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Chair: Mr. Sergeyev (Ukraine)

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The meeting was called to order at 10.15 a.m.

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

1. **Mr. Fitschen** (Germany), presenting an oral report on the Committee's informal consultations on the agenda item, said that the Committee had first discussed the amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as set out in the relevant report of the Secretary-General (A/67/349). Delegations had noted that the first set of amendments aimed to increase the number of plenary meetings of the Dispute Tribunal to two per year and the number of ordinary sessions of the Appeals Tribunal from two to three, which was justified by the geographical decentralization of the Tribunals. They had no legal objections to the proposals; however the cost implications should be considered by the Fifth Committee. It was the understanding of some delegations that the proposed increase in the number of annual plenary meetings and sessions would not be mandatory, but would permit the Tribunals to hold up to two plenary meetings and three sessions, respectively, as required. In response to a request for clarification, the Secretariat had indicated that the proposed amendment to article 9 of the rules of procedure of the Appeals Tribunal was aimed at ensuring equality of treatment by remedying a discrepancy between the time limits for filing an appeal and the time limit for filing an answer and cross-appeal. The said discrepancy had arisen following the amendment of article 7, paragraph 1 (c) of the statute of the Appeals Tribunal, decided by the General Assembly in its resolution 66/237. In light of that explanation, delegations had endorsed the proposed amendment.

2. With regard to the issue of permitting individual contractors and consultants to access mediation under the informal system, analysed in annex V to the Secretary-General's report on the administration of justice at the United Nations (A/67/265), delegations had considered that it would be legally sound to do so, bearing in mind the General Assembly's repeated calls for as many disputes as possible to be solved through informal means of redress. In response to some delegations' concerns as to whether that might overburden the Office of the United Nations

Ombudsman and Mediation Services or challenge its general policy, the Ombudsman had indicated that his Office would in principle be able to handle such cases, subject to resources and the provision of proper training. Delegations had also viewed favourably the Secretary-General's proposal for a mechanism of expedited arbitration procedures for consultants and individual contractors (A/67/265, annex IV), stressing the importance of offering an effective means of redress to those categories of individuals and criticizing the current system as bulky and expensive. However, they had been of the opinion that possibilities for further streamlining the proposed mechanism should be explored. Delegations had also pointed out that the question of access by consultants and individual contractors to the informal system and the establishment of expedited arbitration procedures were distinct issues that should be treated separately. Opting for one measure would not necessarily prejudice a decision on the other proposal.

3. On the issue of measures available to non-staff personnel other than consultants and contractors for addressing disputes (A/67/265, annex VI), it had been noted that the annex contained no proposals to change the current system. Some delegations had expressed concern that for several categories of non-staff personnel the only means of addressing disputes was through direct negotiations with the Organization and had wondered whether that would qualify as sufficient legal remedy. Others had recalled the Committee's discussions during the sixty-sixth session, as well as earlier General Assembly decisions, emphasizing that all individuals working for the United Nations should have an effective means of legal redress. It had been observed that the nature of the relationship between the persons in each of the categories described in paragraph 1 of annex VI and the United Nations differed markedly; each category of non-staff personnel should therefore be considered separately with a view to identifying appropriate legal remedies. Some delegations, recalling earlier indications by the Secretariat that the employment of daily paid workers should be discontinued, had expressed surprise at their continued use. It had also been noted that the persons mentioned in paragraph 1 (h) and paragraphs 27 and 28 of annex VI should be excluded from future work on the issue as they were not "personnel" of the Organization; United Nations personnel serving in peacekeeping missions were also not "personnel" within the meaning of annex VI.

4. With respect to the proposals for mechanisms for addressing possible misconduct of judges (A/67/265, annex VII), delegations had noted the urgency of resolving that issue and had discussed the advantages and disadvantages of the three options presented, as well as the Internal Justice Council's comments. They had expressed interest in the Secretary-General's proposal, which they had considered to be legally sound and in line with international practice. In that context, some delegations had recalled the principle of "open justice", which they had discussed at the sixty-sixth session of the General Assembly. Although the Internal Justice Council had dealt with the issue in its report on administration of justice at the United Nations (A/67/98), they sought a more formal reply to their request for elucidation of the principle, contained in the letter addressed by the Chair of the Sixth Committee to the President of the General Assembly the previous year (A/C.5/66/9).

5. With regard to the proposed code of conduct for legal representation (A/67/265, annex VIII), the Committee stressed the need, from a legal perspective, to ensure that all individuals acting as legal representatives, whether staff members or external counsels, had the same rights and obligations when representing a staff member and were subject to the same professional standards as those applicable within the United Nations system. While some delegations favoured a single code for both groups of representatives, others subscribed to the Secretary-General's view that representatives who were staff members were already sufficiently covered by existing rules. Delegations had agreed, however, that any future instrument should distinguish, as appropriate, between the situation of United Nations staff members and external individuals and should not erect barriers that discouraged staff from seeking external counsel.

6. On the question of the representation of staff members (A/67/265, annex II), delegations had expressed the view that all four options had legal merits and should be retained. With reference to the opinions expressed in the report of the Internal Justice Council (A/67/98) and the memorandum from the judges of the United Nations Dispute Tribunal contained therein, delegations had underlined the important role of the Office of Staff Legal Assistance in advising and representing staff members and had considered that the proposal for a mandatory staff-funded mechanism to support that Office was a matter

for the Fifth Committee's attention. On the legal question as to whether such a mandatory scheme was consistent with article 17, paragraph 2, of the Charter of the United Nations, it had been pointed out that there was already some jurisprudence of the International Court of Justice on what constituted expenses of the Organization and that a legal opinion could be requested from the Office of Legal Affairs or another entity.

7. Delegations had acknowledged that an extension of the mandate of the three ad litem judges for another year until the end of 2013, as recommended in the Secretary-General's report (A/67/265), was an unavoidable measure to ensure the continued delivery of justice. Referring to the position of the Internal Justice Council on that matter (A/67/98, para. 21), and also recalling that the Committee had already addressed the issue during the sixty-sixth session of the General Assembly, delegations had expressed legal concern at the situation. Many delegations, emphasizing the need to find a long-term solution that would guarantee the sustained efficiency of the formal system, had indicated that another extension could be no more than a temporary measure. Delegations had also advised that the issue should be considered by the Fifth Committee as it had financial implications.

8. Delegations had taken note of the Secretary-General's opinion that there was no need to review the statutes of the Tribunals at that time, as well as his conclusion that no change in his legal representation was currently warranted.

9. With regard to the award of exemplary and punitive damages, delegations had recalled the General Assembly's decision that the Tribunals should not have any powers beyond those conferred under their respective statutes and had supported the Secretary-General's recommendation that further reporting on the issue should be requested for consideration at the sixty-eighth session of the General Assembly. Some delegations had also advised that due note should be taken of the legal differences between punitive damages, exemplary damages and moral or immaterial damages as currently applied in the jurisprudence of national and international courts.

10. Turning to the report of the Internal Justice Council (A/67/98), delegations had praised the important role played by that body in the system of administration of justice. With regard to the proposals

concerning the half-time judges of the Dispute Tribunal, they had pointed out that the issue was closely related to the question of the number of full-time judges discussed earlier in the Committee's consultations. In that context, the efforts made by both Tribunals to effectively fulfil their mandates had been recognized. Some delegations had been open to the proposal to amend the statute of the Appeals Tribunal with a view to broadening the spectrum of legal expertise available to that body, while others had recalled that the required qualifications had been thoroughly discussed during the original negotiations on the statute.

11. Lastly, legal issues raised in the memorandums from the judges of the Appeals and Dispute Tribunals (A/67/98, annexes I and II), had been considered. With regard to the proposal to establish a direct reporting line from the Tribunals to the General Assembly, it had been recalled that the Assembly had already addressed the issue in its resolution 66/237 and that the views of the Tribunals were now reproduced in full in annexes to the report of the Internal Justice Council, thus ensuring their timely publication.

12. A draft letter from the Chair of the Sixth Committee, addressed to the President of the General Assembly with a request that it should be brought to the attention of the Chair of the Fifth Committee and circulated as a document of the General Assembly, had been prepared on the basis of the Sixth Committee's informal consultations under the current agenda item; it was to be hoped that it would be approved by consensus.

13. **Mr. Hill** (United States of America) said that his delegation fully supported the draft letter to the President of the General Assembly, which contained a number of useful elements. In particular, his delegation welcomed the reference to paragraph 28 of General Assembly resolution 63/253, which affirmed that the Dispute Tribunal and the Appeals Tribunal should not have any powers beyond those conferred under their respective statutes. His delegation had frequently expressed its concern at departures in the context of Tribunal judgements from the provisions of the respective statutes and would continue to monitor the issue carefully. It was also of abiding importance that, as highlighted in General Assembly resolution 66/237, judgements of the Dispute Tribunal, including judgements, orders or rulings, imposing financial obligations on the Organization, should not be

executable until the expiry of the time provided for appeal in the statute of the Appeals Tribunal or, if an appeal was filed, until action on it had been completed.

14. **The Chair** said that if there was no objection, he would take it that the Committee wished to authorize him to sign and send the draft letter to the President of the General Assembly.

15. It was so decided.

The meeting rose at 10.35 a.m.