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Agenda item 143

Administration of justice at the United Nations

Report of the Fifth Committee

Rapporteur: Mr. Gert Auväärt (Estonia)

I. Introduction

1. At its 2nd plenary meeting, on 18 September 2015, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its seventieth session the item entitled “Administration of justice at the United Nations” and to allocate it to the Fifth Committee.

2. The Fifth Committee considered the item at its 7th and 19th meetings, on 20 October and 8 December 2015. Statements and observations made in the course of the Committee’s consideration of the item are reflected in the relevant summary records.¹

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the administration of justice at the United Nations (A/70/187);

(b) Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/70/151);

(c) Report of the Secretary-General on the amendment to the rules of procedure of the United Nations Appeals Tribunal (A/70/189);

(d) Report of the Internal Justice Council on the administration of justice at the United Nations (A/70/188);

(e) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/70/420);

¹ A/C.5/70/SR.7 and A/C.5/70/SR.19.



(f) Letter dated 3 November 2015 from the President of the General Assembly to the Chair of the Fifth Committee (A/C.5/70/9).

II. Consideration of draft resolution A/C.5/70/L.6

4. At its 19th meeting, on 8 December, the Committee had before it a draft resolution entitled “Administration of justice at the United Nations” (A/C.5/70/L.6), submitted by the Chair of the Committee on the basis of informal consultations coordinated by the representative of New Zealand.

5. At the same meeting, the Committee adopted draft resolution A/C.5/70/L.6 without a vote (see para. 6).

III. Recommendation of the Fifth Committee

6. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling section XI of its resolution 55/258 of 14 June 2001 and its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April 2007, 62/228 of 22 December 2007, 63/253 of 24 December 2008, 64/233 of 22 December 2009, 65/251 of 24 December 2010, 66/237 of 24 December 2011, 67/241 of 24 December 2012, 68/254 of 27 December 2013 and 69/203 of 18 December 2014,

Having considered the reports of the Secretary-General on the administration of justice at the United Nations,¹ on the activities of the Office of the United Nations Ombudsman and Mediation Services² and on the amendment to the rules of procedure of the United Nations Appeals Tribunal,³ the report of the Internal Justice Council on the administration of justice at the United Nations⁴ and the related report of the Advisory Committee on Administrative and Budgetary Questions,⁵ as well as the letter dated 3 November 2015 from the President of the General Assembly addressed to the Chair of the Fifth Committee,⁶

1. *Takes note* of the reports of the Secretary-General on the administration of justice at the United Nations,¹ on the activities of the Office of the United Nations Ombudsman and Mediation Service² and on the amendment to the rules of procedure of the United Nations Appeals Tribunal,³ the report of the Internal Justice Council on the administration of justice at the United Nations⁴ and the related report of the Advisory Committee on Administrative and Budgetary Questions;⁵

2. *Endorses* the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions;

I

System of administration of justice

3. *Emphasizes* the importance of the principle of judicial independence in the system of administration of justice;

4. *Stresses* the importance of ensuring access for all staff members to the system of administration of justice, regardless of their duty station;

5. *Acknowledges* the evolving nature of the system of administration of justice and the need to carefully monitor its implementation to ensure that it remains within the parameters set out by the General Assembly;

¹ A/70/187.

² A/70/151.

³ A/70/189.

⁴ A/70/188.

⁵ A/70/420.

⁶ A/C.5/70/9.

6. *Stresses* the importance of continuous consultation among relevant stakeholders in fostering a dialogue-oriented culture across the Organization;

7. *Reaffirms* its decision, contained in paragraph 4 of its resolution 61/261, to establish a new, 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;

8. *Decides* to extend the three ad litem judge positions for one year, from 1 January 2016 to 31 December 2016;

9. *Stresses* that any decision regarding the possible conversion of ad litem positions to full-time positions and the eligibility criteria for the future permanent positions, including the eligibility of the current ad litem judges, shall be taken after consideration of the recommendations of the panel of independent experts on this matter, as well as the related comments of the Secretary-General, during the seventy-first session of the General Assembly;

10. *Welcomes* the establishment of the panel of experts and, recalling paragraph 23 of the report of the Advisory Committee on Administrative and Budgetary Questions, trusts that the recommendations of the panel and the related comments of the Secretary-General will be comprehensive and will cover all major aspects of the system of administration of justice;

11. *Recalls* that the objective of the interim independent assessment of the system of administration of justice is the improvement of the current system;

12. *Also recalls* its decision that the interim independent assessment of the system of administration of justice should include consideration of the relationship between the formal and informal systems and whether the aims and objectives of the system set out in its resolution 61/261 are being achieved in an efficient and cost-effective manner;

13. *Reaffirms* its request to the Secretary-General to transmit the recommendations of the panel of experts, together with its final report and his comments, for consideration by the General Assembly at the main part of its seventy-first session;

II Informal system

14. *Recognizes* that the informal system of administration of justice is an efficient and effective option both for staff who seek redress of grievances and for the participation of managers;

15. *Reaffirms* that the informal resolution of conflict is a crucial element of the system of administration of justice, emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation, without prejudice to the basic right of staff members to access the formal system, and encourages recourse to the informal resolution of disputes;

16. *Recalls* paragraph 38 of the report of the Advisory Committee on Administrative and Budgetary Questions, and encourages the continued

involvement of the Office of the United Nations Ombudsman and Mediation Services in the progressive development and refinement of human resources policies and practices;

17. *Emphasizes* the importance of both staff and managers understanding and adopting conflict competency skills in order to prevent conflicts, cope with potential or actual conflicts and maintain resilience, and in this regard notes with appreciation the activities of the Office of the United Nations Ombudsman and Mediation Services to promote conflict competence at all levels of the Organization;

18. *Commends* efforts to resolve cases prior to litigation, including through enhanced conflict competence and cooperation between the formal and informal parts of the system of administration of justice, and encourages the Office of the United Nations Ombudsman and Mediation Services to continue its outreach activities at all duty stations to promote informal dispute resolution;

19. *Recognizes* that access to the Office of the United Nations Ombudsman and Mediation Services is a challenge for staff in the field, including for those in special political missions, encourages the development of innovative measures to address these challenges, and requests the Secretary-General to report thereon to the General Assembly at the main part of its seventy-first session;

20. *Requests* that information on the number and nature of cases from non-staff personnel continue to be clearly set out in future reports on the activities of the Office of the United Nations Ombudsman and Mediation Services;

21. *Notes* the progress made in the implementation of the recommendations contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services,² and stresses the importance of improving performance management and communication between staff members to help to address the root causes of disputes;

22. *Welcomes* the recommendations to address systemic and cross-cutting issues contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services, and requests the Secretary-General to report to the General Assembly on progress made in the implementation of those recommendations in his next report;

23. *Recalls* paragraph 39 of the report of the Advisory Committee on Administrative and Budgetary Questions, regrets that the Secretary-General has once again not fulfilled the request to ensure that the revised terms of reference and guidelines for the Office of the United Nations Ombudsman and Mediation Services are promulgated, and reiterates its request that the Secretary-General do so as a matter of priority by the end of February 2016 at the latest;

III

Formal system

24. *Recognizes* the ongoing positive contribution of the Office of Staff Legal Assistance to the system of administration of justice;

25. *Also recognizes* the importance of the Office of Staff Legal Assistance as a filter in the system of administration of justice, and encourages the Office to continue to advise staff on the merits of their cases, especially when giving summary or preventive legal advice;

26. *Reaffirms* the need for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to have at their disposal fully functional courtrooms, including appropriate information technology;

27. *Requests* the Secretary-General to continue to track the data on the number of cases received by the Management Evaluation Unit of the Department of Management and the Dispute Tribunal in order to identify any emerging trends and to include his observations on those statistics in future reports;

28. *Reiterates its request* that the Secretary-General include information on disputes involving non-staff personnel in the context of both management evaluation and informal mediation in his future reports, and requests the Secretary-General to provide information on existing measures to institutionalize good management practices that aim at avoiding or mitigating disputes involving the various categories of non-staff personnel;

29. *Notes with concern* the increase in the number of pending cases before the Dispute Tribunal and the high cost to the Organization due to financial compensation paid to staff, and in this regard encourages further efforts to handle cases in an effective and efficient manner, including through enhanced cooperation between the formal and informal parts of the system of administration of justice and proactive case management by the judges of the Dispute Tribunal;

30. *Requests* the Secretary-General to ensure the accountability of managers whose decisions have been established to be grossly negligent, according to the applicable Staff Regulations and Rules of the United Nations, and which have led to litigation and subsequent financial loss, and to report thereon to the General Assembly at its seventy-first session;

31. *Also requests* the Secretary-General to provide further information with regard to the effectiveness of the Management Evaluation Unit as a first step in the formal system of administration of justice and its review of administrative decisions taken by managers that could potentially have legal and financial implications for the Organization, and to report thereon to the General Assembly at its seventy-first session;

32. *Takes note* of the information provided regarding the voluntary supplemental funding mechanism for additional resources for the Office of Staff Legal Assistance, and decides to extend the experimental period for the mechanism for one year, from 1 January to 31 December 2016;

33. *Acknowledges* the efforts made with respect to incentives for staff not to opt out of the voluntary supplemental funding mechanism, and in this regard encourages the Secretary-General to strengthen such incentives, particularly in locations where the participation rate is low;

34. *Requests* the Secretary-General to continue to collect and examine data relating to staff contributions to the Office of Staff Legal Assistance and to report thereon to the General Assembly in his next report;

35. *Stresses* the need to continue to explore means to raise awareness among staff of the importance of financial contributions to the Office of Staff Legal Assistance;

36. *Recalls* paragraph 44 of its resolution 69/203, regrets the delay in the finalization of a single code of conduct for all legal representatives, and reiterates its request to the Secretary-General to submit the code to the General Assembly no later than at the main part of its seventy-first session;

37. *Also recalls* paragraph 41 of its resolution 69/203, and reiterates its request to the Secretary-General to provide to the General Assembly a report on the implementation of the amendment to article 11, paragraph 3, of the statute of the Dispute Tribunal and to article 7, paragraph 5, of the statute of the Appeals Tribunal, including with respect to the administrative implications, any implications for the timely disposal of these cases, the ultimate disposition of appeals of orders, if any, and any costs saved by reason of stays pending such appeals, and to do so at the main part of its seventy-first session;

38. *Approves* the proposal of the Secretary-General to harmonize the privileges and immunities of the judges of the Dispute and Appeals Tribunals, and decides to amend article 4 of the statute of the Dispute Tribunal and article 3 of the statute of the Appeals Tribunal as follows:

(a) Statute of the Dispute Tribunal, article 4, new paragraph 12:

12. The judges of the Dispute Tribunal shall be considered officials other than Secretariat officials under the Convention on the Privileges and Immunities of the United Nations;

(b) Statute of the Appeals Tribunal, article 3, new paragraph 12:

12. The judges of the Appeals Tribunal shall be considered officials other than Secretariat officials under the Convention on the Privileges and Immunities of the United Nations;

39. *Also approves* the proposal of the Secretary-General to amend article 8 (appeals) of the rules of procedure of the Appeals Tribunal, and decides to amend it as follows:

Article 8 (appeals): 6. The filing of an appeal shall suspend the execution of the judgement or order contested;

40. *Further approves* the proposal of the Secretary-General with respect to the mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the Tribunals and the suggested amendment made by the Sixth Committee contained in the letter dated 3 November 2015 from the President of the General Assembly addressed to the Chair of the Fifth Committee,⁷ and decides to adopt the mechanism with the amendment as proposed therein and annexed to the present resolution;

41. *Requests* the Secretary-General to publish the statutes of the Dispute and Appeals Tribunals, as amended since their initial adoption by the General Assembly, as soon as possible, but no later than at its seventy-first session;

⁷ See A/C.5/70/9, appendix.

IV Other issues

42. *Stresses* that the Internal Justice Council can help to ensure independence, professionalism and accountability in the system of administration of justice, and requests the Secretary-General to entrust the Council with including the views of both the Dispute Tribunal and the Appeals Tribunal in its reports;

43. *Invites* the Sixth Committee to consider the legal aspects of the report 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.

Annex Mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

1. Allegations regarding misconduct or incapacity of a judge should be made, in writing, directly to the President of the relevant Tribunal. In the event that a complaint is against a serving President, it shall be addressed to the most senior judge after the President (“receiving judge”).
2. The complainant shall receive a written acknowledgement of receipt of the complaint.
3. A complaint shall not be receivable unless it is received within 60 days of the date on which the alleged misconduct or incapacity took place, except as set out in paragraph 4 below.
4. By way of a transitional measure only, a complaint may be filed against a judge of either Tribunal related to alleged misconduct or incapacity during the period from the date of the General Assembly’s approval of the mechanism for addressing possible misconduct of judges in resolution 67/241 of 24 December 2012 to the date of approval of this mechanism, provided such complaint is filed within 60 days of the date of such approval.
5. The types of conduct that would warrant the sanctioning of a judge are violations of the standards established in the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal approved by the General Assembly in resolution 66/106. The types of incapacity that would warrant removal from the Dispute Tribunal or the Appeals Tribunal would involve either a physical or a mental condition that would prevent a judge from performing his or her judicial functions and that cannot be addressed by a reasonable accommodation of such condition.
6. Consistent with the principles of the independence of the administration of justice and judicial independence, judicial decisions are not matters of conduct and shall not be the subject of a complaint under this mechanism. Recusal — whether a particular judge should preside over a case or sit on a hearing — cannot be dealt with under the complaints mechanism.⁸ A complaint is not an appeal.

⁸ Recusal of judges of the Dispute Tribunal or the Appeals Tribunal is covered in articles 4.9 and 3.9 of the respective statutes of the Tribunals.

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7. As a general rule, filed complaints relating to a pending case will not be dealt with until the case is disposed of.
 8. Complaints regarding the misconduct or incapacity of a judge shall contain:
 - (a) The name and address of the complainant;
 - (b) The date and location of the alleged misconduct;
 - (c) The name of the judge against whom the complaint is made;
 - (d) A detailed description of the alleged misconduct or incapacity, including the date on which it took place;
 - (e) Any other relevant information, including the names and contact details of witnesses, if any, to the event complained of, and documentary evidence if available;
 - (f) The signature of the complainant and date of submission.
 9. A complainant may be represented by another person, at his or her own expense.
 10. Upon receipt of a complaint, the President or receiving judge shall review it in order to determine what action, if any, is warranted.
 11. If the President or receiving judge decides that no further action is appropriate, he or she will so inform the complainant in writing, within seven days, providing reasons for the decision and sending a copy to the judge against whom the complaint was made (“judge concerned”).
 12. If the President or receiving judge decides that further action is warranted, he or she shall provide the judge concerned with a copy of the complaint and any supporting documentation thereto and invite him or her to provide comments in writing within two weeks, unless the President or receiving judge grants an extension of time to do so.
 13. If the complaint is informally resolved to the satisfaction of the parties at any time during its pendency before the President or receiving judge, the complainant will inform the President or receiving judge accordingly and the complaint will be closed.
 14. If, following a preliminary review, the President or receiving judge is of the view that further inquiry is appropriate, the complainant will be so advised.
 15. If the President or receiving judge is of the view that there are sufficient grounds to warrant a formal investigation, he or she shall establish a panel of outside experts to investigate the allegations and report its conclusions and recommendations to the President or receiving judge. The panel of experts shall comprise three members who shall be judges, former judges or other eminent jurists. When appointing the panel, the President or receiving judge shall take into account geographical distribution and gender balance.
 16. The President or receiving judge shall establish the terms of reference for the panel of experts. Such terms of reference should ensure that the judge concerned is accorded all requisite due process safeguards.

17. The judge concerned may be represented by another person, at his or her own expense.

18. The panel of experts shall complete their inquiries and report in writing to the President or receiving judge within three months of the date of referral of the complaint to the panel.

19. All judges of the relevant Tribunal, with the exception of the judge concerned, shall review the report of the panel and recommend one of the following courses of action:

(a) If a majority of the judges are of the opinion that the complaint is not well founded, the complaint shall be closed and the President or receiving judge shall advise the judge concerned and complainant in writing;

(b) If a majority of the judges are of the opinion that the complaint is well founded but the removal of the judge concerned is not warranted, the President or receiving judge shall take such corrective action as he or she deems appropriate;

(c) If the judges are of the unanimous opinion that the complaint is well founded and that the matter is of sufficient severity to suggest that the removal of the judge concerned is warranted, they shall so advise the President or receiving judge of the Tribunal. The President or receiving judge shall report the matter to the General Assembly, through the Internal Justice Council, to request the removal of the judge concerned. The judge concerned will be advised of such recommendation as soon as possible by the President or receiving judge;

(d) If a majority of the judges are of the opinion that the complaint is well founded and the matter is of sufficient severity to suggest that the removal of the judge concerned is warranted, the President or receiving judge shall take such corrective action as he or she deems appropriate. The judge concerned shall be given an opportunity to make final written representations regarding the sanction proposed;

(e) When the process described in this paragraph is complete, the complainant will be advised of the disposition of his or her complaint.

20. The process of review of the complaint up to the final disposition thereof shall be confidential. If the final disposition is that set out in paragraph 11, 13 or 19 (a), the name of the judge concerned shall continue to remain confidential following completion of the process.

21. The respective Presidents of the Dispute Tribunal and the Appeals Tribunal shall submit an annual report to the General Assembly on the disposition of complaints through the Internal Justice Council.

22. This mechanism shall come into effect upon approval by the General Assembly.
