



General Assembly

Seventy-second session

Official Records

Distr.: General
13 December 2017

Original: English

Fifth Committee

Summary record of the 14th meeting

Held at Headquarters, New York, on Monday, 13 November 2017, at 3 p.m.

Chair: Mr. Tommo Monthe (Cameroon)
*Vice-Chair of the Advisory Committee on Administrative
and Budgetary Questions:* Mr. Sene

Contents

Agenda item 146: Administration of justice at the United Nations

Agenda item 136: Proposed programme budget for the biennium 2018–2019
(*continued*)

Request for a subvention to the Residual Special Court for Sierra Leone

This record is subject to correction.

Corrections should be sent as soon as possible, under the signature of a member of the delegation concerned, to the Chief of the Documents Management Section (dms@un.org), and incorporated in a copy of the record.

Corrected records will be reissued electronically on the Official Document System of the United Nations (<http://documents.un.org/>).

17-20038 (E)



Please recycle



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

Agenda item 146: Administration of justice at the United Nations ([A/72/7/Add.19](#), [A/72/138](#), [A/72/204](#) and [A/72/210](#); [A/C.5/72/10](#))

1. **Ms. Frankson-Wallace** (Executive Director, Office of Administration of Justice), introducing the Secretary-General's report on the administration of justice at the United Nations ([A/72/204](#)), said that the report was the result of coordination between the Office of Administration of Justice and all relevant stakeholders. Information regarding non-staff personnel had been received from a number of specialized United Nations agencies and bodies.

2. Section II of the report contained observations on the functioning of the formal justice system since the system had commenced operation in 2009. While the management evaluation caseload in the Secretariat, the funds and programmes, the United Nations Dispute Tribunal, the United Nations Appeals Tribunal and the Office of Staff Legal Assistance had fluctuated from year to year, it had remained substantial and, in the case of the Office, had increased. Since 2011, the proportion of requests received by the Management Evaluation Unit from staff in peacekeeping missions had increased, and had reached 71 per cent in 2016. Such staff had also been the Office's single largest client group, accounting for 37 per cent of requests. Most applications filed with the Dispute Tribunal in 2016 had related to benefits and entitlements, appointments and separation from service, as they had since 2009. Many staff members had represented themselves before the Tribunals, although the percentages had fluctuated from year to year. In 2016, efforts to resolve disputes informally had resulted in the resolution of 256 of the 944 requests for management evaluation received by the Unit and 44 applications pending before the Dispute Tribunal without a final adjudication on the merits. A link had again been observed between decisions that affected large numbers of staff and recourse to the formal system through clustered or group applications. Lastly, section II provided statistics and information regarding the activities of the entities in the formal system.

3. Section III of the report provided responses to specific requests by the General Assembly regarding the implementation, within current resources, of the recommendations of the Interim Independent Assessment Panel, which had been endorsed by the Assembly; the policy on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations, issued in January 2017; the judgments of the Dispute Tribunal, the caseloads of the Management Evaluation Unit and the

Dispute Tribunal, the delegation of authority and the accountability of managers; the Unit's role in avoiding litigation; staff contributions to the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance; additional resource requirements for the Unit, the Office and the Appeals Tribunal registry and judges; the appointment of permanent judges to replace the ad litem judges; reporting on the measures taken to resolve systemic and cross-cutting issues; and the tenth anniversary of the internal justice system in 2019. The General Assembly had decided in its resolution [71/266](#) to consider the issues related to resource requirements for improving the functioning of a transparent, professionalized, adequately resourced and decentralized system of administration of justice at the United Nations at its seventy-second session.

4. In Section VII, the Secretary-General set out his conclusions and requests for action by the General Assembly. Annex II contained comprehensive information collected from a number of United Nations entities regarding non-staff personnel and the remedies available to them in the Secretariat, funds and programmes, and specialized agencies and related bodies, as requested by the Assembly. Annex III provided information regarding the implementation of the recommendations contained in the Secretary-General's previous report on the activities of the Office of the United Nations Ombudsman and Mediation Services ([A/71/157](#)).

5. Lastly, she drew the Committee's attention to the report of the Internal Justice Council on the administration of justice at the United Nations ([A/72/210](#)), which included the Council's views and recommendations on the justice system, pursuant to General Assembly resolution [62/228](#). Like the Secretary-General, the Council, which had been established to ensure independence, professionalism and accountability in the system, recommended additional resources for the Management Evaluation Unit, the Office of Staff Legal Assistance and Appeals Tribunal judges. The views of the judges of the Appeals Tribunal and the Dispute Tribunal were set out in annexes I and II to the Council's report, respectively, in accordance with Assembly resolution [70/112](#).

6. **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/72/138](#)), said that the fifteenth anniversary of the establishment of the informal dispute resolution system in the Secretariat had influenced the preparation of the report and provided an opportunity to take stock of achievements and consider the challenges faced by the Organization. By

establishing and supporting the Office, the Member States had fostered a culture of dialogue and helped staff, the most important resource of the United Nations, manage their concerns and focus on their substantive work. With a steady increase in caseload and 2,600 cases received in 2016, the Office was well-established and had both global reach and regional expertise.

7. In the area of prevention, the Office had promoted informal dispute resolution and helped staff and managers enhance their conflict management skills. It had held 171 workshops and training and information sessions in 2016, and would continue to promote such initiatives, particularly in the field. The Office had expanded its use of data and analytics by organizing focus groups related to resilience and the ability of staff and managers to cope with difficult situations. It had conducted confidential, anonymous and multilingual pre-mission surveys in 38 Secretariat departments and peacekeeping missions in 19 countries. Over 60 per cent of the participants had experienced workplace conflict that had affected their productivity and well-being and had resulted in unacceptably high stress levels. The findings had strengthened the Office's resolve to work with all stakeholders to remedy the situation and improve decision-making, and had emphasized the need for frequent visits to hardship locations to support staff. The data collected had been valuable, and the surveys were now an essential part of the Office's mission preparations. Intervention for the early resolution of concerns was a core objective of the Office, whose staff had attempted to resolve 1,600 disputes, 81 per cent of which had originated in duty stations away from headquarters, in 2016. Those figures showed that managers and staff were more aware of and comfortable with the possibility of seeking informal resolution. As had been the case for over a decade, staff had been particularly concerned regarding their job and career, evaluative relationships, and compensation and benefits.

8. As a core part of its mandate, the Office identified systemic issues and provided feedback on them bilaterally to stakeholders and in its annual report to the General Assembly. The current report contained an overview of the major systemic issues reported to the Assembly since 2002. He welcomed the information provided by the Secretary-General regarding the implementation of the Office's recommendations and encouraged the Assembly to request annual feedback from the Organization regarding such issues.

9. In dealing with the concerns of managers and staff, the Office provided support to them and paved the way for systemic change. Staff faced many challenges, including hardship, threats to security and job security,

change and transitions, and physical and psychological health risks. As the Organization embarked on new initiatives, it must equip staff to serve, protect their rights and promote their well-being. As the informal pillar of the internal justice system, the Office was committed to working with all concerned, particularly the formal pillar, to those ends.

10. **Mr. Sene** (Vice-Chair of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee ([A/72/7/Add.19](#)), said that, with regard to the formal system of administration of justice, the number of requests for the services of the Office of Staff Legal Assistance and the Management Evaluation Unit had increased from 2015 to 2016, while the number of applications and appeals received by the Appeals and Dispute Tribunals had decreased. The Advisory Committee recommended that the supplemental staff funding mechanism for the Office of Staff Legal Assistance, which had provided sufficient funding to recruit a number of staff, should be regularized. The request for additional capacity in the Management Evaluation Unit was justified by the increased caseload, and the Advisory Committee recommended the approval of resources for a Legal Officer (P-3) position under general temporary assistance.

11. The Advisory Committee recommended that the mandate of the three ad litem judges in the Dispute Tribunal, and the funding of the staff supporting them through general temporary assistance, should be extended by one year. Because the judicial and administrative work that took place between the sessions of the Administrative Tribunal should be compensated, the Advisory Committee recommended the approval of remuneration of \$600 for each interlocutory motion adjudicated by a judge of the Tribunal, and of a monthly \$1,500 stipend for the President of the Tribunal.

12. With regard to the informal system, the Office of the Ombudsman and Mediation Services had opened more cases in 2016 than in previous years and had resolved a large proportion of the cases mediated. The Advisory Committee encouraged it to continue its informal dispute resolution efforts.

13. **The Chair** drew attention to a letter dated 26 October 2017, addressed to him by the President of the General Assembly ([A/C.5/72/10](#)).

14. **Ms. Pereira Sotomayor** (Ecuador), speaking on behalf of the Group of 77 and China, said that the Group attached great importance to the administration of justice as an integral part of effective human resources management and an accountability tool. The Interim

Independent Assessment Panel had concluded in its report on the system of administration of justice at the United Nations (A/71/62/Rev.1) that the system was an improvement on its predecessor and had largely achieved its objectives, although room for improvement remained. The Group was concerned at the lack of knowledge of the internal system among staff, 67 per cent of whom represented themselves before the Tribunals despite the free services offered by the Office of Staff Legal Assistance, and at the weakening of the culture of accountability because of problems with the system of referrals from the Tribunals. During the reporting period, no decisions had been taken on the accountability of managers whose gross negligence had led to litigation and financial loss. Those issues must be further analysed and fully addressed.

15. The number of applications received by the system had increased. Most cases were related to benefits and entitlements, appointments and separation from service. The Group welcomed the increase in recourse by staff to the Office of the United Nations Ombudsman and Mediation Services and encouraged the informal resolution of disputes. The Office provided the institutional capacity to prevent or resolve workplace conflict and promote collaboration, and the informal part of the justice system was essential in preventing or limiting litigation. The Group welcomed the decrease in the number of pending applications and appeals before the Tribunals, which had expedited the processing of cases.

16. In light of the General Assembly's decision, in its resolution 71/266, to consider the issues related to resource requirements for improving the functioning of a transparent, professionalized, adequately resourced and decentralized system of administration of justice at its seventy-second session, the Group would consider on their merits the Secretary-General's proposals that three permanent judges should be appointed in lieu of the ad litem judges, that Appeals Tribunal judges should be paid for interlocutory motions, that the President of the Tribunal should receive a stipend and that a conference to mark the tenth anniversary of the system should be held. The lessons learned from the implementation of the voluntary staff funding mechanism for the Office of Staff Legal Assistance, established in January 2014, should be made available to Member States with a view to the sustainable financing of the Office. The system should be improved for the benefit of the Organization.

17. **Mr. Fisher** (Switzerland), speaking also on behalf of Liechtenstein, said that a fair, effective internal justice system was essential to staff morale. He welcomed the progress in the implementation of the recommendations of the Interim Independent

Assessment Panel, in accordance with General Assembly resolution 71/266, but there was still room for improvement. The implementation of a fair, effective internal justice system would reduce the number of cases and expedite processing, and existing structures should therefore be strengthened, as recommended by the Secretary-General. The Office of Staff Legal Assistance, which was essential in levelling the playing field between staff and management, should be supported.

18. More than half of United Nations personnel were not staff and did not have access to the internal justice system, a situation which exposed the Organization to legal and reputational risks. The Secretary-General should present, in his next report, cost-effective options for giving all categories of personnel access to effective remedies, regardless of their contracts, and the delegations welcomed the Sixth Committee's recommendation that he should prepare a comprehensive analysis of the remedies available to non-staff personnel. The United Nations must provide protection against retaliation not only for staff who reported misconduct but also for those who lodged an appeal or appeared as a witness before the Tribunals. The delegations commended the work of the Office of the United Nations Ombudsman and Mediation Services during the reporting period.

19. **Mr. De Preter** (Observer for the European Union), speaking also on behalf of the candidate countries Albania, Montenegro, Serbia and the former Yugoslav Republic of Macedonia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Georgia and the Republic of Moldova, said that the simultaneous issuance of documentation in all languages was essential to the inclusivity, transparency and success of negotiations. It was regrettable that the annexes to the Secretary-General's report had not been translated; the Secretariat should provide Member States with appropriate documentation in a timely fashion.

20. The system of administration of justice was essential to the United Nations and must embody the principles of independence, transparency and professionalism. He welcomed the decrease in the number of applications and appeals before the Tribunals and supported efforts to resolve cases without litigation. He attached great importance to informal dispute resolution, which benefited staff and management by improving access to the system while reducing the need for expensive, time-consuming procedures. He welcomed the increase in the use of informal mechanisms and the expansion of outreach by the Office of the United Nations Ombudsman and Mediation

Services. Initiatives to improve the justice system should take into account broader human and financial resource requirements. The General Assembly should ensure that changes corresponded to actual needs and clear, qualitative outputs that were consistent with the system's objectives.

21. **Mr. Fukuda** (Japan) said that the system had enhanced the accountability and credibility of the United Nations. Although the number of requests for the services of the Office of Staff Legal Assistance and the Management Evaluation Unit and the number of applications and appeals received by and pending before the Tribunals were expected to fluctuate, the decreases between 2015 and 2016 reflected a long-term trend, and the system was stabilizing. The voluntary supplemental funding mechanism for the Office of Staff Legal Assistance should be regularized. Since the resources necessary for the Office should be provided through financial contributions from the beneficiaries, the Secretary-General must raise awareness among staff regarding the importance of their contributions, so that they could receive such benefits equally and explore their options for providing the Office with appropriate resources, including the adjustable monthly payroll deduction.

22. Since many cases in the system resulted from poor communication or misunderstandings of human resources policies, a cooperative mentality and culture of direct communication between management and staff must be fostered and easily understood human resources policies must be developed to avoid litigation and ensure that the work environment was positive. Those challenges, which could not be met in a short time, must be addressed not only by the Office of the United Nations Ombudsman and Mediation Services but also by other departments involved in human resources management. Through the justice system, the gap between actual and ideal practices and culture must be closed. The system was intended to address situations that could not be resolved by other means, and was essential for a respectful workplace and a harmonious environment in which staff could fulfil the Organization's mandates and successfully implement programmes and projects.

23. **Ms. Norman Chalet** (United States of America) said that an effective, independent administration of justice system was essential in holding the Organization accountable to its staff. The system must be improved in accordance with General Assembly resolution 61/261, which stated that a transparent, impartial, independent and effective system was a necessary condition for ensuring fair and just treatment of United Nations staff. Independent judges were essential to the formal system,

and her delegation would promote the transparency of Tribunal judgments. Enhancing the administration of justice required improvements not only in the system but also in human resources management and whistle-blower protection.

24. The United States was concerned that most cases in the system were related to benefits and entitlements, separation from service and appointments. Although not all disputes could be resolved without the dispute mechanisms, the Secretary-General should improve communication and explanation of the Organization's rules, regulations and administrative decisions in order to prevent litigation. The United Nations could not be transparent and accountable without adequate protection for whistle-blowers, who must not fear retaliation. Her delegation acknowledged efforts to strengthen the policy for protection against retaliation and supported the letter from the Chair of the Sixth Committee (A/C.5/72/10), in which the Secretary-General was requested to analyse existing policies on such protection, particularly with regard to staff who appeared before the Tribunals, and to make recommendations at the seventy-third session of the General Assembly on ways of improving such protection. She acknowledged the successful mediation of 89 per cent of the cases referred to the Office of the United Nations Ombudsman and Mediation Services, and would seek further information regarding the pilot performance management clinics. Outreach to staff, particularly in the field, should be enhanced to improve their understanding of their rights and obligations under the Staff Regulations and Rules and to reduce the number of dispute resolution requests.

Agenda item 136: Proposed programme budget for the biennium 2018–2019 (continued) (A/72/7/Add.20 and A/72/384)

Request for a subvention to the Residual Special Court for Sierra Leone

25. **Mr. Huisman** (Director, Programme Planning and Budget Division), introducing the Secretary-General's report on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone (A/72/384), said that the General Assembly, in its resolution 71/272 A, had authorized the Secretary-General to enter into commitments of \$2.8 million for 2017 to supplement the Court's voluntary financial resources. The report addressed the use of the authority and future financing arrangements for the Court, and contained a request for a subvention to enable the Court to fulfil its mandate in the biennium 2018–2019. The Court had been funded initially through voluntary contributions and subsequently through a

subvention under the programme budget. Despite the efforts of the Secretary-General, the Government of Sierra Leone, the Oversight Committee and the principals of the Court, the voluntary resources received were inadequate and there was no prospect of additional contributions. The Secretary-General therefore requested the General Assembly to approve a subvention of \$5,931,800 for the biennium 2018–2019.

26. **Mr. Sene** (Vice-Chair of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee ([A/72/7/Add.20](#)), said that the subvention requested by the Secretary-General was equivalent to the full budget of the Court for the biennium 2018–2019, given that no voluntary contributions were expected. The Secretary-General's report also contained information on the use in 2017 of the commitment authority authorized by the General Assembly. The appropriation of the entire amount of the budget for the biennium would undermine the voluntary nature of the current funding arrangements. Given that the current request was the third consecutive request for a subvention, the practice was no longer exceptional. However, in view of the need to ensure stable funding for the Court, the Advisory Committee recommended that the General Assembly should authorize the Secretary-General to enter into commitments in an amount not to exceed \$2.3 million for 2018. The Advisory Committee was concerned that no pledges or contributions were forthcoming; the matter required the Secretary-General's personal engagement to increase the level of voluntary contributions.

27. **Ms. Pereira Sotomayor** (Ecuador), speaking on behalf of the Group of 77 and China, said that the Group attached great importance to the smooth functioning of mandated judicial institutions and to the administrative and financial situation of the Court. The Group took note of the details provided by the Secretary-General regarding the use of the commitment authority for 2017 and the current financial status of the Court. It was concerned that, despite the efforts of the Secretary-General, the Oversight Committee and the principals of the Court, there was no prospect of voluntary contributions. The lack of sustainable funding could jeopardize mandate fulfilment. Because voluntary contributions were unpredictable and subvention was only a temporary measure, a long-term funding mechanism was needed, preferably through Member State assessments. The Group would seek further information regarding the Court's staffing, logistical support and administrative arrangements.

28. **Ms. Piché** (Canada), speaking also on behalf of Australia and New Zealand, said that the three

delegations had supported the Court since its establishment. The Court had been essential in ending conflict in the region and, by fulfilling its mandate in an exemplary manner, had shown the value of an impartial criminal judicial system in building a peaceful, just society. The Court, a lean body, was a model for other tribunals. It administered sentences, oversaw witness protection, assisted national authorities and preserved archives. Without resources, it would not be able to operate in 2018, and the Committee must find a solution to enable it to perform its mandate.

29. **Mr. Felix Alie Koroma** (Sierra Leone) said that his Government and the United Nations had established the Residual Special Court for Sierra Leone in August 2010 to discharge the residual legal obligations of the Special Court for Sierra Leone, which included the conduct of contempt of court and review proceedings. Under the agreement establishing the Residual Special Court, the Court should be funded through voluntary contributions from the international community, but those contributions had proved insufficient and unpredictable. To address the resulting financial constraints, which jeopardized the Court's operations, the principals of the Court had in 2017 held diplomatic briefings in Addis Ababa, New York and The Hague, and the Secretary-General had written to all States Members of the United Nations in April 2017 appealing for financial support. The Court, however, had received only \$150,000 for 2017 from voluntary contributions, and no contributions or pledges for the biennium 2018–2019. He urged the Committee to endorse the Secretary-General's request for a subvention of \$5,931,800 for that biennium. His Government would work with Member States and other development partners to secure sustainable funding that would allow the Court to maintain its judicial independence and independent legal personality, preserve the legacy of the Special Court and promote accountability. In the meantime, the International Residual Mechanism for Criminal Tribunals should provide logistical and administrative support to the Court on a cost-reimbursable basis.

The meeting rose at 4.15 p.m.