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Administration of justice at the United Nations

Administration of justice at the United Nations and activities of the Office of the United Nations Ombudsman and Mediation Services

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on administration of justice at the United Nations ([A/75/162](#) and [A/75/162/Add.1](#)) and on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/75/160](#)). The Advisory Committee also had before it the report of the Internal Justice Council on administration of justice at the United Nations ([A/75/154](#)). During its consideration of the reports, the Committee received additional information and clarification, concluding with written responses dated 4 October 2020.

2. The report of the Secretary-General on administration of justice at the United Nations provides information on the functioning of the system of administration of justice in 2019, including statistical data, and a consolidated response to the requests of the General Assembly contained in its resolutions [73/276](#) and [74/258](#). The report on the activities of the Office of the United Nations Ombudsman and Mediation Services provides information on the activities of that Office in 2019.

II. Administration of justice at the United Nations

A. Trends and observations on the formal system of administration of justice in 2019

3. The Secretary-General, in section II of his report, provides information, data and trends related to the operations of the formal system of administration of justice in 2019, including the following:



(a) The Management Evaluation Unit in the Secretariat received 704 requests, compared with the 1,182 requests received in 2018, when a high number of group applications caused a spike in workload. The Unit closed 629, or 89.3 per cent, of the requests received in 2019, in line with its percentage output in previous years. Furthermore, 78 per cent of the requests for management evaluation in the Secretariat did not proceed to the United Nations Dispute Tribunal in 2019 ([A/75/162](#), paras. 3 and 4);

(b) The Dispute Tribunal received 308 applications, slightly fewer than the 316 it received in 2018. Just over half of the applications (158) were received by the Nairobi Registry. The Dispute Tribunal disposed of 389 cases, reflecting an increase of 36 per cent compared with 2018. It also issued 159 judgments, which represents a 24 per cent increase compared with the 128 judgments issued in 2018 (exclusive of withdrawal judgments). Among the applications disposed of were long-standing group applications (*ibid.*, para. 5). The report of the Secretary-General notes that in the first part of 2019, the Dispute Tribunal was composed of three full-time judges, two half-time judges and two ad litem judges, and, as of mid-2019, the composition changed to three full-time judges and six half-time judges (*ibid.*, paras. 11 and 12). Throughout 2019 the composition was therefore equivalent to six full-time judges, compared with the equivalent of seven full-time judges (three full-time judges, three full-time ad litem judges and two half-time judges) during its first nine years (*ibid.*, footnote 10) (see also para. 9 below);

(c) On 1 January 2019, 35 cases were pending before the United Nations Appeals Tribunal. During the course of the year, the Appeals Tribunal received 124 new cases and disposed of 95 cases, leaving 64 cases pending as of the end of 2019 (*ibid.*, para. 26);

(d) The Office of Staff Legal Assistance received 1,978 new requests for assistance and closed 1,695 requests through settlement or otherwise. While lower than in 2018, which was characterized by a significant number of group cases, the total number of new requests continued to reflect the overall trend of increases in demand for assistance (*ibid.*, paras. 41–43) (see also para. 13 below).

4. The Advisory Committee trusts that the Secretary-General will continue to compile and analyse information on caseloads, highlighting any emerging trends in his future reports (see also [A/73/428](#), para. 10).

B. Responses to requests of the General Assembly

5. The Secretary-General, in section III of his report, provides responses to requests of the General Assembly contained in its resolutions [73/276](#) and [74/258](#), including on outreach, prohibited conduct, protection against retaliation, the root causes of conflict, remedies available to non-staff personnel, the accountability of managers for gross negligence, self-representation before the Tribunals, amendments to the rules of the Dispute Tribunal and Appeals Tribunal as well as to the Statute of the Appeals Tribunal, the case disposal plan and the use of half-time judges at the Dispute Tribunal, the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance, conditions of service and appointment requirements for the members of the Internal Justice Council, and the impact of measures introduced by the Assembly in its resolution [73/276](#).

Backlog of cases at the United Nations Dispute Tribunal and related measures

6. In its resolutions [74/258](#) and [73/276](#), the General Assembly noted the large number of pending and ageing cases at the Dispute Tribunal and requested the implementation of a case disposal plan with a real-time case-tracking dashboard and

performance indicators on the disposal of caseloads (resolution 74/258, para. 28, and resolution 73/276, para. 24). The report of the Secretary-General indicates that in early 2019 the President of the Dispute Tribunal established a case disposal plan with monthly targets and that the dashboard was completed in August 2019. At the end of 2018, 404 cases were pending, of which 205 cases, or 51 per cent, had been pending for more than 401 days. By 31 December 2019, 267, or 66 per cent, of those 404 cases had been disposed of, including 91 per cent of the 205 long-standing cases that had been pending for more than 401 days (A/75/162, paras. 97–100). The Internal Justice Council indicates in its report that, while progress had been made in reducing the backlog, as at 1 July 2020 there were 278 pending cases (of which 37 were older than 401 to 500 days and 66 were 501 to 1,000 days old) and, with the expected receipt of over 300 new cases per year, the backlog remained a substantial problem (A/75/154, paras. 17 and 20).

7. The Internal Justice Council proposed recommendations to improve the situation, including: (a) the establishment of a key performance indicator of seven judgments per judge per month, excluding summary dispositions; and (b) the assignment of all new cases as they are received, in lieu of the current practice of assigning no more than 10 to 15 cases to a judge at any given time (ibid., recommendations 1 and 3). The President of the Dispute Tribunal did not consider the Council's recommended benchmark viable and indicated that it was a prerogative of the bench to establish performance measures, such as the target of four cases per month (two judgments and two other dispositions) it had set in early 2020 (ibid., para. 24).

8. The Advisory Committee was informed, upon enquiry, that, further to a request of the General Assembly (resolution 74/258, para. 26), the judges of the Dispute Tribunal, on 1 October 2019, adopted a resolution which, inter alia, confers upon the President the administrative responsibility for deploying judges to duty stations, monitoring the progress made with regard to the backlog elimination plan and the case disposal plan and monitoring compliance with set performance indicators.

9. In paragraph 47 of its resolution 73/276, the General Assembly requested the Secretary-General to provide, during its seventy-fifth session, an in-depth assessment, from within existing resources, on the impact of the new measures introduced in that resolution. While the report of the Secretary-General indicates that it is too early for such an assessment, he offers some preliminary observations regarding the use of half-time judges at the Dispute Tribunal. In particular, the Secretary-General notes that the half-time judges model enhances judicial efficiency, as evidenced by the increased number of judgments and orders issued in 2019 with one fewer full-time judge (see para. 3 (b) above), and adds flexibility to the system, allowing for the deployment of judicial capacity to the duty station with the highest caseload. In addition, he states that the recent practice to publish the half-time judges' deployment schedule and list of assigned cases online has promoted clarity and transparency on the status of cases (A/75/162, para. 129).

10. While acknowledging the progress made, the Advisory Committee remains concerned about the backlog of cases at the Dispute Tribunal and is of the view that more efforts should be made to reduce further the number of pending and ageing cases. In particular, the Committee stresses the importance that the Secretary-General provide, in his next report, updated information on and a comprehensive assessment of the implementation of the measures introduced by the General Assembly in its resolutions 73/276 and 74/258, including on the case disposal plan, case-tracking dashboard, performance indicators, administrative responsibilities of the President and use of half-time judges.

Remedies available to non-staff personnel

11. In his report, the Secretary-General provides updated information on initiatives aimed at improving the prevention and resolution of disputes involving non-staff personnel, as requested by the General Assembly in paragraphs 20 and 21 of its resolution 74/258 (A/75/162, para. 74). Upon enquiry, the Advisory Committee was informed that, in August 2020, the Human Resources Services Division of the Department of Operational Support had completed a study on the use of non-staff personnel within the Secretariat, which would serve as the basis for developing policy recommendations. The study, which includes 32 recommendations, is expected to be published by early November 2020, following final consultations. The Committee was also informed that the revised administrative issuance on the engagement of consultants and individual contractors, currently under preparation, would envisage an ad hoc cost-neutral simplified dispute resolution mechanism, which would avoid any standing costs to the Organization. **The Advisory Committee trusts that the Secretary-General will provide updated information on the progress made with regard to the cost-neutral simplified dispute resolution mechanism for non-staff personnel in his next report** (see also paras. 25–28 below).

Self-representation before the Tribunals

12. In line with the request of the General Assembly to continue to monitor and report on self-representation (resolution 74/258, para. 25), the Secretary-General indicates in his report that, in 2019, 45.1 per cent of the cases before the Dispute Tribunal and 44 per cent of appeals and cross-appeals before the Appeals Tribunal were filed by applicants who represented themselves. In comparison, in 2018 the self-representation rate before the Dispute Tribunal was 39.2 per cent and 45 per cent before the Appeals Tribunal (A/75/162, para. 77).

13. Regarding the underlying reasons for the high level of self-representation, the Advisory Committee was informed, upon enquiry, that in 2019 the Office of Staff Legal Assistance declined representation in 527 cases, following the application of a “reasonable chance of success” merit test to representation. Furthermore, according to the Secretariat, some unrepresented staff have a negative perception of the competence and/or independence of the Office of Staff Legal Assistance, while others believe they can represent themselves equally or better than the Office, owing to their qualifications or familiarity with the administration of justice system. The Committee was also informed that, although the Office has not refused representation expressly as a result of a lack of capacity, understaffing, when it occurs, has a negative impact on the quality and extent of the service provided to staff. In this respect, the Committee notes that the Office was unable to fill 5 of the 10 posts under the regular budget that became vacant in early 2020, owing to the liquidity situation (*ibid.*, para. 132 (b)).

14. Data contained in the report of the Secretary-General indicates that the proportion of unrepresented applicants’ cases rejected on receivability grounds is substantially higher than those filed by represented litigants: of the 161 applications deemed not receivable by the Dispute Tribunal in 2019, 122 were filed by unrepresented applicants. However, it is also suggested that, once an applicant meets the receivability threshold, the legal representation of the applicant is less relevant to the outcome of the application (*ibid.*, paras. 81 and 82). Toolkits to assist self-represented applicants are available on the websites of the Dispute Tribunal and Appeals Tribunal as of May 2019. Applicants are also directed to these toolkits by the Office of Staff Legal Assistance, when it declines representation (*ibid.*, paras. 78 and 80).

Amendments to rules of procedures of the Tribunals

15. The General Assembly urged the Dispute Tribunal and the Appeals Tribunal to amend their respective rules of procedure subject to the approval of the Assembly, with a view to streamlining and harmonizing their approach to case management (resolution 74/258, para. 27). Annexes I and II to the report of the Secretary-General contain amendments to the rules of procedure as adopted by the Appeals Tribunal and the Dispute Tribunal on 24 October 2019 and on 8 June 2020, respectively. **The Advisory Committee notes that these constitute legal matters outside its purview and are for the General Assembly to decide upon. The Committee trusts that, should financial implications arise from the proposals, the relevant rules and procedures for the consideration of the proposals will be adhered to.**

Conditions of service and appointment requirements of the Internal Justice Council

16. Annex V to the report of the Secretary-General presents proposed conditions of service and appointment requirements of the Internal Justice Council, as requested by the General Assembly (resolution 74/258, para. 39). The Secretary-General indicates that the approval of the proposed conditions of service and appointment requirements entails no additional financial implications, as the approved budget for the Office of Administration of Justice includes remuneration of the Council members (A/75/162, para. 127).

C. Other matters

Impact of the coronavirus disease

17. The Advisory Committee was informed, upon enquiry, that the impact of the coronavirus disease (COVID-19) pandemic on the system of administration of justice is still emerging and lessons learned have yet to be fully analysed. However, the pandemic has not had a negative impact on case disposal thus far. As at 31 August 2020, the Dispute Tribunal had issued 159 judgments, which is equivalent to the number of judgments issued in the entirety of 2019, and the number of pending cases had decreased by 29.7 per cent, from 323 in January 2020 to 227. The Appeals Tribunal, which held two of its three annual sessions remotely, had issued 62 judgments as at 29 September 2020, and expected to issue a total of 98 judgments by the end of the year, in line with its annual average since 2010.

Consultations among stakeholders

18. The Advisory Committee notes that information provided to it seems to indicate, in some instances, a lack of full consultation among stakeholders in the administration of justice system. According to the Secretariat, the Internal Justice Council, in some cases, makes recommendations without consulting any or all relevant stakeholders. Similarly, the Internal Justice Council indicates that its views have not been sought with regard to certain recommendations included in the report of the Secretary-General, including its conditions of service and the amendments to the rules of procedures of the Dispute Tribunal. **The Advisory Committee stresses the importance of and encourages consultations among all relevant stakeholders, as appropriate, with a view to providing a comprehensive picture of the status of the administration of justice system to the General Assembly and, ultimately, ensuring its improved functioning.**

19. **Subject to its observations above, the Advisory Committee recommends that the General Assembly take note of the information provided in the report of the Secretary-General on the administration of justice at the United Nations.**

III. Activities of the Office of the United Nations Ombudsman and Mediation Services

Statistical overview of cases and trends in the Secretariat

20. In his report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/75/160), the Secretary-General indicates that, in 2019, the Office opened 2,238 cases originating in the Secretariat. This total, which includes mediation cases, represents a decrease of 538 cases (or 19.3 per cent) compared with 2018. The Office attributes this decrease to the following elements: (a) the postponement or cancellation of several missions; (b) changes in case reporting, as each group case is now counted as a single case; and (c) high mobility at the regional offices and staffing changes during the reporting period (ibid., paras. 22–24).

21. In his report, the Secretary-General indicates that, as in previous years, the three categories of issues most commonly reported to the Office in 2019 were evaluative relationships; job and career; and compensation and benefits (ibid., para. 26). Among systemic issues, the Secretary-General notes an increase in upward professional harassment or mobbing directed at female managers. According to the Ombudsman, a new female manager who is the subject of mobbing does not always find the support needed from senior management, in particular when she is hired from outside the Organization. Therefore, the Organization must provide adequate training to new incumbents so that they will feel fully supported (ibid., paras. 67–71). Regarding the resolution of cases of upward harassment, the Advisory Committee was informed, upon enquiry, that these cases were handled by the Office in various ways, including one-on-one interventions focusing on coaching, team interventions and engagement by senior management.

22. **The Advisory Committee notes with concern the recent increase in cases of upward harassment of female managers and trusts that detailed information on this issue will be included in the next report on the activities of the Office of the United Nations Ombudsman and Mediation Services.**

23. With regard to the issue of racism, it is indicated in the report that the Secretary-General requested the Ombudsman, together with the Office of Human Resources and in close collaboration with the staff representatives, to prepare a plan of action for a one-year campaign to promote knowledge, awareness and action on racism within the Organization and to produce conclusions that would allow the Secretary-General to take appropriate actions (ibid., para. 91). Upon enquiry, the Advisory Committee was informed that the Office is part of the related task force initiated by the Secretary-General, and that racism often arises as an underlying issue within a broader set of concerns regarding discrimination. Therefore, the specific number of cases that had an element of racism is difficult to establish. **The Advisory Committee trusts that detailed information on racism and the cases involving racial discrimination will be included in the next report on the activities of the Office of the United Nations Ombudsman and Mediation Services.**

24. In terms of mediation, it is indicated in the report that the Office opened 112 mediation cases in 2019, which represents an increase of 49 cases (or 77.7 per cent) compared with 2018. According to the Ombudsman, this increase results in part from the effort to triage cases that are better suited to structured mediation or facilitated dialogue. In addition to mediation cases, the Office conducted 78 cases of facilitated

conversation, mostly in the eight regional ombudsman offices. Moreover, the Mediation Service conducted four group cases involving a total of approximately 70 participants. Of the 114 mediation cases closed in 2019, a full resolution was achieved in 65 cases and a partial resolution in 2 cases (*ibid.*, paras. 30–34).

Non-staff personnel

25. In paragraph 16 of its resolution [73/276](#), the General Assembly requested the Secretary-General to establish a pilot project to offer access to informal dispute resolution to non-staff personnel. In paragraph 22 of its resolution [74/258](#), the Assembly requested the Secretary-General to prepare an overview of the functioning of this pilot project. Upon enquiry, the Advisory Committee was informed that, owing to the COVID-19 pandemic, the ability to make a thorough assessment of the pilot project has been hampered.

26. With regard to the recourse currently available to non-staff personnel, the Advisory Committee was informed, upon enquiry, that those personnel have access to the informal system of justice, with the exception of structured mediations resulting in a written settlement enforceable by the Dispute Tribunal. They do not have access to the formal system of the administration of justice with respect to appeals, but do have the right to file a formal complaint of harassment, including sexual harassment, discrimination and abuse of authority under the Secretary-General's bulletin [ST/SGB/2019/8](#), and to avail themselves of arbitration.

27. In the report, the Secretary-General indicates that the Office opened 332 cases involving non-staff personnel in 2019, which represents an increase of 28 cases (or 9.2 per cent) compared with 2018 ([A/75/160](#), para. 36). The most common issues raised by non-staff personnel were evaluative relationships; job and career; legal, regulatory, financial and compliance; and compensation and benefits (*ibid.*, para. 39). In addition, the disparity of treatment between staff and non-staff personnel is highlighted, notably in terms of the duty of care in hardship duty stations and crisis situations (*ibid.*, paras. 45–59). Upon enquiry, the Advisory Committee was informed that, for instance, in the aftermath of the earthquake in Haiti in 2010, differences in entitlements including medical insurance, the number of days of sick leave, disability pension benefits, access to United Nations clinics and compensation issues related to appendix D to the Staff Rules of the United Nations resulted in a difference in treatment between staff and non-staff personnel. The Ombudsman is of the view that the increased occurrence of this kind of situation reflects an increased use of non-staff personnel in hazardous duty stations and conflict zones.

28. The Advisory Committee notes the issues pertaining to non-staff personnel, in particular those related to the duty of care in hazardous duty stations and conflict zones. The Committee considers that the pilot project to offer access to informal dispute-resolution services to non-staff personnel should be prolonged and the overview on the functioning of this project, as requested by the General Assembly in its resolution [74/258](#), undertaken as soon as possible.

Impact of the coronavirus disease pandemic

29. With regard to the impact of the pandemic on the operation of the Office, the Advisory Committee was informed, upon enquiry, that between June and September 2020, 15 virtual missions had been conducted to field offices located in 67 countries. While useful, these virtual missions presented some challenges and limitations, namely: (a) some personnel, mainly national staff and non-staff personnel with limited access to the Internet, were not able to benefit from virtual visits; and (b) some staff did not feel comfortable raising confidential workplace issues in a virtual meeting. While many staff can be reached virtually, initial assessments indicate that

virtual outreach is not a viable substitute for purposes of conflict resolution. **The Advisory Committee notes the challenges of providing equal access to informal dispute-resolution services to all categories of personnel during the present pandemic and trusts that efforts will be made to improve remote access to national staff and non-staff personnel.**

30. Concerning the cases brought to the attention of the Office in relation to the pandemic, the Advisory Committee was informed that from 15 March to 30 September 2020, the number of cases related to incivility showed a 3 per cent decrease compared with the same period in 2018. According to the Ombudsman, the Administration has shown great flexibility on matters related to teleworking and has placed staff well-being at the centre of its consideration. However, given the increasing anxiety of staff with regard to their physical return to premises, the Office expects an increase in cases in the coming months.

Staffing matters/decentralization

31. In his report, the Secretary-General indicates that in its budget submission, the Office proposed a further decentralization of its mediation capacity from Headquarters to bring more services closer to field-based staff. In that regard, the Office proposed the abolishment of the post of Chief of Mediation Office (D-1), and the approval of two Conflict Resolution Officers (P-3) in Geneva (one post) and Nairobi (one general temporary assistance position) (*ibid.*, para. 95). Upon enquiry, the Advisory Committee was informed that the abolishment of the D-1 post is not related to early retirement of the incumbent, who holds a fixed-term appointment that expires on 31 December 2020. Should the General Assembly approve the recommendation to abolish the D-1 post, the Office would not be in a position to renew the fixed-term appointment of the current incumbent beyond the current expiration date.

32. **The Advisory Committee recalls its previous recommendation, which was based on the information provided during its review of the proposed programme budget for 2021 (A/75/7, para. I.18). The Committee noted the interconnected aspect of the proposal and that the proposed abolishment of the post of Chief of Mediation Office (D-1) in New York was essentially related to a voluntary retirement plan. Furthermore, the Committee noted that, should the incumbent's early retirement not take place, the availability of funding for the proposed P-3 post in Geneva would appear to be affected. The Committee also noted that, in terms of the proposed establishment of the post of Conflict Resolution Officer (P-3) in Geneva and the proposed temporary position of Conflict Resolution Officer (P-3) in Nairobi, the justifications did not provide sufficient qualitative and quantitative information. The Committee trusted that the proposed establishment of the post and position would be justified on its own merits. The Committee, therefore, trusts that the Secretary-General will provide further justification to the General Assembly at the time of its consideration of the proposed programme budget for 2021.**