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Chair: Mr. Kohona . . . . . (Sri Lanka)

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13-55129 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 143: Administration of justice at the United Nations (A/68/158, A/68/306 and A/68/346)

1. **The Chair** recalled that, at its 2nd meeting, the General Assembly had referred the current agenda item to both the Fifth and the Sixth Committees. In paragraph 59 of its resolution 67/241, the Assembly had 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.

2. **Ms. Cujo** (Observer for the European Union), speaking also on behalf of the candidate countries Iceland, Montenegro, Serbia and the former Yugoslav Republic of Macedonia; the stabilization and association process countries and potential candidates Albania and Bosnia and Herzegovina; and, in addition, Armenia and Georgia, said that the progress made in the administration of justice at the United Nations since 2009 represented a commendable collective achievement. The handling of cases through all phases of both the informal and the formal systems had improved markedly in terms of efficiency and fairness of procedure. However, a number of challenges remained.

3. The European Union supported the work of the Office of the United Nations Ombudsman and Mediation Services in advancing the use of informal conflict resolution as an effective option for staff. It commended the Management Evaluation Unit for the decisions and recommendations it had been able to deliver despite very tight timelines, and noted with appreciation the high number of complaints disposed of every year. It was pleased that less than one third of all requests went through the formal process and that the rest were dealt with informally. The fact that most of the Unit's decisions which had been appealed before the United Nations Dispute Tribunal had been upheld in whole or in part was a good indicator of its effective approach. Indeed, informal conflict resolution was a crucial element of the system of administration of justice. It helped to avoid expensive and time-consuming litigation and mitigated the negative impact of disputes.

4. The European Union was also pleased that the Unit systematically sought to identify and, wherever appropriate, settle requests with potential for informal resolution, and that it used a variety of measures to directly or indirectly avert litigation, including the institutionalization of good practices and the use of the jurisprudence of the Tribunals in shaping its administrative and management practices. The number of new cases before the Dispute Tribunal appeared to be stabilizing, and the number of judgements delivered in the three locations was also levelling off. The Tribunal should strive to maintain that level of success.

5. The European Union also noted with appreciation the investments made over the past year to improve courtrooms and other facilities — as requested by the General Assembly — which were to be fully operational at all three duty stations by the end of 2013. Those and other technical measures would allow the Dispute Tribunal to work even more efficiently, with the potential of further reducing the time needed to decide a case. Nonetheless, the European Union was somewhat concerned about the relatively high number of decisions and judgements by the Dispute Tribunal that were appealed before the United Nations Appeals Tribunal, two thirds of them by staff and about one third on behalf of the Secretary-General, with markedly different success rates. The judges of the Appeals Tribunal had warned that, if nothing was done, the steady influx of new cases would push the new system into crisis. The backlog of appeals, which had plagued the old system, should be avoided.

6. The proposal to conduct an interim independent assessment of the formal system of administration of justice contained in the Secretary-General's report (A/68/346), would call for a thorough analysis not only of the managerial functioning of the Tribunals, but also of their jurisprudence and working methods. That was a demanding task for which legal expertise and sufficient time would be needed. On the whole, though, the European Union welcomed any measures that would strengthen the system of administration of justice and improve its effectiveness, and believed that the proposed terms of reference adequately reflected the relevant operational aspects to be examined. It requested additional information from the Secretariat, however, on how the entity conducting the assessment would measure the "cost effectiveness of the formal system" and why other factors, such as the degree of satisfaction of staff members, or ways of containing the

submission of frivolous complaints, did not form part of the mandate for the interim assessment.

7. The European Union was prepared to discuss a code of conduct for legal representatives, to be prepared by the organs suggested by the Secretary-General in his report (A/68/346), and agreed that there should be a common, or unified, code for all counsels who appeared before the Tribunals. The fact that the conduct of staff members representing applicants was already covered by the Staff Regulations might not provide sufficient guarantees. As the Internal Justice Council had underlined, it was not easy for the Tribunals to apply the Staff Regulations in the very specific context of judicial proceedings, where counsel owed duties to both their clients and the Tribunals. Such a situation had not been contemplated when the Regulations had been formulated. The European Union was pleased that the Secretariat had started working on a draft code of conduct for legal representatives and planned to consult with stakeholders to that end. On the issue of moral damages, or compensation for non-pecuniary losses, the European Union took careful note of the principles developed by the Appeals Tribunal in its jurisprudence over the past four years, which appeared to be in line with those of many domestic legislatures and the practice of other international administrative tribunals.

8. The Internal Justice Council had an important function in ensuring independence, professionalism and accountability in the system of administration of justice. A functioning Council was an indispensable control mechanism for the formal part of the system. The views and advice provided by the Council to the General Assembly were essential for the proper maintenance and improvement of the system. The European Union welcomed the long-term work programme which the Council had laid out for the remainder of its term of office until 2016.

9. The European Union took note of the Council's remark that a number of problems that the system currently faced were not legal in nature, but could be addressed through technical or administrative measures. In its view, the concrete proposals made by the Council also had a legal dimension. It saw merit in the Council's proposal, which was supported by the judges of the Appeals Tribunals, that judges should be accorded full diplomatic immunities as provided in section 19 of the General Convention on Privileges and Immunities. The European Union was open to discussing at the current session the Council's proposals concerning the qualification of judges at the Appeals Tribunal and an amendment to the relevant parts of the Appeals Tribunal's statute, and looked forward to hearing the views of other delegations.

10. The European Union took note of the three practical options submitted by the Council for reducing abuse of proceedings. It also commended the Office of Staff Legal Assistance, whose counsel helped staff members to avoid mistakes, misunderstandings and, ultimately, unnecessary work. It strongly supported the call by both the Internal Justice Council and the judges of the Dispute Tribunal for the Office to be allowed to continue to represent staff in proceedings before the Tribunals. As for the legal protection of non-staff personnel, a differentiated system that provided an adequate, effective and appropriate remedy was preferable. Lastly, the European Union welcomed the preparation of the Secretary-General's bulletin on accessibility for persons with disabilities at the United Nations and was confident that it would contribute to an inclusive and accessible working environment.

11. **Ms. Lennox-Marwick** (New Zealand), speaking also on behalf of Australia and Canada, said that the three countries had been long-standing advocates of a fair and effective system of internal justice for the United Nations. They welcomed the progress made over the last several years, as further developments aimed at ensuring that the system operated in accordance with its goals were being considered. The Office of Staff Legal Assistance played a positive role in the internal justice system. Its caseload had grown considerably since 2009, and it continued to face challenges in responding to the high volume of requests. A legally appropriate and efficient way should be found for staff to contribute to the funding of the Office, including an automatic payroll deduction with an opt-out provision, as suggested in the report of the Secretary-General (A/68/346).

12. The three delegations welcomed the Secretary-General's intention to present a code of conduct for external legal services at the sixty-ninth session of the General Assembly. However, they were also mindful that the Internal Justice Council had recommended a single common code of conduct for all counsel who appeared before the Dispute Tribunal or the Appeals Tribunal. Given the rationale that different standards could potentially violate the principle that all parties to a dispute should be equal, the Secretary-General

should consider the feasibility of extending the code of conduct to cover all counsels. They noted the Council's concern regarding the risk posed by the current approach to privileges and immunities for judges in the Dispute and Appeals Tribunals; the issue warranted further attention.

13. Australia, Canada and New Zealand took note of the other recommendations and proposals made by the Secretary-General and looked forward to engaging constructively on those issues, including with colleagues in the Fifth Committee, to ensure that the administration of justice was fair, effective and efficient.

14. **Mr. Stuerchler Gonzenbach** (Switzerland), speaking also on behalf of Liechtenstein, said that while the new system of administration of justice was a major improvement over the old system, it still had many shortcomings. It was the understanding of both delegations that the Committee would be sending a letter to the Fifth Committee concerning the system of administration of justice at the United Nations. That letter should stress that the independence of the Dispute and Appeals Tribunals should be cultivated and respected; that the principle of judicial independence was a core component of justice; and that it was not the General Assembly's role to enquire into the appropriateness of individual decisions.

15. It should also express the Committee's support for an interim independent assessment, whose mandate should include the scope of the system of administration of justice, the relationship between the formal and the informal systems, and an assessment of the judicial contribution of the Tribunals. The persons who carried out the assessment must have the requisite legal expertise. Switzerland and Liechtenstein had taken due note of the observation of the Advisory Committee on Administrative and Budgetary Questions that neither the Joint Inspection Unit nor the Board of Auditors might be ideally suited to conduct the assessment. The letter should reiterate that the ad hoc extension of ad litem judges could only be a temporary measure, because a mature system of administration of justice required a settled composition of the bench.

16. Switzerland and Liechtenstein would support granting the judges of the two Tribunals the privileges and immunities of section 19 of the Convention on the Privileges and Immunities of the United Nations, as an expression of the Tribunals' independence. The Internal Justice Council should be asked to elaborate a proposal for an amendment to the statute of the Tribunals to that effect. Both delegations supported the proposals put forward by the Internal Justice Council on how to address abusive proceedings. Option II in particular — striking out offending pleadings — was worth exploring.

17. Switzerland and Liechtenstein believed that an effective legal remedy should be provided to non-staff personnel. Their situation was such that an associate of Al-Qaeda had a better chance of legally challenging targeted sanctions imposed by the Security Council than a United Nations volunteer had of receiving compensation for sexual abuse. It was disappointing that the report of the Secretary-General had given so little attention to that question. The United Nations and the Member States had a responsibility to find an adequate solution for non-staff personnel, regardless of the nature of the contract they had concluded with the Organization, while showing the same concern for the principles of independence, transparency and efficiency, and due regard for human rights.

18. Switzerland, as one of the host States of the United Nations, was very concerned by that issue, as was Liechtenstein. It had a duty to ensure respect for the privileges and immunities that had been agreed in the headquarters agreement concluded with the United Nations and in the Convention on the Privileges and Immunities of the United Nations, to which it had acceded in 2012. It therefore believed that the United Nations must have a sufficiently independent, transparent and efficient system to govern litigation with non-staff personnel. Otherwise, national jurisdictions might refuse to recognize the Organization's immunity from jurisdiction, a risk that had been confirmed by the European Court of Human Rights in its decision of 18 February 1999 in Waite and Kennedy v. Germany. Switzerland and Liechtenstein therefore intended to work towards strengthening the internal dispute-resolution bodies so as to prevent such a situation from occurring. The question of the administration of justice should also remain on the agenda of the Sixth Committee.

19. **Mr. Zack** (United States of America) said that the establishment by the General Assembly in 2008 of an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice had been a landmark achievement for the administration of justice at the United Nations and a

milestone in the ongoing reform of the Organization. The United Nations Dispute and Appeals Tribunals, together with a number of other innovative reforms, had already had a significant impact on the transparency, fairness, efficiency and accountability of the United Nations personnel system.

20. His delegation was impressed by the professionalism and productivity of the new system of administration of justice but, as the General Assembly had recognized in the comprehensive review of the system during its sixty-seventh session, the system was still evolving. A number of issues remained to be monitored and addressed where appropriate, including ensuring that the Dispute and Appeals Tribunals did not exercise powers beyond those conferred on them under their respective statutes and that recourse to general principles of law and the Charter by the Tribunals took place within the context of, and in accordance with, their statutes and relevant General Assembly resolutions, rules and administrative issuances.

21. His delegation remained keenly interested in an independent assessment of the entire system of administration of justice and its impact on accountability and transparency at the United Nations. Accordingly, it supported the request made by the General Assembly in 2012 for the Secretary-General to present a proposal for conducting an interim independent assessment of the formal administration of justice. It would be useful to explore further how the Secretary-General could form an independent panel to conduct the assessment in a cost-efficient manner from within existing resources.

22. The range of informal dispute resolution mechanisms formed a crucial element of the system of administration of justice. All possible use should be made of the informal system in order to avoid unnecessary litigation. The United States welcomed the report on the progress made in implementing the Ombudsman's recommendations for addressing systemic and cross-cutting issues (A/68/158). At the same time, it called upon the Secretary-General to promulgate the revised terms of reference and guidelines for the Office of the Ombudsman and Mediation Services as soon as possible. The reports of the Secretary-General (A/68/346), the Internal Justice Council (A/68/306) and the Ombudsman (A/68/158) raised a number of issues and provided a great deal of background information and, in some cases, recommendations for consideration.

23. His delegation appreciated the Internal Justice Council's views on appropriate options for effective measures against the filing of frivolous applications. It hoped that the General Assembly would be able to reach an appropriate outcome to deal with that issue, and also looked forward to a discussion of the code of conduct for legal representatives. The system of administration of justice at the United Nations should provide a framework for the constructive resolution of employment and labour disputes between employees and management. Those issues must be addressed for the current system to continue to represent an improvement over its predecessor.

24. **Ms. Dieguez La O** (Cuba), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that CELAC was satisfied with the progress made by the system of administration of justice since its inception. The system had had a positive impact on labour relations in the Organization and on work performance. CELAC had always supported measures to protect the basic rights of United Nations personnel in conformity with internationally agreed standards, and continued to support all measures that could help the United Nations to become the best employer and attract and retain the best employees.

25. CELAC was mindful of the important role that the Committee had played in making the system of administration of justice fully operational by drafting the statutes and the amendments thereto for both Tribunals, and would continue contributing with its legal expertise to the resolution of all outstanding issues, such as those relating to the independent evaluation of the system, access to the justice system for persons with disabilities and dispute-resolution measures. CELAC took note of the conclusions of the Secretary-General's report and invited Committee members to review the recommendations and proposals contained therein, bearing in mind the basic principles of independence, transparency, professionalism, decentralization, legality and due process.

26. CELAC welcomed the substantial reduction of the case backlog and the partial decline in new cases received by the Management Evaluation Unit and the Dispute Tribunal, as an indicator that the new system of internal justice was achieving its goal of delivering

impartial and rapid results and that its clients were putting trust in it. The Office of Staff Legal Assistance had been performing a vital task by supporting personnel with counsel, representation, guidance and other legal services. Further proposals for a staff-funded scheme within the Organization should continue to be explored. Those proposals should be complementary and should take the views of relevant stakeholders fully into account.

27. The Internal Justice Council had played an important role in helping to ensure independence, professionalism and accountability, and it should continue to provide its views on the implementation of the system of administration of justice, within the purview of its mandate established in paragraph 37 of General Assembly resolution 62/228. CELAC was concerned about the proliferation of cases in which persons hired by the United Nations system did not qualify as officials of the United Nations or any of its specialized bodies. Those persons were excluded from the United Nations formal system of administration of justice and from the labour process of every country and were thus subject to an arbitration process not covered by the established labour legal system.

28. CELAC acknowledged the substantial amount of work performed by the Dispute and Appeals Tribunals and was ready to explore new ways to improve the use of the informal system. Incentives should be developed to encourage recourse to the informal resolution of conflicts, which was a crucial element of the internal system of administration of justice. More should be done to promote a culture of trust and conflict prevention throughout the Organization. Accordingly, the Secretary-General should ensure that the structure of the Office of the Ombudsman and Mediation Services not only reflected its responsibility for the oversight of the entire integrated office, but also had the support needed to perform its job, thus strengthening due process within the Organization and guaranteeing accountability and transparency in the decision-making process.

29. Lastly, CELAC welcomed the inauguration of the permanent courtroom in Nairobi and hoped that courtrooms in New York and Geneva would be operational as soon as possible. It also stressed the important work of the Management Evaluation Unit in preventing unnecessary litigation before the Dispute Tribunal. The Sixth and Fifth Committees should continue to cooperate closely to ensure an appropriate division of labour and avoid encroachment of mandates.

30. **Mr. Mangisi** (Tonga) said that his delegation attached great importance to the development of a fair, transparent and efficient system of administration of justice at the United Nations and commended the Secretary-General on the progress made in that regard since 2006. The United Nations was the embodiment of collective aspirations for a peaceful, fair and just global society, and it was fitting that it should put those internationally espoused values into practice. The reports before the Committee were evidence of an increasingly efficient and effective system of administration of justice at the United Nations; but they also highlighted continuing challenges. An ongoing commitment to informal dispute resolution was crucial to the system's success.

31. His delegation noted with concern the underresourcing of the Office of Staff Legal Assistance, which played a pivotal role in the efficient administration of justice by encouraging recourse to the informal system of justice, declining representation in unmeritorious cases and encouraging settlement, where appropriate, of cases that were before the Tribunals. It also noted the Secretary-General's conclusion that it would be in the best interests of the Organization for it to continue to fund the entire cost of the Office of Staff Legal Assistance, including the additional resources that it required. It recognized the benefit to the Organization as a whole of ensuring that the Office was adequately resourced. Funding uncertainty was a corollary of many of the joint financing models proposed. His delegation therefore favoured continued funding of the Office by the Organization.

32. Tonga welcomed the Secretary-General's proposal for an independent assessment of the system of administration of justice, to be conducted by the Joint Inspection Unit with existing budgetary resources. It underscored the importance of continuing to disseminate the lessons learned from the administration of justice at the United Nations, to promote best practices by managers and others within the Organization, and to guide Member States in the promotion of good governance and effective dispute resolution at the regional and domestic levels.

33. **Mr. Leonidchenko** (Russian Federation) said that the information contained in the report of the

Secretary-General (A/68/346) showed that the work of the new dispute resolution mechanism had yielded generally positive results. His delegation attached particular importance to the work of the Management Evaluation Unit, which made it possible, through a timely identification of poor decisions, to resolve disputes without having to refer them to the Dispute Tribunal. The informal dispute resolution system also helped to avoid unnecessary and costly litigation.

34. His delegation noted the overall positive trend in the work of the Dispute and Appeals Tribunals, but was concerned about the case backlog, which might delay the consideration of disputes, with the attendant adverse impact on the legal protection of both management and personnel. In that connection, the Russian Federation supported measures aimed at improving the working methods of the Tribunals which were not detrimental to a proper consideration of cases. In particular, the greatest effort should be made to reduce the length of proceedings. His delegation welcomed all attempts to settle disputes *inter partes*.

35. The question of whether to extend the terms of ad litem judges of the Dispute Tribunal until the end of 2014 was more a matter for the Fifth Committee. The responses in the report of the Secretary-General to the questions formulated in General Assembly resolution 67/241 confirmed the need to continue to improve the system of administration of justice by conducting a periodic review of its activities. In seeking the best way of representing the interests of staff, consideration should be given to the option set out in paragraph 132 of the report of the Secretary-General envisaging the participation of staff in the financing of the Office of Staff Legal Assistance through an optional automatic deduction from base salary.

36. His delegation took note of the proposal that an interim independent assessment of the formal system of administration of justice should be conducted by the Joint Inspection Unit, whose experience in assessing the previous system of administration of justice would help it identify problems and priority areas for development in the new one. When taking decisions on practical matters, it was important not to lose sight of the main goal of the reform, namely the establishment of an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice.

Agenda item 80: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (*continued*) (A/68/521 and A/C.6/68/L.14)

Draft resolution A/C.6/68/L.14: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

37. **Ms. Abayena** (Ghana), introducing the draft resolution on behalf of the Bureau, said that the text was very much the same as in previous years and was based largely on General Assembly resolution 67/91, but with a few changes, including the addition of three new preambular paragraphs. The third preambular paragraph recognized the major contribution of the Programme of Assistance to the teaching and dissemination of international law for the benefit of lawyers in all countries, legal systems and regions of the world for almost half a century. The fourth preambular paragraph emphasized the important contribution of the Programme of Assistance, in particular the United Nations regional courses in international law and the United Nations Audiovisual Library of International Law, to the furtherance of the United Nations rule of law programmes and activities. The ninth preambular paragraph noted with regret that the regional course for Asia-Pacific for 2013 had been cancelled due to insufficient funds, and that no regional course for Latin America and the Caribbean had been held in almost a decade. The eighth preambular paragraph had been updated to include a reference to General Assembly resolution 67/91.

38. A number of important changes had also been made in the operative paragraphs to reflect the serious financial situation which threatened the continuation of the United Nations regional courses in international law and the United Nations Audiovisual Library of International Law. Paragraph 1 approved the guidelines and recommendations contained in section III of the report of the Secretary-General (A/68/521), in particular those designed to strengthen and revitalize the Programme of Assistance. Paragraph 2 authorized the Secretary-General to carry out the activities specified in his report in 2014 and 2015, without specifying the method for funding. It was no longer possible to include the reference to “overall resources” contained in previous resolutions because the Trust Fund established for the Programme of Assistance had been depleted.

39. Paragraph 3 authorized the Secretary-General to award a minimum of one scholarship in 2014 and a minimum of one scholarship in 2015 under the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, without specifying the method for funding. Paragraph 8 requested the Secretary-General to issue the legal publications referred to in his report in various formats, including hard copy publications, which were essential for developing countries. She proposed an oral amendment to the opening phrase of paragraph 18, which would read: "Expresses its appreciation to Ethiopia for hosting and to Thailand for agreeing to host United Nations regional courses in International Law in 2013".

40. Paragraph 25 requested the Secretary-General to report to the General Assembly at its sixty-ninth session on the implementation of the Programme of Assistance in 2014 and, following consultations with the Advisory Committee on the Programme of Assistance, to submit recommendations regarding the Programme of Assistance in subsequent years. Paragraph 26 reflected the conclusion of the Advisory Committee on the Programme of Assistance that voluntary contributions had not proven to be an adequate method for funding Programme activities specified in the report and in General Assembly resolution 67/91, in particular the United Nations Regional Courses in International Law and the United Nations Audiovisual Library of International Law, and recognized the need to provide more reliable funding for those activities. Paragraph 27 provided for the inclusion in the provisional agenda of the General Assembly's sixty-ninth session the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

41. She expressed appreciation to the members of the Advisory Committee on the Programme of Assistance and all delegations as well as the Codification Division for their strong support for the Programme of Assistance.

Agenda item 167: Observer status for the Cooperation Council of Turkic-speaking States in the General Assembly (*continued*) (A/66/141 and A/C.6/68/L.2)

42. **The Chair** announced that the coordinating delegation for the agenda item had requested, on behalf of the sponsors, that the Committee should recommend that the General Assembly should defer a decision on the request for observer status for the Cooperation Council of Turkic-speaking States in the General Assembly to its sixty-ninth session.

43. He took it that the Committee wished to accede to that request.

44. *It was so decided.*

The meeting rose at 4.10 p.m.