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Administration of justice at the United Nations

Letter dated 19 November 2021 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 18 November 2021 from the Chair of the Sixth Committee, Alya Ahmed Saif Al-Thani, on the administration of justice at the United Nations (see annex).

(Signed) Abdulla **Shahid**



Annex

1. I have the honour to write to you with regard to agenda item 147, on the administration of justice at the United Nations.
2. As you are aware, at its 2nd plenary meeting, on 17 September 2021, the General Assembly, on the recommendation of the General Committee, referred the agenda item to both the Fifth and the Sixth Committees. In paragraph 39 of its resolution [75/248](#), 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 10th meeting, on 15 October 2021, as well as in informal consultations held on 19, 20, 25 and 27 October and 2, 4 and 5 November. Informal consultations were also held on 8 and 10 November. The Committee considered the legal aspects of the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/76/140](#)), the report of the Secretary-General on the administration of justice at the United Nations ([A/76/99](#)) and the report of the Internal Justice Council ([A/76/124](#)), which included in its annexes I and II the views of the United Nations Appeals Tribunal and of the United Nations Dispute Tribunal, respectively, pursuant to paragraph 34 of resolution [75/248](#).
4. During the informal consultations held on 19 October, the Executive Director of the Office of Administration of Justice, the Chairperson of the Internal Justice Council and the United Nations Ombudsman 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.
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 [75/248](#) and for his report on the activities of the Office of the United Nations Ombudsman and Mediation Services. The Sixth Committee considered the requests of the Secretary-General to the General Assembly contained in the former ([A/76/99](#), para. 116), and in the latter ([A/76/140](#), paras. 96–97). Delegations also considered 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 aforementioned reports that might have financial implications, the Assembly should take duly into account paragraph 4 of its resolution [61/261](#).

Knowledge of the system and outreach activities

8. Recalling the Sixth Committee's recommendations of 2020 (see [A/C.5/75/16](#), annex) in which the Committee 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 through video- and teleconferencing. The Committee welcomed the innovative approaches adopted by the Office of the United Nations Ombudsman and Mediation Services to ensure outreach continuity through the design of a "virtual mission model" as an alternative to in-person visits and the launching of virtual missions across the eight regional offices ([A/76/140](#), paras. 10–13), as well as the fact that the Office looked for new ways to communicate appropriately with staff globally by using online solutions to promote the value of informal conflict resolution services and their use as a first safe step in addressing workplace concerns ([A/76/140](#), paras. 51–52).

9. The Sixth Committee also took note that the Secretariat remains committed to the three-pronged strategy of preventing acts of misconduct, addressing reports of misconduct and holding those who have engaged in misconduct accountable and providing remedial actions, where applicable ([A/76/99](#), para. 50). The Committee recalled the important role of those activities in ensuring universal accessibility to the system of administration of justice at the United Nations.

10. The Sixth Committee also 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 jurisprudence and judicial directions

11. 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, and [A/C.5/73/11](#), annex). The Committee underlined that it had previously noted the absence of a searchable database of Dispute Tribunal and Appeals Tribunal judgments to facilitate meaningful and organized research (see [A/C.5/75/16](#), annex). It therefore supported the Council's recommendation that the Office of Administration of Justice take the action necessary to establish a searchable database of Dispute Tribunal and Appeals Tribunal decisions and inform the General Assembly of its progress ([A/75/154](#), paras. 36–37, recommendation 6). The Committee accordingly welcomed the ongoing development of a Caselaw portal aimed at enhancing transparency in the operation of the formal judicial mechanisms in the internal justice system, expected to be completed by the end of 2021 (see [A/76/99](#), para. 46), and invited the Secretary-General to provide further information on the launch of the database in his next report.

12. The Sixth Committee also recalled that it had previously noted the importance of applying such transparency to judicial directions. The Committee recommended that the General Assembly request that judicial directions that are of general application continue to be posted online and thus made available to all stakeholders, including the Assembly.

Regulatory framework

13. The Sixth Committee underlined the efforts of the Secretary-General and the Office of the United Nations Ombudsman and Mediation Services to give further effect to achieving a harmonious working environment free from discrimination, harassment, including sexual harassment, and abuse of authority, in particular through the civility campaign of the Secretary-General (see [A/76/140](#), paras. 21–26), and various measures to further enhance the accountability of managers ([A/76/99](#), paras. 50–56). In that connection, the Sixth Committee noted that the requests of the General Assembly set out in paragraphs 17, 24 and 25 of resolution [75/248](#) will be addressed in a separate report of the Secretary-General ([A/76/99](#), para. 62). It noted with appreciation the activities undertaken by the Office of the United Nations Ombudsman and Mediation Services to address the issue of systemic racism ([A/76/140](#), paras. 6 and 14–20).

14. The Sixth Committee also recalled the observations by the United Nations Ombudsman that the Organization had no mechanism to systematically monitor staff well-being in difficult duty stations so that it could respond promptly when conditions started to affect the health of staff members in a way that prevented them from continuing to work in that location ([A/75/160](#), para. 88).

Informal system

15. 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.

16. Delegations commended the activities of the Office of the United Nations Ombudsman and Mediation Services, in particular its operational developments against the backdrop of the coronavirus COVID-19 pandemic ([A/76/140](#), paras. 5–9), and its efforts to continue to ensure a global presence and regional activities to increase conflict resolution services for staff and non-staff away from Headquarters.

17. In this regard, the Sixth Committee commended the dialogue model developed, within existing resources, by the Office of the Ombudsman and Mediation Services, thus providing a framework using conversation guidelines and carefully considered questions to create a safe space for participants to exchange perspectives and experiences related to racism in the workplace, as well as the numerous dialogue sessions hosted by the Office for nearly 1,650 United Nations personnel from various Secretariat entities across Africa, Asia, the Middle East, Europe and Central and North America. The Committee also welcomed the recommendation made by the Office, further to paragraphs 22 and 23 of resolution [75/248](#), that continuous learning and education on racism would be necessary to embed an anti-racist awareness and culture in the Organization ([A/76/140](#), paras. 14–20). The Committee therefore encouraged the continuation of learning and education on racism.

18. The Sixth Committee recalled that, in his previous reports, the Secretary-General had recommended that the Organization develop a holistic managerial approach for addressing managers who might appear to perform well but whose abrasive behaviour affected staff, without understanding the impact of their behaviour on others ([A/70/151](#), paras. 63–69 and 70 (c); [A/73/167](#), paras. 56–57, 60 and 62–65; [A/74/171](#), paras. 60–61; and [A/75/160](#), para. 85).

19. The Sixth 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. In this regard, the Committee took note that relatively few workplace disputes at the United Nations are resolved through mediation ([A/76/140](#), paras. 35–38 and figure VI).

It underlined that mediation facilitates dialogue, reduces conflict and has the advantage of offering mutually acceptable solutions without the need for protracted and costly litigation. The Committee supported the consideration by the Office of the United Nations Ombudsman and Mediation Services of a pilot project to increase the utilization of mediation for workplace disputes that may arise ([A/76/140](#), paras. 93–95). It encouraged all stakeholders to continue to refine other recommendations for strengthening the use of mediation by all personnel categories of the Organization.

Formal system

20. The Sixth Committee commended the Management Evaluation Unit for its continued important role in enabling the resolution of work-related disputes of staff members.

21. The Sixth Committee recalled the recommendation of the Internal Justice Council to enhance staff access to documents and information ([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.

22. The Sixth Committee also recognized the work of the Dispute Tribunal and the Appeals Tribunal in contributing to the promotion of justice at the United Nations. The Committee further noted that the reasonable length of proceedings was an important attribute of an effective system of administration of justice. In that regard, the Committee welcomed the output increase and backlog decrease in the work of the Dispute Tribunal, as well as the output increase in the work of the Appeals Tribunal further to its recommendation that the General Assembly consider the views of the Secretary-General and of the Internal Justice Council to respectively enhance the efficiency and transparency of the United Nations system of administration of justice, in particular in addressing the backlog and delays in handling cases ([A/75/154](#), recommendations 1, 3 and 8). The Committee also welcomed the continued implementation of the case disposal plan with a real-time case-tracking dashboard and performance indicators, introduced in early 2019 ([A/75/162](#), paras. 97–100) and the fact that, consistent with paragraph 27 of resolution [75/248](#), the real-time case-tracking dashboard for 2020 was made publicly available in all official languages from the website of the Dispute Tribunal, while the caseload dashboard for 2021 is currently available in English and the versions in Arabic, Chinese, French, Russian and Spanish will be uploaded shortly, thus adding transparency to the management of the caseload ([A/76/99](#), para. 73). The Committee further welcomed the fact that progress in addressing the backlog had been made in 2020, which marked the highest delivery of judgments by the Dispute Tribunal since 2016, and encouraged such a positive trend. The Committee further welcomed the extension of the practice of publishing the schedule and cause list for each half-time judge on the website of the internal justice system to the full-time judges, consistent with paragraph 29 of resolution [75/248](#).

23. The Sixth Committee stressed that the Dispute Tribunal was an independent judiciary, which was expected to manage its affairs in accordance with its statute, rules of procedure and code of conduct. In this context, the Committee took note of the information provided in paragraphs 87 to 92 of the report of the Secretary-General ([A/75/162](#)), submitted further to the request by the General Assembly that the Secretary-General examine recommendations 11, 12 and 13 contained in the report of the Internal Justice Council of 2019 ([A/74/169](#)). The Committee shall remain seized of the matter and will revert at the appropriate time.

24. The Sixth Committee noted recommendations 1 and 3 contained in the report of the Internal Justice Council ([A/76/124](#), para. 14) and requested the Internal Justice Council, the Appeals Tribunal, the Dispute Tribunal and the Secretary-General to include their views on those recommendations and any specific textual proposals in the reports submitted for the seventy-seventh session.

Self-representation and voluntary supplemental funding mechanism of the Office of Staff Legal Assistance

25. The Sixth Committee noted that, further to his continued monitoring of the issue of self-representation in accordance with paragraph 30 of resolution [75/248](#), the Secretary-General had indicated that self-representation is a continuing feature of the internal justice system, although the number of incoming cases in which applicants were self-represented before the Dispute Tribunal and the percentage of applications that were rejected by the Dispute Tribunal on the grounds of receivability declined from 2019 to 2020. The Sixth Committee also noted that targeted outreach continued for self-represented applicants, including through informational material ([A/76/99](#), paras. 77–84).

26. The Sixth Committee welcomed the continued efforts of the Secretary-General, carried out pursuant to paragraph 33 of resolution [75/248](#), to strengthen incentives for staff not to opt out of the voluntary supplemental funding mechanism. The Committee took note of the proposal of the Secretary-General to extend the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance from 1 January 2022 until 31 December 2024 and advised that such an extension should be made without prejudice to a final determination as to whether expenditures incurred pursuant to the Office's mandate constitute "expenses of the Organization" within the meaning of Article 17 (2) of the Charter of the United Nations.

Remedies available to non-staff personnel

27. The Sixth Committee expressed gratitude for the information on remedies available to non-staff personnel provided by the Secretary-General in his report ([A/76/99](#), para. 63), submitted pursuant to paragraph 18 of resolution [75/248](#). The Committee also took note of the information and 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, including the results of the pilot project to offer access to informal dispute-resolution services to non-staff personnel ([A/76/140](#), paras. 44–50).

28. 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"). In that connection, the Sixth Committee considered the opportunity identified by the Secretary-General for the United Nations to collaborate with a neutral entity that would undertake the role of vetting arbitrators, maintaining arbitrator rosters, appointing arbitrators and providing certain administrative functions during an arbitration between the United Nations and non-staff personnel, which is currently under examination ([A/76/99](#), para. 63). The Committee also recalled the views expressed by the Interim Independent Assessment Panel ([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 ([A/71/158](#), paras. 142–153, and annex I, para. 13). The Committee

recommended to continue the discussions on ways to provide non-staff personnel with access to fair and effective mechanisms for resolving work-related disputes.

29. Delegations noted the five initiatives undertaken in order to improve the prevention and resolution of disputes involving non-staff personnel ([A/74/172](#), para. 95) and took note of the updated information provided by the Secretary-General in that regard ([A/75/162](#), para. 74, and [A/76/99](#), para. 63). Therefore, the Sixth Committee recommended that the Secretary-General provide in his next report additional information on the implementation of the five initiatives.

30. Delegations also took note of the information concerning the access by non-staff personnel to services provided by the Office of the United Nations Ombudsman and Mediation Services, including the request contained in paragraph 97 of the report of the Secretary-General ([A/76/140](#)). In particular, delegations took note of the increase in cases brought by non-staff personnel from 2015 to 2019 and of the significant reduction to 195 cases in 2020 ([A/76/140](#), figure VIII). The Sixth Committee encouraged the continuation of the pilot project, within existing resources, and requested the Office of the Ombudsman and Mediation Services to include in its next report information regarding the expected resources that would be required to expand its mandate to cover non-staff.

Protection against retaliation

31. The Sixth Committee took note of the information on protection against retaliation for staff members lodging cases before the Tribunals ([A/76/99](#), paras. 57–60). The Committee noted with appreciation the panel discussion held on retaliation policies ([A/76/99](#), para. 59). The Committee welcomed the ongoing efforts to continuously review the revised policy on protection against retaliation ([ST/SGB/2017/2/Rev.1](#)) for any improvements that might be needed, through the staff-management consultation machinery. The Committee noted that witnesses giving testimony on cases involving reports of misconduct and staff members cooperating with duly authorized audits or investigations might already fall within the ambit of the protection provided by the Ethics Office under Secretary-General's bulletin [ST/SGB/2017/2/Rev.1](#). The Committee further underscored the importance of fully implementing orders issued by the Tribunals for the protection of complainants and witnesses against retaliation.

32. 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 a protected activity ([A/73/218](#), paras. 12–13). In the view of the Internal Justice Council, an explicit system-wide policy protecting parties and witnesses from retaliation was recommended. Delegations took note that the lack of protection against retaliation for staff members who are applying for redress in the Tribunals and appearing as witnesses remains a serious problem. The Council had heard reports that confirmed that the fear of retaliation among staff was real and could be counted as a factor that had serious implications for access to justice ([A/75/154](#), para. 56). 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. Delegations also expressed a need for more clarity on the sufficiency of protection against retaliation for non-staff, considering that the recommendations made in the reports before the Committee did not explicitly cover that issue. The Committee further underscored the importance of fully implementing orders issued by the Tribunals for the protection of complainants and witnesses against retaliation. While the Committee took note of the view of the Internal Justice Council regarding the need to empower the Tribunals to issue protective orders, the Committee underscored that the Tribunals

already had inherent and explicit authority to issue such orders consistent with their statutes, rules of procedure and code of conduct.

33. Delegations took note that the Internal Justice Council will examine the fear of, and protection against, retaliation for staff bringing cases and those testifying before the Tribunals and for reporting misconduct in the coming year ([A/76/124](#), paras. 48–49). They considered it appropriate to request the reports prepared for the seventy-seventh session to include further information on the progress made in the protection against retaliation for both staff and non-staff personnel.

Amendments to the statute of the United Nations Appeals Tribunal

34. 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 strongly advisable for the General Assembly to approve the amendment to article 48 of the Regulations of the United Nations Joint Staff Pension Fund, currently under consideration before the Fifth Committee, and the corresponding amendments to articles 2 and 7 of the statute of the Appeals Tribunal at the same time. In order to achieve this uniformity of language and legal certainty, recalling the relevant proposals of the Secretary-General (see [A/73/217/Add.1](#)), the Sixth Committee recommended approval of the amendments to the statute of the Appeals Tribunal as set out in the paragraphs below.

35. The amendment to article 2, paragraph 9, of the statute of the Appeals Tribunal would entail: (a) adding the words “under section K of the Administrative Rules of the United Nations Joint Staff Pension Fund” before “alleging non-observance”; (b) capitalizing the word “Regulations”; and (c) 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 judgment 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:

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

37. The amendment to article 7, paragraph 2, of the statute of the Appeals Tribunal would entail: (a) capitalizing the word “Regulations”; (b) adding the words “Standing Committee acting on behalf of the” before “United Nations Joint Staff Pension Board”; and (c) 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.

Amended rules of procedure of the United Nations Appeals Tribunal

38. The Sixth Committee recommended the approval of the amendments to articles 8.2 (a) and 9.2 (a) of the rules of procedure of the Appeals Tribunal (see [A/75/162](#), para. 93, and annex I), adopted by the Appeals Tribunal on 24 October 2019, and the amendments to articles 24, 25, 26 and 27 of the rules of procedure of the Appeals

Tribunal (see [A/76/99](#), para. 114, and annex I), adopted by the Appeals Tribunal on 19 October 2020, the text of which is reproduced in the enclosure.

Rules of procedure of the United Nations Dispute Tribunal

39. The Sixth Committee took note of the decision of the Dispute Tribunal to withdraw the proposed amendments to its rules of procedure as set out in annex II to the previous report of the Secretary-General ([A/75/162](#)) and of its intention to submit a revised proposal for consideration by the General Assembly at its seventy-seventh session ([A/76/99](#), para. 113).

Closing remarks

40. 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-seventh session.

41. 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”.

Enclosure

Amended rules of procedure of the United Nations Appeals Tribunal¹

Article 8 Appeals

2. The appeal form shall be accompanied by:

(a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon or, in the case of an appeal against a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, a brief containing pleas and an explanatory statement. The brief shall not exceed 15 pages. **The brief that accompanies an appeal against an interlocutory order of the Dispute Tribunal shall not exceed five pages;**

Article 9 Answers, cross-appeals and answers to cross-appeals

2. The answer form shall be accompanied by:

(a) A brief, which shall not exceed 15 pages, setting out legal arguments in support of the answer. **The brief that accompanies an answer to an appeal against an interlocutory order of the Dispute Tribunal shall not exceed five pages;**

Article 24 Revision of judgements

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement. **The brief that accompanies the application for revision and the comments thereon shall not exceed five pages.**

Article 25 Interpretation of judgements

Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgement on a prescribed form. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application on a prescribed form. The Appeals Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation. **The brief that accompanies the application for interpretation and the comments thereon shall not exceed two pages.**

Article 26 Correction of judgements

Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own

¹ Proposed amendments are shown in bold text.

initiative or on the application by any of the parties on a prescribed form. **The brief that accompanies the application for correction shall not exceed two pages.**

Article 27

Execution of judgements

Where a judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement. **The brief that accompanies the application for execution shall not exceed two pages.**
