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Chair: Mr. Sergeyev (Ukraine)

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The meeting was called to order at 3.10 p.m.

Agenda item 141: Administration of justice at the United Nations (A/67/98, A/67/172, A/67/265 and Corr.1 and A/67/349)

1. **The Chair** recalled that by its resolution 66/237 the General Assembly had invited the Sixth Committee to consider the legal aspects of the reports to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters, and had decided to revert, at its sixty-seventh session, to the issue of the mandate, scope and functioning of the Office of Staff Legal Assistance for consideration by both the Fifth Committee and the Sixth Committee, in their respective capacities.

2. **Mr. Gonzalez** (Chile), speaking on behalf of the Community of Latin American and Caribbean States (CELAC), said that CELAC was satisfied with developments in the new system of administration of justice, notwithstanding the challenges of the first few years of implementation. The new system had had a positive impact on labour relations. CELAC members had consistently supported measures to protect the basic rights of United Nations personnel in accordance with internationally agreed standards and continued to support all measures that could help the United Nations to become the best employer and attract and retain the best employees.

3. Recalling the important role played by the Committee in making the new system fully operational by drafting the statutes and their amendments for both Tribunals, he welcomed the proposed procedure for enforcing the code of conduct for judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as prepared by the Internal Justice Council (A/67/98). CELAC was ready to discuss the proposed amendments to the rules of procedure of the Tribunals (A/67/349), as well as the proposals for addressing possible misconduct of judges as described in annex VII of the Secretary-General's report (A/67/265).

4. Regarding the scope of the system of administration of justice, CELAC looked forward to discussing means for establishing expedited procedures for the resolution of disputes between the United Nations and certain categories of non-staff personnel,

as well as the possibility for non-staff to access the formal system.

5. CELAC took note of the conclusions of the Secretary-General's report and invited Committee members to review the recommendations and proposals contained therein, particularly the preparation of a code of conduct for external legal representatives to the organization and non-staff members. It was important to bear in mind the basic tenets of the new legal administration system – independence, transparency and professionalism – together with the principles of legality and due process.

6. CELAC supported the work of the Office of Staff Legal Assistance in providing staff members with legal counsel. Further proposals for a staff-funded mechanism to support the work of the Office, including those set out in annex II of the Secretary-General's report, should be duly considered; however, the schemes should be complementary and voluntary, taking into account the views of relevant stakeholders. The Internal Justice Council had played an important role in the system of administration of justice to help ensure independence, professionalism and accountability and should continue to provide its views on implementation of the system, within the purview of its mandate established by General Assembly resolution 62/228.

7. Although the Dispute and Appeals Tribunals had been instrumental in promoting justice at the United Nations, CELAC was concerned that staff relied too heavily on the formal system of justice. More cases should be settled through informal dispute resolution, which was a crucial element of the internal system of administration of justice. In that regard, CELAC welcomed the referral of nine cases from the Dispute Tribunal to the Mediation Division and was pleased that approximately 33 per cent of cases received and closed by the Management Evaluation Unit in 2011 had been settled through informal resolution efforts. He called for the development of incentives to encourage such recourse, noting that more should also be done to promote a culture of trust and conflict prevention throughout the Organization. CELAC reiterated the request made to the Secretary-General to ensure that the structure of the Office of the United Nations Ombudsman and Mediation Services reflected the responsibility of the Ombudsman for oversight of the entire office.

8. The Sixth and Fifth Committees should continue to cooperate closely to ensure an appropriate division of labour and avoid encroachment of mandates. A number of measures to be discussed by the Sixth Committee would require consideration by the Fifth Committee in the light of their financial implications.

9. **Mr. Marhic** (Observer for the European Union), speaking also on behalf of the acceding country Croatia; the candidate countries Iceland, Montenegro, Serbia and the former Yugoslav Republic of Macedonia; the stabilization and association process countries Albania and Bosnia and Herzegovina; and, in addition, Armenia, Georgia, the Republic of Moldova and Ukraine, said that the formal and informal systems of administration of justice had markedly improved in terms of efficiency and fairness of procedure. He welcomed the approval by the General Assembly of a code of conduct for judges that was now binding. The Internal Justice Council played a key role in promoting judicial independence and supporting the judiciary to provide fair and effective justice.

10. The informal resolution of conflicts was a crucial element of the internal system of administration of justice, helping to establish harmonious working conditions and to avoid costly and time-consuming litigation. The European Union supported the work of the Office of the United Nations Ombudsman and Mediation Services in advancing the use of informal conflict resolution as an effective option for staff. It was important to consider ways in which more cases might be resolved at an early stage through mediation both at Headquarters and at regional offices. The allocation of resources to the system of administration of justice should be considered in the light of the need to ensure that the system functioned effectively, but also should take into account ongoing pressures on Member States' resources and the need for further development of informal dispute resolution. The new system must be consistent with a number of fundamental principles of the rule of law and due process, including the right to an effective remedy, equal access to justice and the right to be heard.

11. He expressed concern at the expiration of the terms of office of the three ad litem judges of the Dispute Tribunal at the end of 2012, which would reduce the number of judges by half. Indeed, considering that the number of cases before the Tribunal would either remain constant or increase, the failure to extend the mandate of those judges might

result in significant delays in the handling of cases, which in turn might raise serious concerns relating to due process.

12. The various options for the representation of staff members before the Tribunals could all be retained, leaving the choice of representation to the staff themselves. As for the legal protection of non-staff personnel, a differentiated system that provided for an adequate, effective and appropriate remedy was preferable. The European Union was prepared to discuss a code of conduct for legal representatives, to be prepared by the organs suggested by the Secretary-General in his report (A/67/265), and it took note that significant additional resources would be required if arbitration procedures to resolve disputes with consultants and individual contractors were to be introduced or if access to the informal system was to be given to contractors and consultants covered by the expedited arbitration procedures. Lastly, the European Union was also prepared to discuss the proposed amendments to increase the number of meetings to be held by the Dispute and Appeals Tribunals.

13. **Ms. Revell** (New Zealand), speaking on behalf of Canada, Australia and New Zealand (CANZ), said that the CANZ group was pleased with the progress of the new system of administration of justice. It should continue to be refined with a view to reflecting the Organization's core values of respect for the rule of law and equal access to an independent and transparent system of justice. The Sixth Committee should study carefully the proposals for strengthening certain aspects of the system and the proposed amendments to the rules of procedure of the Dispute and Appeals Tribunals together with the Fifth Committee, bearing in mind the financial implications.

14. The Internal Justice Council had made a valuable contribution to the development of the new justice system; the CANZ group welcomed its most recent report and took note of its concerns regarding resources for the new system. It was indeed important that the new system should not become plagued by the very problems and delays it was intended to avoid.

15. **Mr. Stuerchler Gonzenbach** (Switzerland) said that his delegation was pleased with the progress achieved by the new system of administration of justice in the United Nations. It welcomed the reports of the Secretary-General and of the Internal Justice

Council, as well as the memorandums from the judges of the Dispute and Appeals Tribunals.

16. The mandate of the Ombudsman should be expanded to give a broader category of personnel access to the informal system of justice, which had proven efficient. A mechanism should be established to address the possible misconduct of judges. Such a mechanism was a fairly common feature of any system of administration of justice; the United Nations should be no exception. His delegation also supported the creation of a code of conduct for all legal representatives appearing before the Tribunals. Providing consultants and individual contractors with an expedited arbitration procedure was a pragmatic and fair solution for affording legal remedy to those categories of personnel.

17. All persons working for the United Nations should have access to an independent body empowered to deal with complaints effectively. Such access would address concerns relating both to fairness and the application of established legal principles to the Organization. Any solution should satisfy the obligations of the United Nations under the Convention on the Privileges and Immunities of the United Nations and the headquarters agreements it had concluded with host countries regarding the settlement of disputes arising out of contracts to which the United Nations was a party.

18. The granting of immunity of jurisdiction by States to international organizations was a long-standing practice; however, immunity was admissible under the terms of the European Convention for the Protection of Human Rights and Fundamental Freedoms only if plaintiffs had access to other reasonable methods of effectively protecting the rights guaranteed by the Convention. Certain national jurisdictions had already refused to admit immunity of jurisdiction to international organizations, including the United Nations; the risk of such refusal would continue to be a concern until the settlement of disputes for all personnel was sufficiently independent, transparent and effective to meet human rights standards, especially with regard to access to a judge.

19. **Mr. Petrosyan** (Russian Federation) said that his delegation welcomed the Secretary-General's report (A/67/265), which provided evidence of the new internal justice system's effectiveness. It was particularly satisfied with the results of the

Management Evaluation Unit; indeed, his delegation had repeatedly highlighted the Unit's critical role in identifying poor decisions in a timely manner, thereby preventing unnecessary litigation and resulting in cost-savings for the Organization. The high percentage of claims settled through the management evaluation process demonstrated increased trust in the system on the part of staff. Nonetheless, the Unit should not be allowed to become overburdened with new requests resulting from abuse of the right to appeal.

20. Notwithstanding the commendable work of the United Nations Dispute and Appeals Tribunals, the backlog of cases inherited from the former system of administration of justice continued to be a concern. Although the question of extending the terms of the ad litem judges by an additional year was, to a large extent, a matter for consideration by the Fifth Committee, there were clearly legal implications as well: a backlog which led to delays in examining cases undermined access to justice by staff and management alike. His delegation supported measures to optimize the working methods of both Tribunals, without prejudice to the quality of examination of cases. Likewise, it called for the informal system of administration of justice to become more fully operational and welcomed the steps taken in that regard by the Office of the United Nations Ombudsman and Mediation Services.

21. The Secretary-General's report (A/67/265) confirmed the need to continue improving the system of administration of justice by regularly reviewing its activities. A number of issues remained unresolved, for instance, options for the representation of staff members, including a mandatory staff-funded mechanism to support the Office of Staff Legal Assistance. His delegation favoured arrangements whereby staff made even nominal contributions to cover the expenses incurred by the Office.

22. It was important to ensure access to effective remedies by non-staff personnel. His Government continued to examine the Secretary-General's proposed use of expedited arbitration procedures and mediation services for certain categories of non-staff personnel, including consultants and individual contractors. It was critical to ensure that greater legal protection was available to those who personally served the United Nations but did not have access to the dispute resolution system. Further study of access to justice for non-staff personnel was necessary.

23. **Mr. Cancela** (Uruguay) said that his delegation was satisfied with the new system of administration of justice, which dealt swiftly and effectively with current cases as well as those from the former system. A number of challenges remained to ensure access to justice by all categories of United Nations personnel. His delegation supported the work of the Office of Staff Legal Assistance and looked forward to discussing the proposals contained in annex II of the Secretary-General's report (A/67/265), in particular the various options for representation of staff members before the internal Tribunals.

24. While the formal system had proven an effective option for staff seeking redress for grievances, the growing number of cases being submitted to the Tribunals underlined the need to encourage staff to have recourse to the informal system. Not only would that prevent a future backlog of cases, but it would foster a culture of settling disputes amicably and using the formal system only when absolutely necessary. He was pleased to note that 33 per cent of cases received and closed by the Management Evaluation Unit in 2011 had been settled through informal resolution efforts.

25. **Ms. Eyoma** (Nigeria) said that the Office of Administration of Justice was valuable to the promotion of equity, transparency, equal representation, respect and the right to a fair hearing at the United Nations. The provision of a comprehensive system of administration of justice that was both efficient and effective and that ensured the accountability of individuals and organizations for their actions in accordance with relevant United Nations resolutions and regulations was key to human resources management and strengthened the relationship between staff and management. Her delegation supported proposals to improve efficiency and transparency in the administration of justice, provided that such proposals were consistent with the relevant rules of international law and the principles of the rule of law, and that they ensured respect for the rights and privileges of United Nations staff.

26. While her delegation endorsed the independent, transparent establishment of adequate resources as a means to address the work-related grievances of the Organization's staff, it would continue to call for the sufficient allocation of funds to ensure that the Office of the Administration of Justice could manage its workforce effectively. The selection of judges must be a transparent process. The efficiency of the Internal

Justice Council and of the system of administration of justice as a whole depended on the selection of experienced judges.

27. Her Government supported a decentralized system of administration of justice, which would not only promote confidence in the system among staff and managers, but would also help reduce conflicts of interest. It likewise supported the holding of open hearings with a view to addressing complaints efficiently without jeopardizing the interests of staff and management. Lastly, information-sharing should be encouraged with regard to staff rights and privileges, the relevant units for seeking redress, and any updates on the new justice system.

28. **Mr. Hill** (United States of America) said that the adoption of General Assembly resolution 63/253 had been a landmark achievement for the administration of justice at the United Nations and a milestone in the reform of the Organization. The United Nations Dispute and Appeals Tribunals established under that resolution were already having a significant positive impact on the transparency, fairness, efficiency and accountability of the United Nations personnel system. His delegation was impressed by the professionalism and productivity of the new system.

29. The reports of the Secretary-General (A/67/172, A/67/265 and A/67/349) and that of the Internal Justice Council (A/67/98) raised a number of important issues concerning the evolution of the new system, including measures available to non-staff personnel for addressing disputes. All those issues merited careful consideration, as did mechanisms for addressing possible misconduct of judges and a code of conduct for legal representatives as proposed by the Internal Justice Council. His delegation welcomed the Secretary-General's compilation of the practice in certain national legal systems as well as comparable administrative tribunals of international organizations on the award of punitive damages. Given the relatively low number of responses received on national practice, additional information on that subject would be useful.

The meeting rose at 4.05 p.m.