

**Report of the Coordinator, Ambassador Thomas Fitschen,  
on the informal consultations of the Sixth Committee  
on agenda item 143, Administration of justice at the United Nations,  
held on 6, 7 and 8 November**

Mr. Chairman,

The Sixth Committee held informal consultations on agenda item 143, “Administration of justice at the United Nations”, on Wednesday 6, Thursday 7 and Friday 8 November, 2013.

During our informal consultations we were able to cover the proposals and observations in the report of the Secretary-General (A/68/346), together with the report of the Internal Justice Council (A/68/306) and the report of the Secretary-General on activities of the Office of the United Nations Ombudsman and Mediation Services (A/68/158).

The informals held again a very fruitful and engaging question and answer session with staff members of the Office of Legal Affairs, the Internal Justice Council, the Office of the Administration of Justice, and the Office of the United Nations Ombudsman and Mediation Services. This interactive dialogue was greatly appreciated, and should be repeated at the next session as appropriate. It would also be beneficial to hear other stakeholders like the judges of the two Tribunals; in my consultations with delegations many expressly regretted that the Tribunal had not been present during our session. In addition, a number of questions that came up during our informal consultations on various parts of the reports were submitted in writing to the Secretariat, and written replies to these questions were received quickly from the Secretariat. Here I would like to thank all of those officials who came to the informals to answer questions or who provided written replies.

The informals first took up the issues raised in the report of the Secretary-General. Delegations thanked the Secretary-General for the comprehensive report submitted pursuant to resolution 67/241 and the facts and figures on the work of the different parts of the system it provides. Delegations noted with satisfaction that the new system is stabilizing and enjoys the trust and confidence of staff members.

Turning to the Management Evaluation Unit (MEU), the high number of complaints disposed of every year was noted with appreciation, and the MEU was commended for the work it has done, despite the very tight timelines established for delivery of its decisions. Delegations expressed their satisfaction that ultimately only a smaller proportion of the total number of requests was formally decided upon, whereas the rest was dealt with through other means. The fact that a large majority of all decisions by the MEU that were subject to an appeal before the United Nations Dispute Tribunal (UNDT) have been confirmed or partly confirmed indicated the accuracy of the decisions taken by the Unit.

On a more general note the Committee also recalled that the informal resolution of work-related disputes is a crucial element of the system of administration of justice. Delegations acknowledged the important functions of the Office of the Ombudsman, the Management Evaluation Unit and the Office of Staff Legal Assistance in this regard. The Committee took note of the information provided by the Secretary-General on measures to encourage informal dispute resolution and urged further efforts to solve conflicts at the lowest possible level, without prejudicing, however, the basic right of staff members to pursue a case also in the formal system. Attention was also drawn to measures developed by the funds and

programmes for the purpose of managing and settling conflicts.

As to the work of the UNDT, delegations noted that the number of new cases, as well as the number of judgments delivered in the three locations, appeared to be stabilizing. Delegations expressed satisfaction that this had brought the time needed for deciding a case at the first instance down to around 12 months. In order to be able to keep up this level of success, however, it was reaffirmed that the Tribunal needed continuity in the number of judges working in the different duty stations. Delegations stressed – as the Committee had done last year in its letter to the Fifth Committee - that any reduction in the judicial capacity of the Tribunal would lead to a significant increase in the length of time needed to conclude a case. The need to find a solution to this question so as to guarantee the sustained efficiency of the formal system was emphasized.

Delegations noted with appreciation the investments made over the past year into improving the courtrooms. It was underlined that these technical measures, including the case management system, will allow the Tribunal to work even more efficiently, with the potential of further reducing the time needed to decide a case. Delegations supported measures to improve the availability of and easy access to the jurisprudence of the tribunals. I would like to recall here that the representative of the IJC argued strongly in favour of a better search engine which would allow anyone working on these issues in both the formal and the informal system – staff members, managers, OSLA and others who provide advice – to establish quickly the relevant jurisprudence.

As to the work of the United Nations Appeals Tribunal (UNAT), some delegations expressed concern about the relatively high number of decisions and judgments by the UNDT that have been appealed to the UNAT - two-thirds of them by staff, about one third on behalf of the Secretary-General - with markedly different success rates. Taking note of UNAT's own assessment that the steady influx of new cases – if nothing is done – might push the new system into crisis, the informals were in agreement with UNAT's position that an accumulation of a backlog of appeals, which had plagued the old system, needs to be avoided, and it encouraged the Fifth Committee to consider the proposals made by the judges of UNAT.

Mr. Chairman,

Our discussions also focused on the issue of moral damages and compensation for non-pecuniary losses. The Secretary-General was thanked for the summary of practice of the UNDT and the UNAT. The principles developed by the UNAT in its jurisprudence over the past four years were noted. Some delegations recalled that the Statutes did not contain any specific provision on compensation for immaterial loss, and encouraged the further study of relevant national legislation. Delegations also pointed out that the figures provided deserve very careful consideration that should not simply focus on the amount of compensation awarded.

On the question of conducting an interim independent assessment of the formal system of the administration of justice, delegations welcomed the proposals. Such an assessment was considered useful and helpful to take stock of developments after five years of the system's operation. It may also help delegations to take decisions on a number of issues that were currently pending. It was suggested that the assessment should also take up the question of the relationship between the formal and informal systems, and include issues related to non-staff personnel. Delegations agreed that the assessment as envisaged by the General

Assembly called for, *inter alia*, a thorough analysis not only of the managerial functioning of the tribunals, but also of their jurisprudence and working methods under the statutes and the rules of procedure. It was recommended that the entity to be charged with carrying out the assessment should be enabled to draw on sufficient and independent legal expertise, probably even from outside the system, and that it be given the necessary time. Some delegations also requested additional information from the Secretariat on how the entity is supposed to measure the “cost effectiveness of the formal system” and which criteria it was supposed to apply.

Delegations commended the role and work of the Office of Staff Legal Assistance (OSLA), and underlined that providing sound and independent legal advice to staff in all phases of a dispute was necessary. OSLA is, as the Secretary-General has stated, an important filter in the system. It was recalled that the Sixth Committee had already said that OSLA be allowed to continue to represent staff in the proceedings before the Tribunals. Delegations encouraged all staff members to avail themselves of OSLA’s services.

The Committee also took note of the information on non-staff personnel provided by the Secretary-General’s report and the report of the Office of the Ombudsman. Delegations recalled that the Sixth Committee, in its debate last year, had highlighted that the United Nations shall ensure that effective remedies are available to all categories of UN personnel. Some delegations reminded the Committee that the issue of better redress for non-staff was still unresolved.

Upon completion of the consideration of the Secretary-General, the informals took up issues in the report of the Internal Justice Council. Our appreciation of the issues were greatly helped by the dialogue with a representative of the Internal Justice Council (IJC) on Wednesday. In our debate it was underlined that the Council has an important function in ensuring independence, professionalism and accountability in the system of the administration of justice. A functioning Council was an indispensable tool to guide the formal part of the system; the views and advice provided by the Council to the General Assembly were deemed essential for the proper maintenance and improvement of the system. The long-term work programme that the Council has laid out for the remainder of its term of office until 2016 met with a lot of interest. Delegations noted, however, that parts of the work programme may overlap with the mandate to be given to the interim assessment and urged close coordination.

Delegations also noted the IJC’s remark that a number of problems that the system currently faces are not legal in nature, but can be addressed through technical or administrative measures. Whereas the concrete proposals made in this regard by the Council are for the Fifth Committee to examine and to decide, the overall concern about the efficiency of the system and the timely and professional disposal of cases at all its levels is also a legal concern of this Committee.

Regarding the issue of privileges and immunities of the judges of the two Tribunals, some delegations saw merit in the proposal of the IJC to treat the judges of both tribunals equally. They also agreed with the IJC that – for the sake of legal clarity - the immunities of the judges should be clearly specified. Some delegations also welcomed the proposal to extend privileges and immunities under section 19 of the General Convention to both groups of judges, or at least to cover the UNAT judges under section 18 which currently applies only to the UNDT judges. Other delegations, however, requested more time to study the legal repercussion of any change in this regard. We had an extensive exchange on this, and finally agreed that the issue required further examination before a decision can be taken.

Delegations also thanked the IJC for its proposal to broaden the criteria for eligibility of persons to the post of UNAT judge. Some delegations supported the proposals of the IJC to amend the Statute accordingly, whereas others recalled previous discussions in the Sixth Committee that had not led to an agreement on the issue. While it was considered helpful if UNAT judges possessed any of the qualifications listed by the IJC in addition to the judicial experience required by the Statute, these delegations expressed preference for not changing the respective provisions of the Statute.

Delegations also thanked the IJC for its very thoughtful analysis of the current practice of both Tribunals concerning measures against abuse of proceedings, and engaged in a very good discussion on this topic. It was recalled that this was an issue of considerable concern for the General Assembly. The informals noted the IJC's conclusion that until now the absence of a comprehensive definition of the term "abuse of proceedings" has not created any difficulties in practice, as the judges have handled these issues carefully and according to the practical needs of each individual case. Some delegations also noted the UNAT's statement that its rules of procedure were adequate to deal with manifestly inadmissible cases. Concerning further practical measures to reduce abuse of proceedings, there was agreement with the IJC that simply ignoring the problem would be undesirable. Some delegations expressed interest in the three options submitted by the IJC, in particular because they could be implemented in practice without additional costs to the system. Others, however, expressed doubt whether additional measures were called for now.

Discussions then turned to the proposed code of conduct for external counsel. It was underlined that for the sake of legal clarity and predictability clear rules were needed as a matter of urgency. It was recalled that General Assembly resolution 67/241 has already stressed the need to ensure that all individuals acting as legal representatives are subject to the same standards of professional conduct. Delegations welcomed that the Secretariat had started consultations with all stakeholders and was preparing a draft text. Delegations encouraged an early submission of the draft to the General Assembly so that a decision can be taken at the next session.

Finally, we also had an exchange on the proposal by the judges of the UNDT to address the GA directly in a report of their own. Delegations were reluctant to change the current system of formal reporting. But delegations also acknowledged the underlying problem of processing and presenting all relevant information from all players within the informal and the formal system in due time for consideration by the General Assembly. It was regretted that in the run-up to our consultations not all entities had had the opportunity to consider, and eventually to react to, the reports of their respective counterparts in the system. The case of the IJC not even having seen the memorandum of the judges that was published in its own report is a good example here. Delegations therefore encouraged all parts of the system to interact better and to share any information relevant to the conduct of their business. The system of administration of justice within the UN is a complex one, and to ensure its smooth functioning it is important that all parts communicate with each other.

Mr. Chairman,

Based on all of this, it seems pretty clear to me that the debate will have to continue, and the Sixth Committee – colleagues here in this room – stand ready to resume their work at the 69<sup>th</sup> session.

Finally I have the pleasure of informing you that the informals were also able to prepare

your draft letter to the President of the General Assembly transmitting the comments just outlined to the Chairman of the Fifth Committee. The letter was finalized this morning and it is my hope that it will be possible for the Committee to approve it now.

Mr Chairman,

That concludes my report on the informal consultations.