules and regulations as applied by the Tribunals (see [A/C.5/71/10](#), annex). The Committee noted the importance of applying such transparency to judicial directions, in particular in the light of the concerns noted by the Internal Justice Council and the Secretary-General regarding the consistency of such directions with the general framework of administration of justice, as well as with the Charter of the United Nations and the Staff Regulations and Rules. The Committee noted, in this regard, the importance of making available online the judicial directions of the Dispute Tribunal, as referenced in the report of Internal Justice Council (see [A/73/218](#), para. 23), and considered it appropriate to recommend that the General Assembly request such judicial directions to be posted online. The Committee further expressed its support for the recommendation of the Internal Justice Council that the Dispute Tribunal seek input from the Registrars before finalizing the document.

Regulatory framework

10. The Committee welcomed the efforts and the work by the Office of Human Resources Management on the comprehensive review of the regulatory framework with a view to streamlining it. The Committee also noted with appreciation that, in undertaking the review, the Office of Human Resources Management was conducting a two-way communication with stakeholders and taking into account lessons learned (see [A/73/217](#), para. 74).

Informal system

11. The Sixth Committee emphasized that informal dispute settlement was a crucial component of the internal system of administration of justice and renewed its call for better incentives to resort to informal conflict resolution. Delegations commended the activities of the Office of the United Nations Ombudsman and Mediation Services, in particular the training and outreach activities conducted by the Office, as well as its efforts in conflict competence training, team-building and facilitation of dialogue between parties in dispute. The Committee further encouraged all parties to a work-related dispute to make every effort to settle it early in the informal system, without prejudice to the right of each staff member to submit a complaint for review in the formal system.

Formal system

12. Delegations commended the Management Evaluation Unit for its important role in providing staff members resolution to work-related disputes. The Sixth Committee also recognized the work of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal in contributing to the promotion of justice at the United Nations.

13. The Sixth Committee noted that the Internal Justice Council reiterated its recommendation regarding enhancing staff access to documents and information (see [A/72/210](#), para. 19, and [A/73/218](#), recommendation 1). Delegations underlined once more that, where feasible and without compromising needed confidentiality, the Management Evaluation Unit should provide the complaining parties with documents and other information relied upon by the Unit in deciding to sustain the decisions of line managers.

14. The Sixth Committee noted that the reasonable length of proceedings is an important attribute of an effective system of administration of justice. The Committee further noted that, in 2017, the United Nations Dispute Tribunal issued the lowest number of judgments since its inception, and the number of applications that were disposed of also decreased (see [A/73/217](#), paras. 13 and 14). Delegations also took note of the information provided by the Internal Justice Council regarding the operational efficiency of the United Nations Dispute Tribunal and its case disposal (see [A/73/218](#), paras. 20, 21 and 24). In this respect, the Committee expressed its concern with regard to the duration of the proceedings and the timely delivery of judgments in the formal system of administration of justice. Delegations thus considered it appropriate to recommend that the General Assembly consider the views of the Secretary-General and of the Internal Justice Council on monitoring the matter (see [A/73/217](#), para. 15, and [A/73/218](#), recommendations 7, 8 and 11).

Voluntary supplemental funding mechanism of the Office of Staff Legal Assistance

15. The Sixth Committee expressed gratitude for the information provided by the Secretary-General on the staff contributions to the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance (see [A/73/217](#), paras. 80–82 and 120 (a) and annex IV). The Committee noted that the Secretary-General recommended the extension of the mechanism on an indefinite basis, and further noted that the Secretary-General identified a number of advantages of such a measure, most importantly the possibility for clients to benefit from continuity of counsel. It also noted the recommendations of the Internal Justice Council that the Office of Staff Legal Assistance should be allocated sufficient funds to meet its responsibilities (see [A/73/218](#), recommendations 3 and 14). Delegations also took note of the information provided regarding the intensified outreach activities conducted in order to reduce the

high opt-out rates in certain offices and entities of the Organization. The Committee recalled the important role of the Office of Staff Legal Assistance in representing staff before the Tribunals.

Addition of three new permanent judicial positions in the Dispute Tribunal

16. The Sixth Committee noted that the Secretary-General recommended, as he had previously done in 2016 and 2017 in his report on the findings and recommendations of the Interim Independent Assessment Panel (see [A/71/163](#), paras. 126–129) and his report on the administration of justice at the United Nations (see [A/72/204](#), paras. 172 (d), (g) and (h)), the addition of three permanent full-time judges to the Dispute Tribunal, providing his reasons therefor (see [A/73/217](#), paras. 83–90 and 120 (b)), as well as the extension of the positions of supporting staff (*ibid.*, para. 120 (c)). This measure was also long advocated by the Internal Justice Council (see [A/70/188](#), paras. 70 and 71, [A/70/190](#), para. 31, [A/69/205](#), paras. 152–155, and [A/67/98](#), para. 22), as well as the judges of the Dispute and Appeals Tribunals (see [A/68/306](#), annex II, paras. 6 and 7; see also [A/67/538](#), annex, enclosure I, paras. 8 and 9), who, this year, suggested a two-year renewal in the interim of regularization (see [A/73/218](#), annex II, para. 100). It was also supported by the Interim Independent Assessment Panel (see [A/71/62/Rev.1](#), recommendation 47 and paras. 367–370). The Sixth Committee once again recalled that it had previously emphasized the need to find a long-term solution to the question of the composition of the Tribunal that would ensure the sustained efficiency of the performance of the formal system (see letters from the Chair of the Sixth Committee to the President of the General Assembly in 2012 ([A/C.5/67/9](#), annex), 2013 ([A/C.5/68/11](#), annex), 2014 ([A/C.5/69/10](#), annex) and 2017 ([A/C.5/72/10](#), annex)). The Committee also recalled that in previous years it had acknowledged that the extension of the positions of three ad litem judges was a necessary temporary measure aimed at ensuring the continued delivery of justice (see the letters from the Chair of the Sixth Committee to the President of the Assembly cited above and [A/C.5/70/9](#), annex). However, the Committee underlined that the Secretary-General's report had raised the legal implications and the long-term impacts of maintaining the temporary ad hoc arrangements indefinitely (see [A/73/217](#), paras. 86 and 87). The Committee called upon the General Assembly to take such views into consideration.

Complaints by non-staff personnel

17. The Sixth Committee expressed gratitude for the information on non-staff personnel provided by the Secretary-General in his report (see [A/73/217](#), paras. 96–105) pursuant to paragraph 38 of General Assembly resolution [72/256](#). The Committee noted that the information provided reflected a comprehensive analysis of the information the Secretary-General had presented in tabular form in annex II to his 2017 report on the administration of justice at the United Nations ([A/72/204](#)). The Committee also took note of the views expressed in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services on access to the Ombudsman and mediation services for non-staff personnel (see [A/73/167](#), para. 89).

18. The Sixth Committee recalled that it had repeatedly highlighted that the United Nations should ensure that effective remedies were available to all categories of personnel, including non-staff personnel (see [A/66/275](#), including annex II entitled “Proposal for recourse mechanisms for non-staff personnel”, and [A/67/265](#), including annex IV entitled “Expedited arbitration procedures for consultants and individual contractors” and annex VI entitled “Access to the system of administration of justice for non-staff personnel not covered under the dispute resolution mechanism and other measures available to them for addressing disputes”). The Committee further recalled

the views expressed by the Interim Independent Assessment Panel (see [A/71/62/Rev.1](#), para. 413, recommendation 23 and paras. 233–243), as well as the options for a remedy system for non-staff personnel elaborated by the Internal Justice Council (see [A/71/158](#), paras. 142–153 and annex I, para. 13).

19. Delegations received information presented orally by representatives of the Secretariat on the issue, as well as information from the Internal Justice Council.

20. Delegations welcomed the information that the Secretariat and funds and programmes provided on protection against discrimination, harassment, including sexual harassment, and abuse of authority, as well as protection against retaliation, for non-staff personnel.

21. Delegations also took note of the information concerning the access of non-staff personnel to services provided by the Office of the United Nations Ombudsman and Mediation Services, and took positive note of the proposal of the Secretary-General to initiate a pilot project in this regard, particularly given that the pilot project would assist the Organization in determining the types of grievances raised by non-staff personnel and the quantitative caseload (see [A/73/217](#), para. 105). In this regard, and given that, in its initial stages, the pilot project would be implemented within the existing resources of the Office of the United Nations Ombudsman and Mediation Services, as stated in the report of the Secretary-General, the Committee recommends that the General Assembly endorse the proposal of the Secretary-General to initiate the pilot project.

22. Taking into consideration the analysis and ideas contained in the reports of the Secretary-General contained in documents [A/66/275](#) and [A/67/265](#), and in light of the information provided in annex II to his report contained in document [A/72/204](#) and in section III of his report contained in document [A/73/217](#), delegations considered it important to have a comprehensive understanding of all remedies available in law, and of the extent to which they are available in practice, to non-staff personnel, including arbitration concerning individual contractors. Accordingly, delegations requested the Secretary-General to prepare, with a view to informing the discussions of the General Assembly at its seventy-fourth session, a comprehensive analysis of the information provided in annex II of document [A/72/204](#) and paragraphs 96 to 105 of document [A/73/217](#), on the remedies available to non-staff personnel, including their effectiveness, efforts that could be taken to prevent disputes and to resolve existing ones *inter partes*, as well as the identification of good practices.

Protection against retaliation

23. The Sixth Committee took note of the view of the Internal Justice Council that staff members lodging a case before the Tribunals or appearing as witnesses should be accorded protection by the Ethics Office and that staff litigation should be regarded as protected activity (see [A/73/218](#), paras. 12 and 13). In the view of the Internal Justice Council, an explicit system-wide policy protecting parties and witnesses from retaliation is recommended. The Committee took note of the information presented orally by representatives of the Secretariat on the issue. The Committee welcomed the new revised policy on protection against retaliation ([ST/SGB/2017/2/Rev.1](#)) and the ongoing efforts to continuously review it for any improvements that might be needed, through the staff management consultation machinery. The Committee also noted that such policy was included in the comprehensive review of the regulatory framework mentioned above. The Committee noted that retaliation against complainants or staff appearing as witnesses constituted misconduct, and that the Secretary-General's policy on protection against retaliation protected staff from being punished for reporting misconduct. The Committee further underscored the

importance of fully implementing orders issued by the Tribunals for the protection of complainants and witnesses against retaliation.

24. Delegations considered it appropriate to request the Secretary-General to present, at the seventy-fourth session, further information, as well as the extended views of the Internal Justice Council, on the continuous review of the policy.

Amendments to the statute of the United Nations Appeals Tribunal

25. The Sixth Committee noted that, in order to ensure uniformity of language as well as legal certainty with respect to the jurisdiction of the Appeals Tribunal, it would be advisable for the Assembly to approve the amendment to article 48 of the Regulations of the United Nations Joint Staff Pension Fund and the corresponding amendments to articles 2 and 7 of the statute of the United Nations Appeals Tribunal at the same time. Having reviewed the proposals of the Secretary-General (see [A/73/217/Add.1](#)), the Committee recommended approval of the amendments to the statute of the United Nations Appeals Tribunal as set out in the paragraphs below.

26. The amendment of article 2, paragraph 9, of the statute of the Appeals Tribunal would entail: (i) adding the words “under section K of the Administrative Rules of the United Nations Joint Staff Pension Fund” before “alleging non-observance”; (ii) capitalizing the word “Regulations”; and (iii) adding the words “in regard to rights affecting participation, contributory service and benefit entitlements under its Regulations” after “Fund”. The amended paragraph reads:

9. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board under section K of the Administrative Rules of the United Nations Joint Staff Pension Fund, alleging non-observance of the Regulations of the Fund in regard to rights affecting participation, contributory service and benefit entitlements under its Regulations, submitted by:

27. In addition, paragraphs 9 (a) and (b) would be amended to capitalize the word “Regulations”.

28. The amendment of article 7, paragraph 2, of the statute of the Appeals Tribunal would entail: (i) capitalizing the word “Regulations”; (ii) adding the words “Standing Committee acting on behalf of the” before “United Nations Joint Staff Pension Board”, and (iii) replacing “Board’s” with “Standing Committee’s”. The amended paragraph reads:

2. For purposes of applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within 90 calendar days of receipt of the Standing Committee’s decision.

Amendment to the rules of procedure of the United Nations Appeals Tribunal

29. With respect to the amendment to the rules of procedure of the United Nations Appeals Tribunal (see [A/73/217](#), paras. 108 and 120 (g)), delegations noted that, on 29 June 2018, in accordance with article 32, paragraph 1, of its rules of procedure, the Appeals Tribunal adopted an amendment to article 7 (Time limits for filing appeals), paragraph 1, of its rules of procedure, which is provisionally applied. Pursuant to article 32, paragraph 2, of the rules of procedure of the Appeals Tribunal, the Sixth Committee recommended approval of the amendments to article 7, paragraph 1. The amended paragraph reads:

1. Appeals instituting proceedings shall be submitted to the Appeals Tribunal through the Registrar within:

(a) 60 calendar days of the receipt by a party appealing a judgement of the Dispute Tribunal;

(b) 30 calendar days of the receipt by a party appealing an interlocutory order of the Dispute Tribunal;

(c) 90 calendar days of the date of receipt by a party appealing a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board; or

(d) A time limit fixed by the Appeals Tribunal under article 7.2 of the rules of procedure.

Closing remarks

30. The Sixth Committee recommended that the General Assembly include the item entitled “Administration of justice at the United Nations” in the provisional agenda of its seventy-fourth session.

31. It would be appreciated if the present letter were brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly under agenda item 147, “Administration of justice at the United Nations”.
