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Administration of justice at the United Nations

Letter dated 12 November 2019 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 11 November 2019 from the Chair of the Sixth Committee, Michal Mlynár, on the administration of justice at the United Nations (see annex).

(Signed) Tijjani **Muhammad-Bande**



Annex

1. I have the honour to write to you with regard to agenda item 146, Administration of justice at the United Nations.
2. As you are aware, at its 2nd plenary meeting, on 20 September 2019, the General Assembly, on the recommendation of the General Committee, referred the agenda item to both the Fifth and the Sixth Committees. In paragraph 41 of its resolution [73/276](#), 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 17th meeting, on 17 October 2019, as well as in informal consultations held on 17, 18, 23 and 24 October and 4 November. Informal consultations also took place on 5 and 6 November 2019. The Sixth 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/74/171](#)), the report of the Secretary-General on the administration of justice at the United Nations ([A/74/172](#)) and the report of the Internal Justice Council ([A/74/169](#)), which included, in annexes, the views of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal pursuant to paragraph 43 of resolution [73/276](#).
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.
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 [73/276](#) 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 request of the Secretary-General to the General Assembly contained in his report ([A/74/172](#), para. 102). 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 emphasized that the judges of the Tribunals must enjoy judicial independence and be accountable for reasons of incapacity or conduct that render them unfit to discharge their duties, including case management.

Election of the judiciary

8. Delegations expressed concern at the impact of the short period of time between the announcement and the holding of elections, on 10 July 2019, for four half-time judicial positions on the United Nations Dispute Tribunal.

9. Delegations urged the Secretary-General, the President of the General Assembly and the Internal Justice Council to ensure, in the future and for similar elections, that delegations were provided a reasonable period of time between the setting of the date of the election and the holding of the election.

Knowledge of the system and outreach activities

10. Recalling the Sixth Committee's recommendations of 2016, 2017 and 2018 (see [A/C.5/71/10](#), annex, [A/C.5/72/10](#), annex, and [A/C.5/73/11](#), 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. The Committee welcomed the information provided by the Secretary-General on the continued implementation of an outreach strategy by the Office of Administration of Justice, and in particular that a handbook entitled "A staff member's guide to resolving disputes" was revised in 2018 and made broadly available in all six United Nations languages (see [A/74/172](#), paras. 73–77). The Committee also welcomed the outreach activities by the Office of the United Nations Ombudsman and Mediation Services, including the efforts to address systemic issues ([A/74/171](#), paras. 45–47, 51 and 59). The Committee emphasized the important role of those activities in ensuring universal accessibility to the system of administration of justice at the United Nations.

11. The 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

12. 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).

13. The Committee also recalled that it previously 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 2018 report of the Internal Justice Council (see [A/73/218](#), para. 23) and recommended in the 2019 report of the Secretary-General ([A/74/172](#), para. 88). The Committee reiterated its recommendation that the General Assembly request judicial directions that are of

general application to be posted online and thus made available to all stakeholders, including the General Assembly.

Regulatory framework

14. The Committee underlined the efforts of the Secretary-General and the Office of the United Nations Ombudsman and Mediation Service 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 Secretary-General's civility campaign (see [A/74/171](#), paras. 67–73), and various measures to further enhance the Secretariat's response to prohibited conduct ([A/74/172](#), para. 80). The Committee also took note of the policy updates provided in paragraph 81 of the report of the Secretary-General ([A/74/172](#)).

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 awareness-raising and competence skill-building services, as well as the efforts made at the regional level to increase conflict resolution services for staff away from Headquarters, including in the field and in the deep field, and to raise awareness and build capacity ([A/74/171](#), paras. 18 and 13, respectively).

17. The Committee welcomed the efforts made by the Office of the United Nations Ombudsman and Mediation Services to mainstream a gender perspective in its activities and support systemic changes ([A/74/171](#), para. 59). The Committee also noted the recommendation of the Secretary-General proposing that the Organization should develop a holistic managerial approach for addressing managers who may appear to perform well but whose abrasive behaviour affects staff, without understanding the impact of their behaviour on others ([A/74/171](#), para. 60).

18. 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

19. 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.

20. 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.

21. The Sixth Committee noted that the reasonable length of proceedings is an important attribute of an effective system of administration of justice. Delegations took note of the competing assertions made to the presidency of the United Nations Dispute Tribunal ([A/74/172](#), para. 17) and the concerns expressed by the Internal

Justice Council regarding its operational efficiency as well as its case disposal (A/74/169, paras. 15–19). In this respect, the Committee reiterated 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 to respectively enhance the efficiency and transparency of the United Nations administration of justice’s system, particularly in addressing the backlog and delays in handling cases (A/74/169, recommendation 9). The Committee also welcomed the implementation of a case disposal plan with a real-time tracking dashboard and performance indicators in early 2019 (A/74/172, paras. 86–87). The Committee further welcomed that progress in addressing the backlog was made in 2019, despite the situation described in paragraph 17 of the report of the Secretary-General (A/74/172).

22. The Sixth Committee stressed that the Dispute Tribunal is an independent judiciary, which is expected to manage its affairs in accordance with its statute, rules of procedure and code of conduct. In this context, the Committee takes seriously the information provided in paragraphs 20 to 26 of the report of the Internal Justice Council (A/74/169). It invited the Secretary-General to provide his views on recommendations 10, 11, 12 and 13 of the report of the Internal Justice Council for the Committee’s consideration during the seventy-fifth session of the General Assembly.

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

23. Considering the continuously high number of self-represented applications, the Sixth Committee noted, with appreciation, that the Office of Administration of Justice had created a toolkit for self-represented applicants, which was issued and posted on the website of the internal justice system in May 2019 (A/74/172, para. 89).

24. 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 (A/74/172, paras. 90–92, annex I, para. 33 and annex IV), which has been extended by the General Assembly, in paragraph 28 of its resolution 73/276, until 31 December 2021. The Committee welcomed efforts to strengthen incentives for staff not to opt out of the voluntary supplemental funding mechanism, as addressed in paragraphs 30 and 31 of Assembly resolution 73/276. The Committee further recalled the important role of the Office of Staff Legal Assistance in representing staff before the Tribunals.

Remedies available to non-staff personnel

25. The Sixth Committee expressed gratitude for the information on remedies available to non-staff personnel provided in paragraphs 93 to 95 by the Secretary-General in his report (A/74/172) submitted pursuant to paragraph 46 of General Assembly resolution 73/276. 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 (A/74/171, paras. 41–44).

26. 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 ([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).

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

28. Delegations noted the initiatives undertaken in order to improve the prevention and resolution of disputes involving non-staff personnel ([A/74/172](#), para. 95). Therefore, the Sixth Committee recommends that the Secretary-General provide in his next report detailed information on the five initiatives mentioned in paragraph 95 of his report of 15 July 2019 ([A/74/172](#)), which aim at improving the prevention and resolution of disputes involving non-staff personnel, including information about cost-effective means of engaging a neutral entity to undertake the role described in paragraph 95 (d) of that report.

29. 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. In particular, delegations took note of the increase in cases brought by non-staff personnel since 2017 ([A/74/171](#), figure IX). The Sixth Committee took positive note of the proposal of the Secretary-General to pursue 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 ([A/74/171](#), para. 65). In this regard, and given that, in its initial stages, the pilot project would continue to 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 pursue the pilot project.

30. The Sixth Committee took note of the request by the Office of the United Nations Ombudsman and Mediation Services to allow for more time to assess the feasibility of institutionalizing the pilot project regarding services provided to non-staff personnel, and the intention of the Office to provide an update at the seventy-fifth session of the General Assembly ([A/74/171](#), para. 65). The Committee requested that this assessment should consider the categories, the location, the length of time to consider and the outcomes of the complaints filed by non-staff personnel.

Protection against retaliation

31. The Sixth Committee took note of the information on protection against retaliation provided by the Secretary-General pursuant to paragraph 11 of resolution [73/276](#) ([A/74/172](#), para. 81). The Committee also took note of the information presented orally by representatives of the Secretariat on the issue. 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 may already fall within the ambit of the protection provided by the Ethics Office under the 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 and 13). In the view of the Internal Justice Council, an explicit system-wide policy protecting parties and witnesses from retaliation is recommended. Delegations took note that in the Council's meetings with stakeholders, it was confirmed that lack of protection for retaliation against staff members for applying for redress in the Tribunals and for appearing as witnesses remains a serious problem. The Council has 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/74/169, para. 9). 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. 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 have inherent and explicit authority to issue such orders consistent with their statutes, rules of procedure and code of conduct.

33. Delegations considered it appropriate to request the Secretary-General to present, at the seventy-fifth session, further information on the progress made in the protection against retaliation, 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

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 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 United Nations Appeals Tribunal at the same time. Recalling the relevant 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.

35. 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:

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

37. 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.

Closing remarks

38. 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-fifth session.

39. 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 146, “Administration of justice at the United Nations”.
