

**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 Comm

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 consider

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

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

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.