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Administration of justice at the United Nations

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Report of the Internal Justice Council

I. Background

1. By its resolution 65/251, the General Assembly included the administration of justice at the United Nations in its agenda for the sixty-sixth session. In paragraph 52 of the resolution, it encouraged the Internal Justice Council to continue to provide its views on the implementation of the system of administration of justice and, if it deems it necessary, on how to enhance its contribution to the system. The Council has accordingly prepared the present report, which should be read together with its previous report (A/65/304), as much of the material set out in that report is still relevant and it would be duplicative to repeat it. The recommendations, which are summarized at the end of the present report, are very similar to those contained in the previous report.

2. The Internal Justice Council was established by May 2008 and its current members are the distinguished external jurists Mr. Sinha Basnayake (Sri Lanka, nominated by management) and Justice Geoffrey Robertson (United Kingdom of Great Britain and Northern Ireland, elected by staff), with Ms. Jenny Clift (Australia) a Senior Legal Officer in the International Trade Law Division, Office of Legal Affairs, as the staff representative, and Mr. Frank Eppert (Department of Management, United Nations Headquarters, New York) as the management representative. The current Chairperson is Justice Kate O'Regan, whose term of office as a judge of the Constitutional Court of South Africa expired in October 2009.

II. Introduction

3. The present report sets out the views and conclusions of the Internal Justice Council from monitoring the second year of the new system. Although financial constraints confined Council members to only one meeting in Geneva in 2011 to

* A/66/150.

prepare the present report, they have been in regular touch through e-mail with each other and with the main stakeholders in the system, and have been reading the judgments of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. In addition, the Chairperson of the Council was in New York for other reasons in March 2011 and was able to hold meetings with the Executive Director of the Office of Administration of Justice and other staff of that Office, the judges and registrar of the Dispute Tribunal in New York, with management and its lawyers, with staff unions and the Office of Staff Legal Assistance, and with other role players, including the Chief of the Management Evaluation Unit. In June 2011, members of the Council met in Geneva to prepare the present report. At the same time, they were able to hold meetings with the judges of the Dispute Tribunal (by videoconference), the registrars of the Dispute Tribunal (by videoconference), the judges of the Appeals Tribunal, management lawyers (by videoconference) and the Chief of the Office of Staff Legal Assistance (by videoconference).

4. The Internal Justice Council is broadly satisfied that the new system has continued to function well. Yet, it is convinced that the desperate shortage of resources is a growing threat to the new system and that if this insufficiency is not addressed, the new system may well become plagued by the very problems and delays it sought to avoid. The successful functioning of the system to date has been due to the commitment and hard work well beyond the call of duty of many of the role players, including the judges of the two Tribunals, as well as the staff of the registries, lawyers representing management and staff, and the team in the Office of Administration of Justice. It is clear to the Council that this level of commitment is unsustainable in the long run. However, it is of the view that if the necessary resources are made available, the new system will continue to improve as all role players come to fulfil the potential of the system.

5. The report is divided into seven sections: the Code of conduct for judges and a complaints mechanism to enforce it; the Tribunals, including the registries; the Office of Administration of Justice; the Office of Staff Legal Assistance; the Internal Justice Council; the Management Evaluation Unit and proposed amendments to the statutes of the Tribunals. Two other issues which were dealt with in the Council's report to the General Assembly at its sixty-fifth session, namely, the relationship between the formal system and the informal system, and disciplinary issues, are not addressed again, although the recommendations made in the Council's last report are repeated at the end of the present report.

III. Code of conduct for judges and a complaints mechanism

A. Code of conduct for judges

6. By paragraph 37 (c) of its resolution 62/228, the General Assembly decided that the Internal Justice Council should draft a code of conduct for the judges, for consideration by the Assembly. After full consultation with the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal on the text, the Council presented the Code of conduct for consideration by the Assembly at its sixty-fifth session (see A/65/86, annex, and the annex to the present report). However, the Code was not considered by the Assembly at that session. The Council notes that there is an urgent need for the Code of conduct to come into force, in

particular because complaints against judges have been received by the Council and the Code of conduct will be the basis for determining whether they have merit once a complaints mechanism is put in place.

B. Complaints mechanism

7. In paragraph 40 of its aforementioned report to the General Assembly at its sixty-fifth session (A/65/304), the Internal Justice Council noted that no mechanism for dealing with complaints against judges arising out of their conduct had been established. The Council considered this to be a matter that required "urgent attention". However, the matter was referred for further consideration during the sixty-sixth session. During the course of the last 12 months, the Council has become aware of several complaints against judges. Complainants have written to various bodies as well as to the Council, but there is no entity with a clear mandate to consider such complaints. In the view of the Council, this state of affairs needs to be rectified as soon as possible in order to protect the reputation of the Tribunals. Given the need to ensure independence, professionalism and accountability in accordance with the new relevant General Assembly resolutions, it is the view of the Council that the Assembly should mandate an independent institution to consider complaints that arise. Also in paragraph 40 of its previous report, the Council suggested that it would be an appropriate institution to investigate complaints that arise. After further consideration, the Council is of the view that it might be appropriate for the three external members of the Council (the Chairperson and the distinguished jurists nominated by staff and management, respectively), to form a complaints panel to consider complaints. The three external members of the Council are independent experts who are not only familiar with the system of justice but, as the members of the body that identifies suitable candidates for appointment as judges, are also familiar with the judges. Their knowledge and expertise would mean that complaints would be dealt with speedily and without requiring external consultants to be appointed. The Council suggests that all complaints be placed before the complaints panel. Many complaints will likely be determined without any need for the panel to hear oral evidence, but where a material factual dispute arises, oral evidence may have to be heard. All investigations would have to be conducted fairly and afford both the complainant and the judge an opportunity to be heard. Complaints deemed to be frivolous would be rejected immediately, but others would be investigated and adjudicated. The panel should be empowered to dismiss complaints after investigation, or if it considered the complaint to be well founded, to issue advice or guidance privately to the judge concerned, or a public reprimand, where appropriate. If the panel considered that dismissal might be warranted, it would prepare a report with a recommendation to that effect for the General Assembly. The procedure should make plain that the Assembly alone may dismiss the judge, but that it may only do so when it has received the report of an investigation by the panel. This process would protect judicial independence and provide for a transparent and fair disciplinary procedure.

IV. The Tribunals, including the registries

A. United Nations Dispute Tribunal

8. From 1 July 2010 to 31 May 2011, 170 new cases were received by the United Nations Dispute Tribunal.[1] In the same period, 195 judgments were handed down. Of the 169 cases which were pending in the Joint Appeals Boards and Joint Disciplinary Committees under the old system, and which were transferred to the Dispute Tribunal in July 2009, all but 8 have been finalized, and of the 144 cases transferred to the Dispute Tribunal from the United Nations Administrative Tribunal in January 2010, 55 are still pending. Therefore, 63 cases remain from those transferred from the old system. In considering these statistics, it should be noted that one "case" (that is, one complaint about a particular course of management conduct) can give rise to multiple orders by the Tribunals, for example an order for suspension of action or for disclosure of documents, each of which may be accompanied by a reasoned judgment. There may thus be far more judgments than there are "cases". The end of a "case" in both Tribunals will ordinarily involve an order with a final reasoned judgment on the merits. The various registries of the Dispute Tribunal have been recording these orders and judgments differently, and although they are aware of the problem and are working to resolve it, it is difficult at this stage to say with accuracy how many "cases" remain pending at 31 May 2011. The statistics also do not provide an accurate picture of how much work is being done by the Tribunals, as some "cases" may be quite simple, involving only one judgment, while others may involve numerous orders and judgments. Despite these difficulties in interpreting the statistics, the Internal Justice Council is satisfied that the Dispute Tribunal judges (six full-time judges, including the three ad litem judges, and two half-time judges) have only just been able to manage the new caseload that is being generated.

1. Need for three additional permanent judges

9. The Internal Justice Council reiterates the view expressed in paragraph 21 of its previous report (A/65/304) that the current number of judges needs to be maintained in order to cope with the number of cases being filed. Accordingly, three additional full-time judges need to be appointed to replace the three ad litem judges when the current terms of the ad litem judges expire. The Council is of the view that if additional judges are not appointed, the Dispute Tribunal will rapidly build up a backlog that will prevent it from administering justice promptly. The support staffing currently provided at each registry for the ad litem judges would also need to be retained permanently if three additional permanent judicial posts are established.

2. Undesirability of repeated extensions of the terms of ad litem judges

10. The term of ad litem judges, initially one year, from July 2009 to June 2010, has already been extended twice, from July 2010 to June 2011 and from July 2011 to December 2011. The Internal Justice Council is of the view that it is not desirable to

[1] At the time the present report was prepared, the statistics for June 2011 were not available. The new cases should be added to the 290 cases still pending before the United Nations Dispute Tribunal as at 30 June 2010.

reappoint ad litem judges continually. There are several reasons for this. First, the requirement of judicial independence is undermined by the repeated reappointment of ad litem judges. Secondly, the ad litem appointments were originally made to ensure that the backlog of cases from the old system could be addressed. By and large, this task has been completed. Thirdly, there are practical difficulties with repeated extensions of the terms of office of ad litem judges, as it makes it very difficult for them to arrange their affairs. The Council notes that when a second extension of six months was offered, one of the ad litem judges was unable to accept the extension, with unfortunate effects for the administration of justice. The short time period made it impossible to identify two or three candidates suitable for appointment for six months only. Moreover, if the concern of the General Assembly is not to "overstaff" the Dispute Tribunal, the Council notes that, if it becomes clear that six full-time judges are not necessary to staff the system, it will be open to the Assembly not to appoint new judges when the terms of judges expire or when judges resign. As the terms are staggered, the Assembly will be able to make this decision at least every three or four years. In the view of the Council, the flexibility to reduce the number of judges in the system that is available to the Assembly, together with the principled and practical shortcomings of repeated extensions of ad litem appointments, make plain that the use of ad litem appointments should be avoided.

3. Half-time judges of the Dispute Tribunal

11. From 1 July 2010 to 31 May 2011, the two half-time judges continued to be deployed between New York, Geneva and Nairobi as need dictated, with each judge working two three-month sessions per year. In each three-month session, two months were spent at one of the seats of the Dispute Tribunal. The remaining 30 days available to these judges as half-time appointees were spent at home preparing cases and writing judgments. In reality, however, the caseload and workflow demands of the Tribunals have meant that the judges spend up to 60 days undertaking that work, up to 30 days of which remains unremunerated. The half-time limitation does not provide the flexibility that would enable the judges to do that additional work, as required, on a remunerated basis.

12. Having reconsidered its previous recommendation for an additional half-time judge (recommendation 2) in the light of the practical experience of the Tribunals since its last report, the Internal Justice Council has noted that the need for an additional half-time judge might be avoided if the statute of the Dispute Tribunal were to be amended to provide for two part-time judges, instead of two half-time judges. Half-time judges are budgeted for on the basis of 50 per cent of the cost of full-time judges. Were the provision for half-time judges amended to provide for part-time judges and were the budget for the existing two half-time judges increased from 50 per cent to 75 per cent of the cost of a full-time judge, the need for a third half-time judge might be avoided, as it would mean the existing half-time judges could devote more than six months a year to the Dispute Tribunal, as required by caseload and workflow demands. Moreover, such a change would resolve most of the issues raised in paragraph 23 of the Council's previous report. This change would require an amendment to the statute of the Dispute Tribunal.

4. Plenary sessions of judges of the Dispute Tribunal

13. To date, the judges of the Dispute Tribunal have held five one-week plenary sessions (New York, July 2009; Geneva, December 2009; Nairobi, June 2010; Geneva, December 2010; and New York, June 2011). The Internal Justice Council understands that the possibility of holding a second plenary session in 2011 is unlikely owing to financial constraints. For the reasons set forth in paragraph 27 of its previous report, the Council reiterates its recommendation that the travel funding of the Tribunal be enhanced to ensure that at least two plenary sessions of the Tribunal, including its registrars, can be held annually, preferably on the basis that those plenary meetings are held in turn at the three seats of the Tribunal to support the decentralized nature of the system.

5. Support services for the Dispute Tribunal

14. In paragraph 30 of its previous report, the Internal Justice Council outlined a number of reasons for supporting an increase in the administrative budget of the Dispute Tribunal. A further year's practical experience with the operation of the Tribunal has underscored the need for that increase in order to ensure that adequate transcription, videoconferencing, interpretation and translation services are available at each of the seats of the Tribunal, and for a budget to be provided for the acquisition of legal texts and online legal resources. The Council notes that a sum of $1 million was allocated to the system of the administration of justice to assist with interpretation and translation services, but records with dismay that this sum does not seem to have been allocated to the internal justice system and translation and interpretation services remain imperilled by resource constraints.

15. The Internal Justice Council is also deeply concerned by the absence of reliable recording and transcription machinery for oral testimony. In interviews with judges and registrars of the two Tribunals, it became clear that, in many cases, the United Nations Administrative Tribunal is not presented with a full and reliable transcription of the oral testimony presented in proceedings of the Dispute Tribunal. Where the appeal turns on questions of fact, which have to be determined on the basis of the oral testimony in the Dispute Tribunal, the Council is of the view that a professional system of justice requires a reliable transcription of that oral testimony. The Council is of the view that this issue needs to be addressed urgently.

6. President of the Dispute Tribunal

16. The Internal Justice Council reiterates the view expressed in paragraph 31 of its previous report that appropriate arrangements should be made for administrative assistance to the President of the Dispute Tribunal.

7. Language of proceedings

17. As indicated in paragraph 32 of its previous report, the Internal Justice Council has asked the Office of Administration of Justice and the Registrars to monitor the language used by staff members in filing cases before the Tribunal. The Council notes that only two cases in French have been lodged in the New York registry (the only seat of the Dispute Tribunal that does not have a French-speaking judge) and that these cases have been handled with the assistance of one of the French-speaking judges at one of the other locations of the Dispute Tribunal. The Council is therefore

satisfied that adequate arrangements have been made for applicants to have their cases handled in the working language of the United Nations that they choose.

B. United Nations Appeals Tribunal

1. Statistics on cases

18. From 1 July 2010 to 31 May 2011, the Appeals Tribunal received 113 new cases. In the same period, it handed down 95 judgments. As at 31 May 2011, 95 cases were pending before the Tribunal.

2. Number of annual sessions of the Appeals Tribunal

19. Although the initial budget for the Appeals Tribunal provides for two two-week sessions per year, in 2010 the Tribunal held three two-week sessions to dispose of its caseload and it plans to do the same in 2011. While this requirement may not need to be a permanent feature, the Internal Justice Council is of the view, as stated in paragraph 33 of its previous report, that it is important to ensure that the Appeals Tribunal is able to hear and determine appeals from the Dispute Tribunal promptly so as to avoid the lengthy delays encountered in the previous appeal system. One of the reasons for two-week sessions, rather than longer sessions, is that they enable judges from national systems more easily to continue serving as judges in their home jurisdictions while also serving as judges of the Appeals Tribunal. Enabling judges who are currently serving in national systems to be judges of the Appeals Tribunal would enhance the professionalism of the internal justice system. Accordingly, it is the view of the Council that provision should be made for the Appeals Tribunal to have three two-week sessions per year, if three sessions are necessary. The Council will continue to monitor the number of sessions needed.

3. Remuneration of judges of the Appeals Tribunal

20. The Internal Justice Council notes that in paragraph 34 of its previous report, it recommended that the Assembly keep the system of remuneration under review. As will be recalled, judges of the Appeals Tribunal are paid on the basis of judgments they write (the principal author of a judgment receives $2,400 per judgment and the other two participating judges receive $600 per judgment). This system was adopted from the International Labour Organization Administrative Tribunal without any examination of its appropriateness either there or for the new system. The Council is concerned that to have an appeal court of three judges hearing appeals from very experienced full-time judges of the Dispute Tribunal, where one of the three judges is paid $2,400 for writing the judgment and the others are paid $600 for participating in it, might create the perception that the three appellate judges are not contributing fully to the appellate decision. Moreover, the payment system overlooks the fact that on a collegial bench, the three judges should work closely together to determine the case and take equal responsibility for it. In addition, the judges of the Appeals Tribunal do not only write judgments, they also perform a range of other tasks that are unremunerated under the current system. Most importantly, judges of the Appeals Tribunal take turns as duty judges for a month at a time when the Tribunal is not sitting and, during that period, may need to issue as many as 30 interlocutory orders in cases pending before the Tribunal. In the view of the Council, this state of affairs is not desirable. At present, such work is not

remunerated at all. It is the view of the Council that it may be appropriate to consider a more equitable system for remuneration of judges. For example, judges could be paid a lump-sum amount annually in respect of all the work they perform, including the three two-week sessions per annum and all additional work.

4. Support staff of the Appeals Tribunal

21. The Internal Justice Council notes that the support staffing of the Appeals Tribunal referred to in paragraph 36 of its previous report has been reinforced by the addition of one Legal Assistant position (General Service (Other level)) for one year to be funded through general temporary assistance, in accordance with paragraph 49 of General Assembly resolution 65/251. While acknowledging this addition, the Council is of the view that the Appeals Tribunal remains disturbingly understaffed with regard to legal expertise. The experience of the last 12 months of the Tribunal is that, with its current staffing, the registry of the Tribunal continues to be unable to prepare the legal memorandums and summaries of issues to the standard and with the speed necessary for the judges to carry out their work effectively and efficiently. The Council reiterates its request to the Assembly to reconsider the recommendations of the Redesign Panel and of the Secretary-General with respect to the staffing of the Appeals Tribunal, so that it could have three legal officers, at least one of whom should be competent in French, and three legal assistants.

C. Issues common to the Dispute Tribunal and the Appeals Tribunal

1. Status of judges of the Dispute Tribunal and the Appeals Tribunal

22. In its previous report, the Internal Justice Council recommended that the judges of the Appeals Tribunal be accorded an appropriate United Nations ranking, such as Assistant Secretary-General (recommendation 13). This step would not affect salaries, as judges of the Appeals Tribunal do not receive salaries. After further consideration of the manner in which this matter is addressed in other international tribunals, the Council is of the view that it is desirable, in order to attract to its ranks the ablest judges from national superior courts and to acknowledge the important work performed by the two Tribunals, that judges of both the Appeals Tribunal and the Dispute Tribunal be accorded the rank of Assistant Secretary-General.

2. Judicial oath of office and regulations that bind judges

23. In paragraph 38 of its previous report, the Internal Justice Council raised the issue of the oath of office taken by judges of both the Dispute Tribunal and the Appeals Tribunal upon their appointment. The separate oath of office proposed was not considered by the General Assembly at its sixty-fifth session, but the Council repeats that it is important that an oath of office be developed which acknowledges the duty of judges to observe the Code of conduct and to act independently and fairly and without fear, favour or prejudice. If authorized by the Assembly, the Council is willing to prepare a draft judicial oath for consideration by the Assembly at its sixty-seventh session.

24. In paragraph 38 of its previous report, the Internal Justice Council also raised the issue of the status of judges and the regulation of their relationship with the United Nations through the Regulations Governing the Status, Basic Rights and

Duties of Officials other than Secretariat Officials and Experts on Mission (ST/SGB/2002/9). That issue was not taken up by the General Assembly at its sixty-fifth session. The Council reiterates its view that while the judges of the Dispute Tribunal should enjoy the privileges and immunities conferred on officials other than Secretariat officials under the Convention on the Privileges and Immunities of the United Nations, and the judges of the Appeals Tribunal the privileges and immunities conferred on experts on mission, it is crucial to their independence that the Code of conduct for judges alone should regulate their ethical responsibilities.

3. Jurisprudential performance

25. The Internal Justice Council is keeping abreast of the jurisprudence emanating from the new system. The Council considers that analysis by legal academics would be an important mechanism for improving jurisprudential quality and for judicial accountability. Accordingly, it is cooperating with several universities to hold a judicial symposium and an academic conference in June 2012 on the new system of justice.

4. Code of conduct for all legal representatives

26. In paragraph 41 of its previous report, the Internal Justice Council noted that it would be appropriate for a code to be adopted to regulate the conduct of all legal representatives appearing before the Tribunals. The Council is of the view that the code needs to be developed through an inclusive process that embraces legal representatives from within the Organization, those that represent both management and staff, and legal representatives from outside the Organization as well as the judges of the Tribunals. The Council therefore recommends that the General Assembly authorize the Council to convene a process to draft a Code of conduct for legal representatives to be presented to the Assembly at its sixty-seventh session. The Code of conduct should not only include the rules that should regulate conduct of legal representatives, but also contain appropriate routes for the enforcement of the Code, if it is considered necessary, by reference to a complaints panel comprising the three “distinguished jurist” members of the Council (see para. 7 above). Such a Code would, among other things, like the Code in operation at the International Criminal Court, require that legal representatives be able to speak either good English or French, or both, the working languages of the United Nations.

5. Travel

27. Since its previous report, the Internal Justice Council has continued to monitor the issue of travel in relation to the Tribunals and the Office of Administration of Justice. Experience over the last 12 months reinforces the need for the travel budget to meet the requirements as discussed in paragraph 44 of that report.

6. Courtrooms and office space

28. While there has been progress in the last year in the provision of courtrooms for the Tribunals, there is still no courtroom in Nairobi, although a suitable space has been identified. In New York, although a courtroom has been completed, it is not yet functional and in Geneva, although the courtroom is functional, it has no facilities for the regularly required interpretation services. The problems in Geneva

and Nairobi appear to be a result of funding constraints. The Internal Justice Council again repeats that if the new system is to be independent, professional and accountable, functional courtrooms with the following facilities need to be provided: two entrances (one for judges, and one for legal representatives and members of the public); facilities for the recording of proceedings; facilities for videoconferencing so that testimony can be taken from witnesses in other duty stations; and facilities for simultaneous interpretation. In addition, judges of both the Dispute Tribunal and the Appeals Tribunal working at a duty station need to be provided with offices equipped with telephones, computers and Internet access. Finally, it is the understanding of the Council that as yet the needs of the internal justice system have not been included in the capital master plan, in place for the refurbishment of the Headquarters building in New York. In the view of the Council, the needs of the internal justice system need to be included in the capital master plan as a matter of urgency.

7. Open hearings

29. Again the Internal Justice Council notes the importance of the principle of open justice to the new system of internal justice. The Dispute Tribunal continues to hold many open hearings, despite the absence of permanent courtrooms (see para. 28 above), but the Appeals Tribunal has held only two open hearings during each session. In the view of the Council, where a party wishes to have an open hearing, such a hearing should be held, unless there are good reasons for not doing so. Attendance at the open hearings held so far has varied, but at least on some occasions they have been well attended. The Council considers that this matter should be kept under review.

V. Office of Administration of Justice

30. The Office of Administration of Justice continued to be the focal point for the functioning of the system of justice. The most important functions of the Office were

- To guarantee the independence of the system, by overseeing the work of the Tribunals and their staff, and their interaction with the rest of the Secretariat
- To support the system by providing the administrative services and facilities without which the system could not function
- To help in achieving equality of arms within the system by assisting staff through the Office of Staff Legal Assistance.[2]

A. Operational aspects

31. The Internal Justice Council notes that the website of the Office of Administration of Justice is functioning efficiently, giving staff access to the case law of the Tribunals, including the capacity to search for judgments and orders of the Tribunals. It also notes with satisfaction the launching by the Office from 6 July 2011 of a web-based electronic case management system, which includes a capacity

[2] A more detailed description of the operation of the Office is contained in A/65/304, para. 53.

for staff members to file and monitor cases from any duty station, an important gain within a decentralized organization like the United Nations.

32. The Office of the Executive Director has a very limited support staff in relation to its many duties, consisting essentially of a special assistant (P-4), a General Service-level staff member and two information and technology officers. The Internal Justice Council believes that some strengthening of this support staff is justified.

B. Independence of the Office of Administration of Justice and the status of the Executive Director

33. The value of the justice system to the Organization is greatly dependent on the perception by staff and management that it is independent and impartial. Stakeholders are then discouraged from taking or insisting on unreasonable or extreme actions or positions, since such actions or positions might come under scrutiny in the Tribunals, a public arena where individuals could be held accountable. The official on whom much of the responsibility for trying to maintain this independence and impartiality rests is the Executive Director of the Office of Administration of Justice. He or she is the interlocutor to whom both the Tribunals and the departments turn when problems occur in their interface. Over the past three years, the Internal Justice Council has become increasingly convinced that the status of the Executive Director is of great importance. He or she must be able to speak freely and as an equal to the higher echelons of the Secretariat, and to the judges as well. It is for these reasons that the head of the informal system of justice, the Ombudsman, has been accorded the status of Assistant Secretary-General, and the Council believes that it is appropriate that the head of the formal system should have the same status.[3]

C. Outreach and coordination

34. The Internal Justice Council has been informed that there is still a lack of understanding in some duty stations about how the formal system of justice operates, which results in delays and dismay when stakeholders engage with the system. The Council therefore supports efforts by the Office of Administration of Justice and the Secretary-General to explain the system to stakeholders.[4]

VI. Office of Staff Legal Assistance

A. Structure and mandate of the Office of Staff Legal Assistance

35. The Office of Staff Legal Assistance is located within the Office of Administration of Justice. It consists of seven Professional-level legal officers funded from the regular budget, three located in New York and one at each of the duty stations located in Addis Ababa, Beirut, Geneva and Nairobi. It also has three General Service staff members, similarly funded, who are all located in New York.

[3] See also A/65/304, para. 57, where the recommendation was made, supported by further details.

[4] A fuller description of the need for outreach and training is contained in A/65/304, para. 60.

In addition, in 2010 it was provided with an additional staff member, located in Nairobi, to support cases originating in field missions, funded for one year through the Peacekeeping Support Account. The Office of Staff Legal Assistance was established in recognition of the fact that the United Nations is an exceptional employer and should support claims by staff even against itself in the interest of improving the quality of decision-making within the Organization as well as achieving equality of arms within the legal system.

36. The current mandate of the Office of Staff Legal Assistance[5] is to provide professional legal assistance for staff, which is recognized as being critical for the effective and appropriate utilization of the available mechanisms within the system of administration of justice (see resolution 62/228, paras. 12-15). In particular, its role is to assist staff and their volunteer representatives in processing claims through the formal system of administration of justice (see resolution 65/251, para. 38).

B. Current functioning of the Office of Staff Legal Assistance

37. The Office of Staff Legal Assistance can only discharge its mandate within the constraints of the number of its staff. It has also determined internally that it may decline to provide assistance where it determines that a case lacks legal merit, or has little chance of success before the Tribunals. The Internal Justice Council noted last year that requests by staff with meritorious claims far exceeded the capacity of the Office to consider them (see A/65/304, para. 63).

38. The Internal Justice Council recognizes that the General Assembly never intended the Office of Staff Legal Assistance, with its limited staff, to bear the sole responsibility for staff legal assistance. In that regard, the Assembly has encouraged staff to help in the work of the Office, including by providing volunteer professional counsel (see resolution 65/251, para. 37; see also A/65/304, para. 64). Moreover, it has requested the Secretary-General to submit proposals for a staff-funded scheme under which legal assistance would be provided to staff (see resolution 65/251, para. 40). The first avenue of help to the Office has not met with great success. While the Office has been assisted by some internal volunteer counsel, legal interns and pro bono external counsel, such assistants have not been of appreciable help, in part because they have been few, in part because pro bono assistance has usually been available only at Headquarters duty stations, and in part because the specialized knowledge necessary for staff-management claims processing is not available outside the Organization (see also A/65/304, para. 68). As to the second avenue, annex I to the report of the Secretary-General on the administration of justice at the United Nations (A/66/190) puts forward different models for staff funding of the Office, noting the advantages and disadvantages of each model. The Secretary-General concludes that all the models put forward require further consideration, after the Assembly has taken a decision in principle on which model it considers most suitable. Accordingly, help for the Office is unlikely to come anytime soon.

[5] In para. 56 of its resolution 65/251, the General Assembly decided to revert to the mandate and functioning of the Office at its sixty-sixth session.

C. Reasons for assisting the Office of Staff Legal Assistance

39. Assisting the Office of Staff Legal Assistance will entail increased funding. However, there are good reasons for supporting the Office. For example, its lawyers do not waste the time and limited resources of the legal system by pursuing bad cases (see para. 37 above). Moreover, since its lawyers are familiar with all the recourse mechanisms available, they choose the most cost-effective one, taking into account the needs of the case, and provide the help necessary for that method of recourse. Office staff may provide advice on negotiations with management, or on mediation through the informal system of justice, or represent a staff member in negotiation or mediation. If there is litigation, it will be as quick and efficient as possible, increasing accountability. Furthermore, Office staff on fixed salaries have no incentive to prolong proceedings (see also A/65/304, para. 62).

40. The workload of the Office of Staff Legal Assistance has continued to grow. At 1 July 2010, the active cases in its docket numbered 432.[6] At 31 May 2011, they numbered 570. It is fairly safe to predict that this workload will remain more or less constant, with cases being disposed of and new cases coming in. If divided equally among the eight legal officers in the Office, the workload translates into 71 cases per officer. The Internal Justice Council is of the view that this burden is excessive, precludes the best professional attention being given to cases and needs to be reduced.

D. Suggested remedies

41. It is suggested, in the first place, that the legal officers located in Addis Ababa, Beirut and Geneva each be provided with one General Service support staff member, together with one support staff member for the two legal officers located in Nairobi. This would greatly increase the productivity of the legal officers, as they would be relieved of multifarious administrative and secretarial burdens (see also A/65/304, paras. 66 and 71). Indeed, it is very probable that no other legal officers functioning as such within the United Nations system do so without any secretarial or administrative support. It is suggested that these be permanent posts.

42. It is noted that only one of the eight Legal Officer posts in the Office of Staff Legal Assistance is above the P-3 level.[7] In that context, it is suggested that two Legal Officer posts at the P-4 level be provided. The additional posts would alleviate the workload of the eight legal officers. Moreover, they would provide a career development path for the five legal officers at the P-3 level who, without

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[6] The Internal Justice Council has been informed that a “case” for the Office of Staff Legal Assistance refers to any of the following: providing assistance or acting as counsel of record before bodies of the formal justice system (the Management Evaluation Unit, the United Nations Dispute Tribunal or the United Nations Appeals Tribunal); providing legal guidance and summary legal advice; assisting a staff member in achieving an informal resolution to a dispute, which may involve consultations with the staff member and discussions and negotiations with third parties, or referral to other actors in the system, including the Office of the Ombudsman or staff unions.

[7] The Chief of the Office of Staff Legal Assistance, located in New York, is at the P-5 level. The comparatively low level of the legal officers in the Office contrasts with the levels (P-5, D-1, D-2) of the legal officers who provide advice to management. See also A/65/304, para. 69, footnote 20.

such a path, would after some time be compelled to leave the Office, resulting in a serious diminution of experience and expertise (see also A/65/304, para. 70). One of the additional officers should be bilingual (French/English) and may be located in Geneva, which is a busy duty station. They should be supported by the same General Service posts proposed above. Furthermore, the posts could be established in the first instance for a period of three years, after which the source of funding for them may be reviewed in the light of the mechanism for staff-funded assistance to the Office, which would by then have been adopted.

E. Equality of arms

43. The Internal Justice Council repeats that equality of arms is an important principle that should guide the development of the internal system of justice. Both the Office of Staff Legal Assistance and management legal representatives assert that they have insufficient staff members to represent their respective clients adequately before the new Tribunals. The Council considers this to be a matter of concern. The need to maintain a reasonable equality of arms persists and the Council intends to keep the matter under review in future years.

VII. Internal Justice Council

44. The Internal Justice Council was only able to hold one meeting from July 2010 to June 2011, but it held numerous teleconferences to set in place the process for selecting suitable candidates to be presented to the General Assembly at its sixty-sixth session in order to fill the vacancies that will arise on 1 July 2012 when the terms of office of five judges (one full-time and one part-time judge of the Dispute Tribunal and three judges of the Appeals Tribunal) will expire.

45. During the course of 2011, the Internal Justice Council was contacted by several persons wishing to lodge complaints against judges of the Dispute Tribunal. Each time, the Chairperson of the Council informed the person concerned that the Council did not have a mandate to deal with such complaints and it was clear that no other body had such a mandate. The Chairperson also wrote to the President of the General Assembly to draw his attention to this problem. In the absence of an express mandate from the Assembly, it was the view of the Council that it did not have jurisdiction to deal with such complaints. This matter has been raised in paragraph 7 above.

46. In paragraph 76 of its previous report, the Internal Justice Council considered that ordinarily two meetings of the Council needed to be held per year to review adequately the operation of the internal justice system. The Council remains of that view and recommends that resources be provided for two meetings per year. Moreover, if the Council is to undertake additional tasks, such as those proposed in the present report (see paras. 7, 23 and 26 above), it may need additional meetings.

47. The Internal Justice Council notes that the term of office of current members of the Council expire in early 2012. Steps will need to be taken by both staff and management to appoint new members.

VIII. Management Evaluation Unit

A. Structure of the Management Evaluation Unit

48. The origins of the Management Evaluation Unit lie in resolution 62/228, by which the General Assembly emphasized the need to have in place a process for management evaluation that is efficient, effective and impartial. In the same resolution, the Assembly reaffirmed the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted. Pursuant to the resolution, a Management Evaluation Unit was established within the Department of Management. It currently consists of a Chief (P-5), three legal officers (P-4), another legal officer financed through discretionary funding and three legal assistants at the General Service level.

B. Relationship to the formal justice system

49. The Management Evaluation Unit is integrated into the formal system of justice in that, in certain cases,[8] an applicant wishing to file an application with the United Nations Dispute Tribunal is required, prior to the filing, to submit the administrative decision he or she is contesting to the Unit (see article 8 (1) (c) of the statute of the Dispute Tribunal). When a management evaluation is so required, certain deadlines apply to the filing of the application.[9] Deadlines also apply for responses by the Unit to a request for an evaluation.[10]

C. Objectives and functioning of the Management Evaluation Unit

50. The management evaluation system and the Management Evaluation Unit try to achieve many valuable objectives. For example, where the contested administrative decision is illegal or otherwise vulnerable, the Unit tries to negotiate a settlement and is often successful. In this way, it may remove pressure from the judicial system. This may also happen for another reason: it has been estimated that, as at 31 December 2010, where the Unit had taken a view on a contested decision and the case had then proceeded to litigation, the view of the Dispute Tribunal had

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[8] Staff rule 11.2 (a) states: "A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), **shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision**" [emphasis added]. Staff rule 11.2 (b) states: "A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process **is not required to request a management evaluation**" [emphasis added].

[9] The application must be filed within 90 calendar days of the receipt by the applicant of the response to his or her submission. If no response is received, the application must be filed within 90 days of the expiry of the response period for the submission for management evaluation (see article 8 (1) (d) (i) a) and b) of the statute of the Dispute Tribunal.

[10] The deadlines for responses are 30 calendar days after the submission of the dispute to management evaluation for disputes arising at Headquarters and 45 days after submission for disputes arising at other offices (see article 8 (1) (d) (i) b) of the statute of the Dispute Tribunal.

coincided with that of the Unit in a large majority of cases. Staff therefore may be dissuaded from litigating after the Unit stage. Furthermore, the work of the Unit provides the Department of Management with an overview of contested management decisions, enabling it to detect and correct systemic problems in administration, and to hold to internal account officials whose conduct has been egregious. Moreover, the responses of the Unit are reasoned, set out the facts of the case, a summary of the comments of the decision maker, the applicable legal rules and jurisprudence, and, where the Unit considers the contested decision to be proper, the reasons why the Unit considers it to be so. This procedure provides transparency and, even when staff may disagree with the conclusion of the Unit, negates the feeling that staff sometimes might have that, when in a dispute with management, they are in the grip of an impersonal machine. Such a perception can help to improve staff morale.

51. The impression the Internal Justice Council has obtained is that the Management Evaluation Unit is functioning efficiently, but is under great strain because of the volume of its work and the tight deadlines applicable to it. The Council is supportive of initiatives to strengthen the Unit.

D. The Management Evaluation Unit and constraints imposed by the statute of the United Nations Dispute Tribunal

52. There appear to be some cases when the 30-day and 45-day deadlines noted above imposed by the statute of the Dispute Tribunal for providing a response, may create difficulties: where resolving the dispute entails gathering a large amount of information or where information is difficult to obtain; where the Management Evaluation Unit would like to facilitate resolution of the dispute through direct negotiation between the parties, which becomes prolonged; and where staff make supplementary submissions after filing their initial submission for management evaluation. The statute does not contain any provision for the extension of the deadlines; indeed, the General Assembly seems to have intended the deadlines to be immutable, because it has provided in article 8 (3) that the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.[11] The reason for this may have been staff concern that management evaluation in the past had caused delays in the system. This was also the view of the Redesign Panel. It is important that management evaluation should not cause delays again.

53. Nevertheless, the Internal Justice Council considers that it should be possible to extend deadlines where both parties agree or where the Dispute Tribunal considers that exceptional grounds to do so exist (see para. 57 below). In permitting the extension of deadlines only in these limited circumstances, a gradual slide into the situation that prevailed under the former system where reviews by management became greatly delayed is unlikely to happen. The Council notes that the Funds and Programmes have stated that they are able to meet the statutory deadlines. The Council therefore believes that the Management Evaluation Unit would be assisted to overcome the difficulties noted above if it is given the authority to extend

[11] However, the Secretary-General, in staff rule 11.2 (d) has provided: “The deadline [for the response to management evaluation] may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.”

deadlines should both parties agree, and the Dispute Tribunal is given the authority to extend deadlines if exceptional circumstances exist (see below). It also considers that it is necessary to strengthen the capacity of the Unit by expanding its cadre and by strengthening its authority to demand that information be provided to it rapidly by departments or offices and its authority to fast-track negotiations between departments and offices and staff, and by placing limits on the supplementary submissions that staff can make.

IX. Review of statutes

54. In paragraph 32 of its resolution 63/253, the General Assembly decided to carry out, at its sixty-fifth session, a review of the statutes of the Tribunals, in the light of experience gained. That review was not conducted. The Internal Justice Council proposes the following minor amendments to the statutes in addition to its important proposal, contained in paragraph 7 above, that a mechanism for dealing with complaints against judges be established (which would have to be provided for in the statutes), and to its proposal, contained in paragraph 12 above, that the reference to "half-time judges" in the statute of the Dispute Tribunal be altered to refer instead to "part-time judges".

55. Article 4(3)(b) of the statute of the Dispute Tribunal provides that judges of the Dispute Tribunal shall "possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions", and article 3(3)(b) of the statute of the Appeals Tribunal provides that judges of the Appeals Tribunal shall "possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions". It is not clear whether the phrase "or its equivalent" in both provisions refers to an equivalence to experience in administrative law, or experience equivalent to judicial experience in a national jurisdiction. In paragraph 16 of its previous report, the Internal Justice Council noted that in some member States, employment law disputes are decided by arbitrators and the Council took the view that candidates with such experience were appropriately qualified. Moreover, the Council noted that the two provisions as currently drafted may be understood to exclude experience on such other international tribunals as the International Labour Organization Administrative Tribunal, the World Bank Administrative Tribunal and the International Monetary Fund Administrative Tribunal, although the work on such tribunals might well be considered relevant experience. In the view of the Council, it would be helpful if the language of the statutes were revised to provide clarity. The Council would suggest a possible formulation to resolve both difficulties as follows: candidates should possess at least 10 (for the statute of the Dispute Tribunal) or 15 (for the statute of the Appeals Tribunal) years of judicial or adjudicative experience relevant to the work of the pertinent Tribunal in the United Nations internal justice system either in a national jurisdiction or in an international tribunal.

56. For the reasons outlined in paragraph 29 of its previous report, the Internal Justice Council reiterates its recommendation that the statutory provision (article 10(9) of the statute of the Dispute Tribunal) requiring the President of the Appeals Tribunal to authorize three-judge panel hearings of the Dispute Tribunal be revised to allow determination of that need by the President of the Dispute Tribunal.

57. A further amendment concerns article 8(3) of the statute of the Dispute Tribunal, which allows the Tribunal to waive or suspend deadlines in exceptional cases, but expressly excludes that authority in relation to time limits for management evaluation. As noted above (see paras. 52 and 53), the experience of the Management Evaluation Unit has shown that there are exceptional cases in which it would be appropriate for the Tribunal to have the power to alter the management evaluation deadline. The Internal Justice Council is of the view that such a change would enhance the usefulness and flexibility of the Dispute Tribunal. The Council also considers that the statute should be amended to permit the Unit to extend the deadlines where both parties to the dispute agree.

58. The Internal Justice Council considers it to be desirable to amend article 7(1) of the statute of the Dispute Tribunal and article 6(1) of the statute of the Appeals Tribunal to require the Tribunals to provide interested parties an opportunity to make representations on proposed amendments to the Tribunals' rules of procedure. The Council suggests that this could be achieved by issuing notification of the proposed amendment on the respective Tribunal's section of the website of the Office of Administration of Justice and affording interested parties 30 days within which to forward comments to the Registrars of the relevant Tribunal. Moreover, the Council would suggest that two sentences be inserted in each set of rules, as follows: "Any proposed amendment to the rules must be published on the Tribunal's section of the website of the Office of Administration of Justice, together with the date of publication. Interested parties may, within a period of 30 days from the date of publication of the notice, forward any comments to the Principal Registrar whose name and contact details shall be furnished in the notification."

59. A final suggestion for the amendment of the statutes relates to an issue also raised in the previous report of the Internal Justice Council, that is, the need to consult the Presidents of the Dispute Tribunal and the Appeals Tribunal when the budget is being prepared (see A/65/304, para. 48). In the view of the Council, both statutes should be amended to include a provision stipulating that the Executive Director of the Office of Administration of Justice will consult the Presidents of the Dispute Tribunal and the Appeals Tribunal when compiling the budget of the Office and give them a reasonable opportunity to provide information relating to the needs of the Tribunals.

60. Apart from the foregoing changes, it is the view of the Internal Justice Council that there is no need at this stage for further amendment of the statutes. The Council considers that it would be advisable for the General Assembly to review the internal system of justice again in two years' time during the sixty-eighth session.

X. Conclusion and recommendations

61. In conclusion, the Internal Justice Council is of the view that the new system is working as well as its resources allow and better than could be expected given that it has only been operating for two years. The success of the new system remains largely a result of the dedication of the judges, Registrars and their staff, the staff of the Office of Administration of Justice and lawyers from both the Office of Staff Legal Assistance and management who appear before the Tribunals. The Council commends all these role players for their hard work and commitment in the first year of the reformed internal justice system.

62. The recommendations which the Internal Justice Council has made in the preceding sections of the present report, which are summarized in the section that follows, address the challenges currently facing the system. The Council regrets that many of the recommendations will require some additional resources. In making the recommendations, the Council is acutely aware of the financial constraints facing the General Assembly and it has therefore recommended only those things it considers essential for the effective functioning of the new system to ensure that it is independent, professional and accountable.

Summary of recommendations

The Internal Justice Council recommends that:

Code of conduct for judges and complaints mechanism

1. The Code of conduct for judges be considered by the General Assembly at its sixty-sixth session so that it may come into force as soon as possible (para. 6);

2. The General Assembly establish a complaints panel, comprising the Chairperson and the two "distinguished external jurist" members of the Internal Justice Council, to hear and determine any complaints that a judge has breached the Code of conduct or is otherwise unfit to occupy judicial office within the internal justice system. The complaints panel shall, if it considers the case so warrants, inquire into it and, where appropriate, warn or reprimand the judge. In hearing and determining complaints, the complaints panel shall observe the precepts of natural justice and fairness. Should the panel conclude that dismissal from office is warranted, it shall make a full report of its investigation, including its recommendation to the Assembly (para. 7);

Tribunals

3. Three additional permanent full-time judges be appointed to the United Nations Dispute Tribunal to replace the ad litem judges when the terms of the ad litem judges expire (paras. 9 and 10);

4. The provisions of the statute of the United Nations Dispute Tribunal be amended to provide for two part-time judges, rather than two half-time judges, and the part-time positions be funded up to 75 per cent of full-time judges (para. 12);

5. Provision be made for judges and Registrars of the United Nations Dispute Tribunal to hold two one-week plenary sessions per year (para. 13);

6. Adequate provision be made for videoconferencing, interpretation, translation and acquisition of legal research resources (para. 14);

7. Adequate provision be made to ensure that oral testimony presented in the United Nations Dispute Tribunal can be transcribed, where necessary, as a record for appeal (para. 15);

8. The President of the United Nations Dispute Tribunal be provided with administrative support (para. 16);

9. Provision be made for the United Nations Appeals Tribunal to hold three two-week sessions annually (para. 19);

10. The remuneration paid to judges of the United Nations Appeals Tribunal be reviewed, with consideration given to an annual lump-sum salary for all work performed (para. 20);

11. Judges of the United Nations Appeals Tribunal and half-time judges of the United Nations Dispute Tribunal be paid a monthly stipend to adequately cover the costs of Internet connectivity, computer usage and related administrative expenses (A/65/304, paras. 26 and 34 (c));

12. The General Assembly invite Member States to review their rules relating to remuneration for national judges in order to enable national judges to receive remuneration if appointed to a recognized international tribunal (A/65/304, para. 34 (a));

13. The staffing complement of the United Nations Appeals Tribunal be increased in line with the original recommendations of the Redesign Panel and the Secretary-General (para. 21);

14. The General Assembly accord the judges of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal the ranking of Assistant Secretary-General (para. 22);

15. A new judicial oath of office be developed (para. 23);

16. The application of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission (ST/SGB/2002/9) to judges be reconsidered in the light of the independent status of judges within the Organization (para. 24);

17. The Internal Justice Council be mandated to initiate a process involving role players to draft a Code of conduct for staff and management legal representatives and to present the draft code to the General Assembly at its sixty-seventh session (para. 26);

18. The principle of the binding nature of the orders of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal be endorsed (A/65/304, para. 42)

19. Adequate resources be provided for travel for judges, Registrars and staff of the Office of Administration of Justice (para. 27);

20. Appropriately equipped courtrooms be provided as a matter of urgency for the use of the United Nations Dispute Tribunal in Geneva, Nairobi and New York and for the United Nations Appeals Tribunal in Geneva, Nairobi and New York when it holds a session at one of those duty stations, and appropriately equipped offices be provided for the judges (para. 28).

Office of Administration of Justice

21. To maintain confidence in its independence, the Office of Administration of Justice report directly to the General Assembly (A/65/304, para. 56);

22. Administrative support to the Office be increased (para. 32).

23. The post of Executive Director of the Office of Administration of Justice be reclassified to Assistant Secretary-General in line with the original recommendation of the Secretary-General (para. 33);

24. More extensive training of management personnel on the reform of the internal justice system be undertaken, in particular in duty stations away from Headquarters (para. 34).

Office of Staff Legal Assistance

25. Two Legal Officer posts at the P-4 level be established (para. 42);

26. General Service administrative staff be provided for Addis Ababa, Beirut, Geneva and Nairobi (para. 41);

Internal Justice Council

27. Adequate resources be provided for two meetings per year (para. 46).

Management Evaluation Unit

28. Additional staffing and authority be provided for the Management Evaluation Unit (paras. 51-53);

29. Provision be made to permit the Management Evaluation Unit to extend the time limits for management evaluation if both parties consent (para. 53);

Review of the statutes

30. It be made clear whether the reference to equivalency in the experience required for judicial posts relates to judicial experience or to administrative law; article 4(3)(b) of the statute of the United Nations Dispute Tribunal and article 3(3)(b) of the statute of the United Nations Appeals Tribunal be amended to make clear that the qualifications are that judges "shall possess at least 10 years (for the Dispute Tribunal) and 15 years (for the Appeals Tribunal) of judicial or adjudicative experience relevant to the work of the pertinent Tribunal in a national jurisdiction or international tribunal" (para. 55);

31. The statutory requirement for the President of the United Nations Appeals Tribunal to authorize three-judge panel hearings of the United Nations Dispute Tribunal be revised to allow determination of that need by the President of the Dispute Tribunal (para. 56);

32. Article 8(3) of the statute of the United Nations Dispute Tribunal be amended by the deletion of the last sentence and amendment of the article to the effect that the Dispute Tribunal is permitted to waive or suspend deadlines in relation to management evaluation in exceptional circumstances and that the Management Evaluation Unit is empowered to extend those deadlines when both parties to a dispute agree (para. 57);

33. Article 7(1) of the statute of the United Nations Dispute Tribunal and article 6(1) of the statute of the United Nations Appeals Tribunal be amended to require that interested parties be notified of proposals to amend the rules of procedure so that they can forward comments to the relevant Tribunal (para. 58);

34. A provision be introduced into both statutes that the Executive Director of the Office of Administration of Justice shall consult the Presidents of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal when compiling

the budget for the Tribunals so as to give them a reasonable opportunity to comment and provide information (para. 59);

Relationship between the formal and informal systems

35. Incentives to use informal dispute resolution mechanisms should focus on all employees of the United Nations; both staff and management should be strongly encouraged to use these mechanisms (A/65/304, para. 84);

36. More training on informal dispute resolution be provided for both staff and management (A/65/304, para. 84);

37. Management officials participating in mediation need to be appropriately authorized to reach agreed solutions (A/65/304, para. 85);

38. Where a settlement is reached by an authorized management official, the Organization should guarantee payment of any settlement amount (A/65/304, para. 85);

39. Where a staff member pursues informal dispute resolution, the time periods for seeking a management evaluation of a decision should be suspended (A/65/304, para. 87);

Disciplinary proceedings

40. Reforms proposed to the conduct of disciplinary matters be addressed as a matter of priority (A/65/304, para. 94).

(*Signed*) Kate **O'Regan**

(*Signed*) Sinha **Basnayake**

(*Signed*) Jenny **Clift**

(*Signed*) Frank **Eppert**

(*Signed*) Geoffrey **Robertson**

Annex

Code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

Preamble

Whereas the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations,

Whereas this right is endorsed and elaborated upon in a range of important international human rights instruments, including the International Covenant on Civil and Political Rights,

Whereas the General Assembly, in paragraph 4 of its resolution 61/261 of 4 April 2007, decided to establish an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice 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,

Whereas the fair resolution of employment grievances will contribute to efficiency in the work carried out by the United Nations and enhance the integrity of the Organization,

Whereas public confidence in the internal justice system and in the moral authority and integrity of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal is of the utmost importance within the working environment of the United Nations,

Whereas it is essential that judges, individually and collectively, respect and honour judicial office as a public trust, and strive to enhance and maintain confidence in the internal justice system,

And whereas the United Nations Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of judicial bodies, and can provide guidance to the internal administration of justice,

The following values and principles are adopted to establish standards for the conduct of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, to provide guidance to those judges and intended also to assist the staff and management of the United Nations to better understand and support the work of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal within the United Nations:

1. Independence

(a) Judges must uphold the independence and integrity of the internal justice system of the United Nations and must act independently in the performance of their duties, free of any inappropriate influences, inducements, pressures or threats from any party or quarter;

(b) In order to protect the institutional independence of the Tribunals, Judges must take all reasonable steps to ensure that no person, party, institution or State interferes, directly or indirectly, with the Tribunals;

2. Impartiality

(a) Judges must act without fear, favour, or bias in all matters that they adjudicate;

(b) Judges must ensure that their conduct at all times maintains the confidence of all in the impartiality of the Tribunals;

(c) Judges must recuse themselves from a case if

(i) They have a real conflict of interest or are actually biased;

(ii) It may reasonably appear to a properly informed person that they have a conflict of interest or bias;

(iii) They have personal knowledge of disputed evidentiary facts concerning the proceedings;

(d) Judges must not recuse themselves on insubstantial grounds. Judges must provide reasons when they decide an application for recusal;

(e) Judges must disclose to the parties in good time any matter that could reasonably be perceived to give rise to an application for recusal in a particular matter;

(f) Judges must not participate in the determination of a case in which any member of their family is a litigant or represents a litigant, or in the outcome of which any member of their family has a significant interest;

(g) In order to determine whether they should recuse themselves from any matter, judges must be aware of their personal and fiduciary financial interests and shall, as far as reasonably possible, make efforts to be informed about the financial interests of members of their immediate families;

(h) (i) Judges must not directly or indirectly negotiate or accept any remuneration, income, compensation, gift, advantage or privilege that is incompatible with judicial office or that can reasonably be perceived either as a reward or as likely to influence them in favour of a particular party;

(ii) Judges may receive a token gift, decoration, award or benefit that does not result in the incompatibility or reasonable perception referred to in subparagraph (i);

(i) Judges must not engage in financial, political or business dealings or activities, including fund-raising activities, that are inconsistent with, and reflect adversely upon, the independence and impartiality required by their status as judges, that may reasonably be perceived to exploit the judge's judicial position, or that are in any other way incompatible with judicial office in the United Nations. Should a judge be unsure whether a course of conduct would be in breach of this provision, he or she may ask the presiding judge of the Tribunal to contact the chair of the Internal Justice Council. The Council will then consider the matter and inform the judge concerned whether the proposed conduct is in conflict with this provision;

3. Integrity

(a) Judges must be of high moral character and always, and not only in the discharge of their duties, act honourably and in accordance with the values and principles set out in the present Code;

(b) Judges at all times, including periods when they are not on official business must comply with the law of the country in which they live, work or visit;

(c) Judges must inform the presiding judge of their Tribunal should they suffer from an illness or other condition that might threaten the performance of their duties;

4. Propriety

(a) Judges must exhibit and promote high standards of judicial conduct to reinforce confidence in the integrity of the administration of justice in the United Nations;

(b) Save in the discharge of judicial office, judges must not comment publicly on the merits of any case pending before the Tribunals or make any comment that might reasonably be expected to affect the outcome of such proceedings or impair the manifest fairness of the process;

(c) Judges are bound by professional duties of confidentiality with regard to deliberations with judicial colleagues and confidential information acquired in the course of their duties;

(d) Judges, like other citizens, are entitled to freedom of expression, belief, association and assembly, but must exercise these freedoms with due regard to the values and principles set out in the present Code;

(e) Judges must not use or lend the prestige of judicial office to advance the private interests of the judge, a member of the judge's family or anyone else, nor shall judges convey the impression that anyone is in a position to influence them improperly;

(f) In their personal relations with individual staff members who are parties, legal representatives and others who appear regularly in the Tribunal presided over by them, judges must avoid situations which might give rise to the reasonable apprehension of favouritism or partiality;

(g) Full-time judges of the United Nations Dispute Tribunal must not practise law, but may give informal advice to family members, friends, charitable organizations and the like without remuneration;

(h) Judges should use their best endeavours to foster collegiality in the Tribunals. In so doing they must act courteously and respect the dignity of others, including members of the Tribunal staff;

(i) Judges may form or join associations of judges;

(j) Subject to the proper and effective performance of judicial duties, a judge may engage in any lawful activity as long as it does not bring judicial office in the United Nations into disrepute in the mind of reasonable members of the community;

5. Transparency

Judges must observe the principle of open justice, namely that justice must be seen to be done, and take reasonable steps to ensure that this principle is honoured in the manner in which cases before the Tribunals are handled;

6. Fairness in the conduct of proceedings

(a) Judges must resolve disputes by making findings of fact and applying the appropriate law in fair proceedings. This includes the duty to

(i) Observe the letter and spirit of the *audi alteram partem* ("hear the other side") rule;

(ii) Remain manifestly impartial;

(iii) Publish reasons for any decision;

(b) Judges must not conduct themselves in a manner that is racist, sexist, or otherwise discriminatory. They must uphold and respect the principles set out in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights. Judges must not by word or conduct unfairly discriminate against any individual or group of individuals, or abuse the power and authority vested in them;

(c) Judges must not permit Tribunal staff or legal representatives appearing before the Tribunals, or others under their direction or control, to act in a manner that is racist, sexist, or otherwise discriminatory;

(d) Judges have a duty to protect witnesses and parties from harassment and bullying during Tribunal proceedings;

(e) When conducting judicial proceedings, judges must act courteously to legal representatives, parties, witnesses, Tribunal staff, judicial colleagues and the public, and require them to act courteously;

(f) Judges must maintain order in Tribunal proceedings. Where necessary, they may have any person removed from the proceedings who disrupts or threatens to disrupt the orderly administration of justice;

7. Competence and diligence

(a) Judges perform all assigned judicial duties, including tasks relevant to the judicial office or the operation of the Tribunals, diligently and dispose of judicial work promptly in an efficient and professional manner;

(b) Judges must give judgement or rulings in a case promptly. Judgements should be given no later than three months from the end of the hearing or the close of pleadings or, in the case of the United Nations Appeals Tribunal, from the end of the session in which the matter is decided, unless there are exceptional circumstances;

(c) Judges must cooperate with any formal inquiry into their conduct in office;

(d) Judges must not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the work of the Tribunal;

(e) When engaged in the administration of justice, judges must attend chambers during their normal working hours, as determined by the members of the Tribunal, and attend hearings and deliberations of the Tribunal during stipulated hours, unless they have a good reason not to do so. Judges must inform the presiding judge of the Tribunal in advance if they need to be absent. If they are to be absent for longer than three days, they must obtain the approval of the presiding judge of their Tribunal;

(f) Judges must respect and comply with the reasonable administrative requests of the presiding judge of the Tribunal of which they are members;

(g) Judges must take reasonable steps to maintain the necessary level of professional competence and to keep themselves informed about relevant developments in international administrative and employment law, as well as international human rights norms;

(h) Judges' judicial duties must take precedence over other duties and activities.