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Chair: Ms. Fiodorow (Vice-Chair) (Poland)
*Chair of the Advisory Committee on Administrative
and Budgetary Questions:* Mr. Ruiz Massieu

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In the absence of Mr. Taalas (Finland), Ms. Fiodorow (Poland), Vice-Chair, took the Chair.

The meeting was called to order at 3.05 p.m.

Agenda item 143: Administration of justice at the United Nations (A/68/158, 306, 346 and 530)

1. **Ms. Taylor** (Executive Director, Office of Administration of Justice), introducing the report of the Secretary-General on administration of justice at the United Nations (A/68/346), said that the report was the result of close cooperation between the Office of Administration of Justice and all relevant stakeholders, and that it contained statistics on the functioning of the system of administration of justice in 2012. Like the previous year, greater use had been made of tables and charts, and the statistics were presented in a more structured, descriptive and consistent manner. However, for the first time, the report contained observations on the formal system, drawn from the experiences of various United Nations offices, departments and entities. Emerging trends in the system would be reported in future reports. The report also provided a consolidated response to the requests made by the General Assembly in resolution 67/241.

2. Following the overview provided in section I of the report, section II gave a review of the formal system of justice, which included observations on the functioning of the system since it had commenced operation on 1 July 2009 and during 2012. The findings showed a reduction in requests for management evaluation and in new cases filed with the Dispute Tribunal in 2012, but an increase in the caseloads of the Appeals Tribunal, the Office of Staff Legal Assistance, the Administrative Law Section and the Office of Legal Affairs. The observations also showed the important role of management evaluation in resolving disputes in the formal system, the success of informal dispute resolution within the formal system, the negative impact of self-represented staff members in the formal system, and the importance of the filtering role played by the Office of Staff Legal Assistance in the internal justice system. Section II also gave an account of the accomplishments of the current system in 2012 and provided detailed statistics on the activities of the various entities involved. In addition, the Secretary-General had identified the need to maintain the ability of the Dispute Tribunal to manage its caseload by extending the ad litem judges and their supporting staff for a period of one year.

3. Section III of the report and the annexes provided detailed responses to specific requests by the General Assembly, while section IV invited the General Assembly to clarify whether the salaries of Dispute Tribunal judges remained at a fixed level equivalent to those paid to United Nations staff members at the D-2 level, step IV. In section V, the Secretary-General noted that no additional resources had been requested in the context of the report, and in section VI he set out his conclusions and recommendations for action to be taken by the General Assembly.

4. She concluded by drawing attention to the report of the Internal Justice Council prepared pursuant to General Assembly resolution 62/228 (A/68/306), which included the Council's recommendations on the implementation and functioning of the current system of administration of justice, and its responses to the specific mandates set out in General Assembly resolution 67/241. That report also included the views of the judges of both the Appeals Tribunal and the Dispute Tribunal.

5. **Mr. Barkat** (United Nations Ombudsman), introducing the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/68/158), said that the report provided an update on the activities of the Office in its three main areas of work: case work, including mediation; outreach initiatives and efforts to enhance conflict competence; and identification of the root causes of conflict and systemic trends. The Office continued to believe that conflict was not inherently bad and that disagreements were often essential for participatory governance. However, resolving conflict collaboratively could minimize its negative impact and mitigate associated risk.

6. In 2012, the Office had opened 2,039 cases globally, of which 1,496 had originated from the Secretariat. As in previous years, most cases had emanated from offices away from Headquarters, country offices and field offices, and staff in the Professional category remained the largest group of users. Career-related issues continued to be the most prevalent concerns among staff and managers, followed by interpersonal issues and questions related to compensation and benefits. There had been a steady increase in the number of requests for mediation, with an average growth rate of 13 per cent in those cases since 2009. In 2012, the Mediation Service had opened 36 cases, of which 30 had come from the Secretariat.

The number of cases referred to mediation by the Dispute Tribunal had increased, and the Office acknowledged the efforts of staff in the formal system to encourage the use of mediation and informal resolution where appropriate.

7. The Office had worked to promote conflict competence through workshops and training events designed to build skills in informal conflict resolution and raise awareness of the informal system's availability, and it would continue to expand on those initiatives through mission travel and visits to remote duty stations. Reflecting the ongoing work of the Office to analyse the root causes of conflict and provide relevant feedback to the Organization, the report provided an update on cross-cutting systemic issues related to performance management, investigations and disciplinary procedures, and service-incurred injuries and illness. The Office had been working with stakeholders to raise awareness and develop guidelines based on consultations across departments.

8. In response to the General Assembly's repeated emphasis on providing equal access for all staff, the Office had made extra efforts to reach staff in the field. The combined efforts of the seven regional branches, the use of on-call ombudsmen and mediators, and a system of regular visits to the field had enabled the Office to better meet the demand for informal conflict resolution. However, staff continued to highlight the need for direct contact and in-person intervention by the Office, which provided a crucial human element in conflict resolution.

9. The Office recognized the need for staff and management to better deal with the challenges faced in hardship duty stations, and had drawn attention to the notion of resilience in adapting to and coping with stressful situations. It carried out regular visits to those locations to demonstrate its support for staff and show that the Organization cared. The Office looked forward to assisting staff and managers in preparing for reform and change, and trusted that the General Assembly would continue to provide support for preventive and early-stage dispute resolution and collaborative mediation.

10. **Mr. Ruiz Massieu** (Chair of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/68/530), said that the

Advisory Committee recommended that the terms of reference for conducting an interim independent assessment of the formal system of administration of justice should provide for a substantive evaluation of the formal system, including a review of the jurisprudence of the Tribunals and an analysis of the conduct of the Tribunals' work. Regarding the Secretary-General's proposal that the Joint Inspection Unit should conduct the assessment, the Advisory Committee noted that it might be difficult for the Unit to absorb the assessment within its current workplan and resources. On the other hand, the mandate of the Board of Auditors — the other internal body considered — might not be broad enough to cover all relevant aspects of the assessment. Taking into account the substantive nature of the assessment, the exercise would benefit from the expertise of experienced and independent legal experts familiar with internal labour dispute mechanisms. Given that an assessment by experts would have financial implications, the General Assembly might wish to reconsider its decision that the assessment should be conducted within existing resources.

11. With regard to the financing of the Office of Staff Legal Assistance, the Advisory Committee noted the Secretary-General's view that it would be in the best interests of the Organization to continue to fund the entire cost of that Office, including the additional resources that it required. However, if the General Assembly wished to proceed with a scheme for staff contribution, the Advisory Committee agreed with the option proposed by the Secretary-General to establish an automatic monthly payroll deduction from the net base salary of staff members, unless a staff member expressly opted out of the deduction, with the stipulation that the payroll deduction would cover all costs related to staff representation by the Office, while assessed contributions should continue to cover the cost of other services provided by the Office.

12. The Advisory Committee noted with concern that the General Assembly had repeatedly requested, at four previous sessions, promulgation of revised terms of reference for the Office, and urged the Secretary-General to act on that request as soon as possible. Lastly, on the subject of the pilot project on the feasibility of decentralizing elements of disciplinary matters relating to the field, the Advisory Committee noted the ongoing initiatives which might result in similar objectives as those intended for the pilot

project, and therefore supported the Secretary-General's request to postpone the project for two years.

13. **Mr. Daunivalu** (Fiji), speaking on behalf of the Group of 77 and China, said that the administration of justice was an integral part of an effective human resources management system and that the Group firmly supported the reforms of the United Nations internal justice system. The informal resolution of disputes remained essential in the administration of justice system as a means of avoiding unnecessary litigation. Greater efforts should therefore be made to encourage the informal resolution of disputes, while ensuring that individuals had effective access to dispute resolution mechanisms. The new system should be closely monitored in order to avoid the failures that the Redesign Panel had identified in the previous system, taking the reduction of the case backlog as the main gauge of success. The Group would seek detailed information on progress in that regard, including case disposal rates and other performance indicators.

14. The decrease in new cases received by the Management Evaluation Unit and the Dispute Tribunal suggested that the new system was achieving its goals of delivering impartial and rapid results, and the Group welcomed the reduction in the average length of time taken to dispose of a case by that Tribunal. However, the increase in the caseloads of the Appeals Tribunal, the Office of Staff Legal Assistance, the Administrative Law Section and the Office of Legal Affairs, while partly the result of increased trust in the system, was also a sign of bad management and poor relations between staff and management. The introduction of the new system of administration of justice should have a positive impact on staff-management relations and should improve performance on both sides. The Group would monitor that aspect of the functioning of the new system. It also agreed with the Advisory Committee that lessons-learned guides on the Tribunals' jurisprudence for managers were important, and expected that the lessons learned would produce concrete results in managerial actions.

15. The Group welcomed efforts to strengthen the internal justice system, especially the proposal to conduct an interim independent assessment of the formal system of administration of justice and the proposal concerning the financing of the Office of Staff Legal Assistance. In addition to considering those proposals, it would seek updated information on the code of conduct for the judiciary, the terms of

reference for the integrated Office of the United Nations Ombudsman and Mediation Services, and trends relating to cases concerning staff with disabilities. The Group welcomed the inauguration of the permanent courtroom in Nairobi and hoped that courtrooms in New York and Geneva would be operational as soon as possible. Lastly, an independent, effective and transparent administration of justice system was imperative to ensure due process within the Organization, as well as accountability and transparency in decision-making.

16. **Mr. Dettling** (Switzerland), speaking also on behalf of Liechtenstein, said that it was regrettable that certain reports had again been issued very late and a full account should be given of the reasons for the delay. The administration of justice system could be truly effective and efficient only if the separation of powers and independence of the Tribunals were respected, effective legal remedies were available at all times, the level and distribution of resources across the system were adequate, and the incentives and disincentives contributing to a person's decision to pursue litigation were appropriately balanced. Improvements in the system must also go hand in hand with improvements in human resources management.

17. An interim independent assessment of the system was desirable and could indicate whether the system was performing well and whether adjustments were needed. However, the assessment should also include the scope of the current system, the relationship between the formal and informal systems, and the Tribunals' jurisprudence. The two delegations had noted the observation of the Advisory Committee that neither the Joint Inspection Unit nor the Board of Auditors might be suited to conducting the assessment, and they were open to exploring other options to ensure that it was conducted by individuals with the right expertise.

18. With regard to ad litem judges, the delegations suggested extending the terms of such judges by two years, rather than one, in order to provide more stability and ease the burden for Member States. It was hoped that the interim independent assessment would enable Member States to identify a sustainable solution in that regard. Given that abusive proceedings had a negative impact on the administration of justice by diverting resources away from the legitimate proceedings, the two delegations welcomed the four options presented by the Internal Justice Council for

preventing frivolous applications, and sought further information on options II and IV in particular.

19. It was reasonable that staff members and Member States should share the cost of the legal services provided by the Office of Staff Legal Assistance. The Secretary-General's proposal for an automatic monthly payroll deduction with an opt-out clause was a viable mechanism for solving some of the budget constraints faced by that Office, and the delegations would welcome further information on the measures envisaged to ensure the predictability and stability of that mechanism. Lastly, the two countries had always been concerned about disputes involving non-staff personnel and were interested in learning more about the nature of those disputes and the practices in place to avoid or mitigate them in the absence of effective legal remedies.

20. **Ms. Yajima** (Japan) said that resolving disputes through informal mechanisms should be encouraged given that it was more efficient, less cumbersome and less emotionally stressful than litigation, for both staff members and the Administration. Her delegation therefore commended the outreach efforts of the Office of the United Nations Ombudsman and Mediation Services. The Secretary-General should also take steps to strengthen good management practices within the Organization in order to address underlying problems that could lead to workplace disputes.

21. Her delegation agreed with the Advisory Committee that an interim independent assessment of the formal system of administration of justice was desirable. It also supported the provision of legal advice and guidance to staff by the Office of Staff Legal Assistance, since that could be effective in resolving disputes before they reached the Tribunals. However, staff should arrange their legal representation themselves, and her delegation would therefore engage in further discussions on both the financing and the mandate of that Office.

22. **Mr. Strickland** (United States of America) said that the administration of justice system was an essential element of an effective human resources management system, and that lack of an effective system would severely undermine other human resources management reform initiatives. Despite significant improvements in the system, substantial hurdles remained, including ensuring that the Dispute and Appeals Tribunals did not exceed the powers

conferred on them by their statutes; ensuring that recourse by the Tribunals to general principles of law and the Charter of the United Nations was consistent with General Assembly mandates; and resolving performance management issues before a dispute was referred to the justice system. Unfortunately, a litigious culture had arisen within the United Nations, partly because of the lack of an effective performance management system.

23. An interim independent assessment of the entire administration of justice system should be conducted, including its impact on accountability and transparency at the United Nations. While his delegation respected the valuable work done by the Joint Inspection Unit, it had serious concerns about the capacity of that Unit to conduct an independent assessment, and therefore wanted to explore how the Secretary-General could form an independent panel to conduct the assessment within existing resources.

24. His delegation was also concerned about the current rules on representation and had noted with concern the Secretary-General's view that it would be in the Organization's best interests to continue funding the entire cost of the Office of Staff Legal Assistance, including the additional resources required. Action requested by the Tribunals should be a shared responsibility between management and staff, and his delegation wished to know why the Secretary-General believed that his funding proposal was the best option. His country continued to support proposals for a joint funding mechanism that included an automatic payroll deduction for staff members with an opt-out clause. It nonetheless recognized that the proposed waiting period to use the services of that Office for staff members who opted back in after originally opting out of the payroll deduction system raised an access-to-justice question that needed to be addressed.

25. Informal conflict resolution was a key element for avoiding unnecessary litigation, but his delegation remained concerned about performance management issues, such as the lack of managerial guidance and acknowledgement of efforts by staff; inadequate mutual engagement in the performance management process; and perceived abuse and injustices in the evaluation of staff. The administration of justice system should constructively resolve employment and labour disputes between employees and management, and should complement an effective performance management system. However, if the flaws of the

current system were not addressed, it could make the Organization increasingly difficult to manage and sustain.

26. **Ms. Diaz** (Philippines) said that the system of administration of justice was evolving and the growing jurisprudence should lead to clearer guidelines on policy, procedure and interpretation of regulations. Her delegation hoped that greater clarity with regard to the outcomes of disputes would speed up decision-making and the processing of cases by the formal dispute resolution mechanism, and encourage staff members to make use of the options available for informal dispute settlement.

27. Alongside good management practices, clear and simply worded rules, regulations and contract terms were essential to a preventive approach to disputes. Her delegation was concerned that cases had been brought by staff on the grounds of disability, accessibility, reasonable accommodation and assistive technology. It therefore welcomed the draft Secretary-General's bulletin on accessibility for persons with disabilities at the United Nations and looked forward to the establishment of a framework for the creation of a working environment that was in line with the Convention on the Rights of Persons with Disabilities. It was also concerned at the apparent lack of specialization in the distribution of work among staff in the Office of the United Nations Ombudsman and Mediation Services across the areas of conflict resolution, systemic issues and conflict competence. It therefore hoped that the revised terms of reference for the Office would be promulgated soon. It also looked forward to the preparation of the code of conduct for external legal representatives.

28. Other issues of interest to her delegation included the financing of the Office of Staff Legal Assistance and accountability for violations of the rules and procedures of the Organization that had led to financial loss. Lastly, an interim independent assessment of the formal system of administration of justice should be conducted within existing resources.

The meeting rose at 4 p.m.