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Administration of justice at the United Nations

Letter dated 21 November 2022 from the President of the General Assembly addressed to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 18 November from the Chair of the Sixth Committee (Legal), Pedro Comissário Afonso, with regard to agenda item 149, “Administration of justice at the United Nations” (see annex).

(Signed) Csaba **Kőrösi**



Annex

1. I have the honour to write to you with regard to agenda item 149, on the administration of justice at the United Nations.
2. As you are aware, at its 3rd plenary meeting, on 16 September 2022, the General Assembly, on the recommendation of the General Committee, referred the agenda item to both the Fifth and the Sixth Committees. In paragraph 21 of its resolution [76/242](#), 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 11th meeting, on 11 October 2022, as well as in informal consultations held on 12, 14, 18, 21 and 27 October and 3 November. Informal informal consultations were also held on 1 and 8 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/77/151](#)), the report of the Secretary-General on the administration of justice at the United Nations ([A/77/156](#)) and the report of the Internal Justice Council on the administration of justice at the United Nations ([A/77/130](#)).
4. During the informal consultations held on 12 October, the Executive Director of the Office of Administration of Justice, the United Nations Ombudsman and the Chairperson of the Internal Justice Council 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 [76/242](#) 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/77/156](#), para. 129). 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 (*ibid.*, 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 launch of a Caselaw portal that will contribute to a more transparent and accessible system of administration of justice (see [A/77/156](#), paras. 60–64), and invited the Secretary-General to provide further information on the functioning of the database in his next report. The Committee is reviewing jurisdictional aspects of the United Nations common system to promote consistency and will provide its views in a separate letter to the Chair of the Fifth Committee.

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 (A/76/140, paras. 21–26), and various measures to further enhance the accountability of managers (A/76/99, paras. 50–56). Delegations noted with concern the reports by women, especially those appointed to senior positions, that they seemed to be measured by different standards compared with their male counterparts and that several women leaders reported the harassment they experienced (A/77/151, para. 83). In that connection, the 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/77/151, paras. 52–57).

14. The Sixth Committee noted the launch of the strategic action plan of the Secretary-General's Task Force on Addressing Racism and Promoting Dignity for All in the United Nations, and it also recalled resolution 76/271 in this regard.

15. 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

16. 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.

17. 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 disease (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.

18. In this regard, the Sixth Committee commended the dialogue model developed, within existing resources, by the Office of the United Nations 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 over 1,500 United Nations personnel from various Secretariat entities across Africa, Asia, the Middle East, Europe and Central and North America (A/77/151, paras. 55–56). 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.

19. 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). It welcomed the fact that senior managers are made aware of their significant decision-making authority and their accountability through training, information sessions and advisory services ([A/77/156](#), para. 55).

20. 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/77/151](#), paras. 25–27 and figure III, and [A/77/130](#), para. 28). 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 welcomed the fact that various mechanisms in the formal system support the increased use of mediation in appropriate cases and are willing to participate in a pilot project introducing a mandatory discussion about mediation as a first step ([A/77/156](#), para. 111). It took note that the Internal Justice Council will remain seized of the issue of strengthening the mediation approach and will provide further recommendations at the subsequent session ([A/77/130](#), para. 39 (d)). 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

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

22. 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.

23. 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 commended 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 the case disposal and judgment targets for the Dispute Tribunal established in 2019 were maintained in 2021 and that all cases pending on 31 December 2018 were disposed of by July 2021 ([A/77/156](#), para. 87). 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](#).

24. 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.

25. The Sixth Committee noted recommendations 1 and 3 contained in the report of the Internal Justice Council ([A/76/124](#), para. 14) and the additional comments provided by the Internal Justice Council ([A/77/130](#), paras. 17–18), the Appeals Tribunal, the Dispute Tribunal and the Secretary-General in the reports submitted for the seventy-seventh session. It took note of the lack of support for the recommendation regarding the appointment of a president for a term of seven years ([A/77/156](#), paras. 74–83).

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

26. 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 Committee also noted that targeted outreach continued for self-represented applicants, including through informational material ([A/76/99](#), paras. 77–84).

27. 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.

Remedies available to non-staff personnel

28. The Sixth Committee expressed gratitude for the information on remedies available to non-staff personnel provided by the Secretary-General in his report ([A/77/156](#), paras. 113–116) submitted pursuant to paragraph 18 of resolution [75/248](#). The Committee underscored the importance of fair and appropriate access to dispute resolution for both staff and non-staff and the need to take into account any limitations in access to information and resources available to non-staff such as those identified in the report on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/77/151](#), para. 30).

29. 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](#) and [A/66/275/Corr.1](#), including annex II, entitled “Proposal for recourse mechanisms for non-staff personnel”, and [A/67/265](#) and [A/67/265/Corr.1](#), 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 Committee took note of the plan for managing disputes with non-staff personnel including strengthened informal amicable dispute resolution and, if that fails, procedures for a

streamlined and simplified expedited arbitration ([A/77/156](#), paras. 113–114). It also took note of the opportunity identified by the Secretary-General for the United Nations to collaborate with the Permanent Court of Arbitration to support ad hoc arbitration proceedings (*ibid.*, paras. 115–116) and encouraged the Secretary-General to continue seeking options to minimize the expected costs in order to promote access to dispute resolution. 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, affordable and effective mechanisms for resolving work-related disputes.

30. 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 regarding an expedited dispute resolution mechanism and the opportunity to collaborate with a neutral entity ([A/77/156](#), paras. 113–116). The Sixth Committee took note of the summary report on “Non-staff capacities study”.

31. 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 noted that although 114 non-staff cases were handled in 2021, compared with 195 in 2020, the Office anticipates that more non-staff personnel will reach out for services as the workplace stabilizes following the disruptions during the pandemic ([A/77/151](#), paras. 28–31). The Sixth Committee encouraged the continuation of the pilot project in its current modality, within existing resources, and requested the Office 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

32. 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 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.

33. 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 ([A/77/130](#), para. 35). 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 took note that the Secretary-General’s 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 (regardless of the

type of appointment or its duration), intern, United Nations volunteer (including United Nations volunteers serving in the Secretariat), individual contractor or consultant ([A/77/156](#), para. 72). 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.

34. Delegations took note that the Internal Justice Council will continue to examine the fear of, and protection against, retaliation for staff bringing cases and those testifying before the Tribunals and for reporting misconduct, including further information on the progress made in the protection against retaliation for both staff and non-staff personnel in the context of the reviews currently under way ([A/77/130](#), para. 39 (c)). It supported recommendation No. 7 made by the Internal Justice Council regarding awareness-raising (*ibid.*, para. 36).

Amendments to the statute of the United Nations Dispute Tribunal

35. The Sixth Committee took note of the Secretary-General's proposal ([A/77/156](#), para. 128) and of the different views expressed by key stakeholders and by Member States. It encouraged the Secretary-General to continue to consult the various stakeholders on this important legal issue and revert to the appropriate committee to consider the matter.

Amended rules of procedure of the United Nations Dispute Tribunal

36. The Sixth Committee recommended the approval of article 19 (2) of the proposed amendments to the rules of procedure of the United Nations Dispute Tribunal, the text of which is reproduced in the enclosure, and took note of the Secretary-General's request that the General Assembly consider the comments, as set out in annexes II to IV to his report on the administration of justice at the United Nations (*ibid.*), before deciding whether to approve the remaining proposed amendments to the rules of procedure of the Dispute Tribunal, as set out in annex I to that report. With regard to the remaining amendments, it suggested to postpone the decision to the seventy-eighth session of the Assembly.

Closing remarks

37. 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-eighth session.

38. 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 149, "Administration of justice at the United Nations".

Enclosure**Amended rules of procedure of the United Nations
Dispute Tribunal¹****Article 19****Case management**

1. The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.
 2. **The Tribunal shall undertake a judicial action within 90 days from the date when the complete application was filed.**
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¹ Proposed amendments are shown in bold text.