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Administration of justice at the United Nations

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Report of the Internal Justice Council

Summary

The present report of the Internal Justice Council takes into account the relevant resolutions of the General Assembly and draws from extensive consultations with stakeholders in the internal justice system.

A key area of focus in the report is the efficiency and internal workings of the United Nations Dispute Tribunal. The Council puts forward several recommendations in that regard.

To further improve the performance of the system, the Council also makes recommendations concerning the framework for protection from retaliation, the issue of self-representation, referrals for accountability from the Tribunals, rescission or specific performance as a remedy, investigation and disciplinary matters, authority to settle cases and suspension of action applications before the Dispute Tribunal.

* [A/74/50](#).



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I. Introduction

1. The General Assembly established the internal system of administration of justice at the United Nations as an independent, transparent, professionalized, adequately resourced and decentralized system operating consistently with the relevant rules of international law and the principles of the rule of law and due process in order to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike (resolution [61/261](#)).

2. In a subsequent resolution, the Assembly established the Internal Justice Council to ensure independence, professionalism and accountability in the system of administration of justice and tasked the Council to provide its views to the Assembly on the implementation of the system of administration of justice (resolution [62/228](#)).

3. The current membership of the third Internal Justice Council, whose terms of office expire on 12 November 2020, consists of five members: two “distinguished external jurists”, one nominated by staff and one by management, one “representative” nominated by the staff, one “representative” nominated by management and a “distinguished jurist” nominated by the four other members to be the Chair. The Secretary-General appoints the individuals so nominated to the Internal Justice Council. The current members of the Council are external jurists Samuel Estreicher (United States of America, nominated by management) and Carmen Artigas (Uruguay, nominated by staff). The representatives are Frank Eppert (United States, nominated by management) and Jamshid Gaziyeu (Uzbekistan, nominated by staff). The Chair is Yvonne Mokgoro (South Africa).

4. In preparing the present report, the Council relied on relevant resolutions of the General Assembly and drew from the inputs received from and its interviews with the various stakeholders in the internal justice system.

5. The views of the United Nations Appeals Tribunal and of the United Nations Dispute Tribunal are contained in annexes II and III, respectively, to the present report, in line with paragraph 43 of General Assembly resolution [73/276](#).

6. The Council held its plenary sessions and meetings, in person and by videoconference, with stakeholders¹ in New York from 29 April to 7 May 2019. In view of the four new judicial positions that the General Assembly created in resolution [73/276](#), the Council simultaneously conducted an extensive recruitment exercise, which included the review of 325 applications, administering a written examination to eligible candidates and conducting in-person interviews with short-listed candidates from 3 to 7 June 2019. Upon concluding its work, the Council prepared a report with recommended candidates for judicial positions ([A/73/911](#) and [A/73/911/Corr.1](#)), submitted to the General Assembly for its consideration, and the present report.

7. In its report of 24 July 2017 ([A/72/210](#)), the Council pointed to the lack of clarity with regard to the precise responsibilities of the Dispute Tribunal judges and those of the registry staff with regard to certain aspects of their work and to the related work-

¹ The meetings were held with the judges of the United Nations Appeals Tribunal and of the United Nations Dispute Tribunal, members of the registries, representatives of the Office of Administration of Justice, including the Executive Director and the Office of Staff Legal Assistance, a number of staff unions and staff associations, the Office of the United Nations Ombudsman and Mediation Services, the Office of Human Resources of the Department of Management Strategy, Policy and Compliance, the Human Resources Services Division and the Headquarters Client Support Service in the Department of Operational Support, legal offices from the Secretariat and funds and programmes representing the Secretary-General, the Management Evaluation Unit and the Investigations Division of the Office of Internal Oversight Services. All were invited to freely raise concerns and matters of interest.

related friction between some judges and some registry staff. In its previous report (A/73/218), the Council addressed the additional friction that has arisen between the Office of Administration of Justice and the Tribunal and put forward some recommendations in that context. In 2019, the Council has observed that further internal friction among judges of the Dispute Tribunal themselves has arisen. The Council is gravely concerned about the deleterious effects of those frictions on public confidence in the accountability and on the efficiency of the Dispute Tribunal. The Council has therefore addressed the issue in the section dealing with judicial efficiency and accountability (see sect. II.D below), which is a key central focus of the present report. The Council is aware of other crucial issues raised by stakeholders, some of which are addressed below and some others will remain in the scope of its attention for potential consideration in its next report.

8. A fundamental consideration that guides the Council is that, in order for the internal system of administration of justice to produce fair and efficient results for staff and management, and be so perceived by all stakeholders, the judges of the Tribunals must enjoy judicial independence and be accountable for the timeliness and quality of justice that they deliver. 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 its resolution 66/106, underlines the fundamental values and principles of independence, impartiality, integrity, propriety, transparency, fairness, competence and diligence.

II. Recommendations

A. Protection from retaliation

9. In the Council's meetings with stakeholders, it was confirmed that lack of protection for retaliation against staff members for applying for redress in the Tribunals and for appearing as witnesses remains a serious problem. The Council has heard reports that confirmed that the fear of retaliation among staff was real and could be counted as a factor that had serious implications for access to justice. There is a shared sentiment among staff that they would not be protected from potential retaliation against them, should they become a party or witness in litigation. Seeking redress at the Tribunals is seen by many staff as a risky undertaking, especially in the context of the high threshold required for staff to prove that retaliatory action was improperly motivated and the absence of adequate protection against retaliation. In addition, some applicants indicated that they were facing challenges in convincing their witnesses to agree to come forward, given the concerns of retaliation. Overall, there would appear to be low confidence among staff in the efficacy of the current framework on the prohibition of harassment and abuse of authority (ST/SGB/2008/5) in dealing with the cases of retaliation against applicants and witnesses before the Tribunals.

10. The Council is of the view that one of the most effective approaches, and one that has the best potential to mitigate any climate of fear, is to empower the Tribunals to issue protective orders, should a judge find that retaliation has occurred or is reasonably likely to occur.

Recommendation 1

The Council recommends that the General Assembly revise the statutes of the Tribunals to give Dispute Tribunal and Appeals Tribunal judges explicit authority to issue orders to protect employees believed to be at risk of retaliatory harassment for acting as a party or witness in the internal dispute resolution system. Such orders should be referred to the Chef de Cabinet of the Secretary-General for appropriate follow through, including adopting protective measures and issuing sanctions. In appropriate cases, the presumption of regularity should be reversed, with the burden placed on the respondent to prove the absence of retaliation.

Recommendation 2

In the revision of the Secretary-General's bulletin on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5), it should be made explicit that retaliation against applicants and witnesses constitutes misconduct. Investigation of complaints of retaliatory harassment by staff members claiming that they are being retaliated against for using or serving as witnesses in the informal or formal procedures of the internal justice system of the United Nations should be handled by managers who are not connected with the management or supervision of the complainants.

Recommendation 3

The Office of Internal Oversight Services should elevate complaints of retaliatory harassment, in deciding priorities for investigation.

Recommendation 4

The websites of the Office of Administration of Justice and the United Nations Ombudsman and Mediation Services should expressly indicate that the United Nations policy of zero tolerance of harassment includes protection against retaliation against parties and witnesses in its internal justice system. Training programmes should highlight the policy and identify the steps that can be taken to root out such harassment.

B. Self-representation

11. Self-representation remains a significant feature of the Dispute Tribunal, with 39 per cent of applications filed in 2018 by staff members representing themselves. The Council considers that to be a very high percentage, given that a much lower incidence of self-representation would be expected from a system with easily accessible legal aid provided by the Office of Staff Legal Assistance, which is by all accounts a well-regarded, competent service. Representatives of the Office indicated to the Council that the Office did not turn away from representing applicants, owing to lack of resources, however, they did indicate that the Office's outreach efforts were woefully inadequate because of its lack of resources. Based on feedback from their constituents, some staff associations reported that the Office's outreach was not visible and that it had turned down representation of cases, owing to lack of staffing and a tendency to accept applicants whose cases were clear "winners". That reportedly has compelled staff members who believe they have meritorious cases to self-represent even in cases in which they did not feel legally competent and could not afford private counsel.

12. Without more data and systematic feedback from applicants, the Council is unable to evaluate with confidence whether staff represent themselves largely by choice or by necessity, in the absence of assistance from the Office of Staff Legal Assistance. The Council is confident however in communicating to the General Assembly its continuing concern that the Office is not adequately resourced, as contemplated in the resolution establishing the administration of justice. The Organization's continuing reliance, if not insistence, on staff payments to the "voluntary supplementary funding mechanism" to support the system does not meet the legal obligation of Member States under Article 17 of the Charter of the United Nations to bear the expenses of the Organization.

Recommendation 5

The Office of Administration of Justice should carry out an ongoing survey of applicants who represent themselves to determine the reason for their decision to do so. In addition, the Office should conduct an ongoing exit survey to track the experience of applicants.

Recommendation 6

In accordance with Article 17 of the Charter of the United Nations and pursuant to General Assembly resolution [61/261](#), the Assembly is recommended to increase resources to the Office of Staff Legal Assistance so that it is not obliged to refuse representation in cases with arguable merit because of lack of resources and so that it can undertake more outreach activities, such as those undertaken by the Ethics Office and the Office of the United Nations Ombudsman and Mediation Services.

Recommendation 7

Reaffirming previous recommendations of the Council, staff associations should be granted standing to intervene in cases of systemic importance to staff. In appropriate cases, these associations should be permitted to apply in their own right to seek redress for interference with the right of association of their members.

C. Referrals for accountability from the Tribunals

13. The Council has repeatedly addressed the issue of referrals by the Tribunals for accountability. The statutes of both Tribunals allow for the referral of appropriate cases to the Secretary-General or the relevant executive head of separately administered United Nations funds and programmes for possible action to enforce accountability. The General Assembly has taken a sustained interest in ensuring accountability in the Organization and has requested the Secretary-General to take all measures to ensure that staff, in particular senior managers, are held accountable for their actions. Referrals for accountability by the Tribunals should be seen as a recognition of the authority and obligation of the Secretary-General to hold staff accountable for their actions or inaction.

14. The issue of accountability is an ongoing concern for all stakeholders. The Council heard from them that the system of referrals for accountability was not functioning well. Despite reassurances from the Organization, staff representatives referred to an information gap and the fact that little or no feedback was shared with the Tribunals or staff members on follow-up action taken with respect to allegations raised. There is still no public record of action taken by the Secretary-General with regard to such referrals, despite repeated recommendations from the Council. A

failure, or perceived failure, to act on a referral for accountability from one of the Tribunals presents a significant challenge for the internal justice system. Rather than reinforcing accountability in the Organization, continued inaction with regard to publicizing measures taken regarding referrals for accountability by a judge may create an atmosphere of impunity.

Recommendation 8

The Council urges that referrals for accountability from the Tribunals, and the disciplinary or remedial steps taken to deal with these matters, should be publicized, in an anonymized format, as part of the report of the Secretary-General, entitled “Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour”, under the heading “Referrals for accountability”.

D. Judicial efficiency and accountability

15. In paragraph 42 of its resolution [73/276](#), the General Assembly welcomed further views from the Council on possible ways to improve judicial and operational efficiency. At its session, the Council engaged with the Dispute Tribunal and its registrars in focused discussions with regard to operational and judicial efficiency. The Council’s views and recommendations set out below are informed by the current Council’s three years of experience in reviewing how the administration of justice system is carrying out its mandate and takes into account in particular developments concerning the Dispute Tribunal that have transpired since its previous report. A review of the caseload information indicates that, while there have been some fluctuations from year to year, the caseload of the Tribunal remains substantial and the backlog continues to be a source of serious concern.

16. In line with article 7 of the code of conduct, the deadline for delivery of a judgment by the Tribunal is three months from the end of Dispute Tribunal hearings or close of pleadings in the case. A review by the Council of compliance with that deadline during 2017 and 2018 indicates frequent non-compliance. While a solid number of judgments were delivered within the three-month time limit, many judgments were delivered after the deadline. In addition, some judgments were delivered well over a year after the end of hearings or close of pleadings, and they were not exceptional instances but a sizeable cluster. The Council was flabbergasted to observe that the longest time frame identified was 868 days.

17. The Council notes variations between the duty stations. In one duty station, in one year, the compliance rate with the three-month time limit was only 14 per cent, while the highest compliance rate over 2017 and 2018, from among the three Dispute Tribunal locations, was 67 per cent for one duty station, in one year, which still left 33 per cent of judgments delivered in non-compliance with the deadline. Tables illustrating the extent of compliance with the three-month time limit in 2017 and 2018, by duty station, are contained in annex I to the present report. For 2018, the breakdown of Dispute Tribunal cases in non-compliance with the three-month time limit for the delivery of judgments is as follows: in Geneva, for 35 per cent of applications, the judgment was issued following the expiration of the three-month time limit (average number of days from closing to judgment, 89 days); in Nairobi, 55 per cent (average number of days from closing to judgment – 168 days); and in New York, 86 per cent (average number of days from closing to judgment, 227 days). The delays not only indicate inconsistent compliance with the code of conduct, but also point to critical efficiency issues and to regrettable delays in delivering justice.

18. The information also indicates that a significant amount of time elapsed between the applications being filed and initial judicial action. When applications are filed with the Tribunal, the respondent is required to file a response within 30 days, and it is a mandatory deadline. However, there is no deadline in the legal framework that would require the Tribunal to issue a case management order or other judicial action within a given time frame. The Council notes that there is no common or shared approach to case management across or within Tribunal locations. A review of information for applications filed in 2018, for which judicial orders were ultimately issued, indicates that, with regard to 66 per cent of applications, the first judicial order was issued within 90 days. In 34 per cent of applications, however, the first order was issued after 90 days; in 15 per cent of applications, it took over 200 days – and up to 400 days – for an order to be issued. In terms of an efficient case management process, the Council is of the view that applications will be disposed of in a timely fashion only if a judge takes charge of applications and directs the parties early on as to how to advance the resolution of the application. For example, the judge could narrow the factual and legal issues, direct the parties to submit evidence or argument or direct a schedule for the disposal of the application.

19. Two-year delays or longer before hearings are held and extensive – in some situations almost wholesale – non-compliance with the 90-day time limit for issuing judgments after hearings, as required under the code of conduct, are factors illustrative of a protracted judicial process that is a continuing problem and is unacceptable in an internal system that promises to deliver justice for staff members and managers alike.

Recommendation 9

The Council recommends that the General Assembly consider amending article 7 of the code of conduct for judges of the Tribunals to provide that the first judicial action in a case should be taken no later than three months from the date an application is filed. The Council also recommends the review of the rules of procedure of the United Nations Dispute Tribunal be reviewed, with a view to harmonizing and streamlining the Tribunal’s approach to case management. The Council further recommends that the President of the Tribunal, in the views of the Tribunal transmitted annually through the Council’s report to the Assembly, provide data on the disposal flow of cases at the Tribunal, disaggregated by location and duration pending, and inform the Assembly of the progress made in addressing the backlog of cases pending with the Tribunal.

Table 1
Pending Dispute Tribunal cases as at 31 December 2018, by duty station and duration

Location	Days pending											Total No. of cases
	Up to 100	101– 200	201– 300	301– 400	401– 500	501– 600	601– 700	701– 800	801– 900	901– 1000	Over 1,000	
Geneva	17	33	11	7	9	2	4	2	0	75	1	161
Nairobi	28	19	11	19	11	13	10	5	9	3	6	134
New York	35	4	6	9	8	25	13	3	3	1	2	109
Total	80	56	28	35	28	40	27	10	12	79	9	404

20. At the end of 2018, Judge Bravo was elected by the Tribunal to serve a one-year term as President of the Tribunal, effective 1 January 2019. In accordance with article 1 of its rules of procedure, the President is vested with responsibility to direct

the work of the Tribunal and its registries. Based on correspondence copied to the Council, Judge Bravo set about directing the Tribunal's work very soon after taking office. Her efforts focused on fulfilling the mandate set out in resolution 73/276, in which the General Assembly requested the President of the Dispute Tribunal and the President of the Appeals Tribunal to work together to develop and implement a case disposal plan to address the backlog that had developed, with a real-time case-tracking dashboard and performance indicators on the disposal of caseloads by judges. With the assistance of the Principal Registrar, the President took the initiative to work towards fulfilling the aforementioned mandate. Her colleagues on the bench complained, however, that her manner in dealing with them was not sufficiently collegial and that she took action without sufficient consultation. Moreover, in their view, the actions that were taken were unduly influenced by the Principal Registrar.

21. The Council took the view that it was not in a position to evaluate the allegations levelled against Judge Bravo by her colleagues, or the counter-allegations put forward by Judge Bravo in explaining her actions. The Council can report, however, with regrettable accuracy, that an acrimonious environment developed on the bench, which ultimately led to the other judges asking Judge Bravo to resign the presidency, and that, following her refusal to do so, a decision was taken by the others to remove her from office and elect Judge Nkemdilim Amelia Izuako as the new President. Due to a lack of clarity in article 1 (2) of the rules of procedure, it is not fully clear whether Judge Bravo could in fact be removed from office prior to the expiration of her term, except for an "inability to act". Serious questions remain as to whether such a removal is indeed authorized under the rules of procedure, for, if so, the enhanced supervisory capacity of the President called for by the General Assembly in its resolution 73/276 can be effectively nullified by the resistance of a majority of the judges.

22. The Dispute Tribunal is an independent judiciary which is expected to manage its own affairs in accordance with its statute, rules of procedure and code of conduct. Notwithstanding, the Council did attempt to informally mediate a resolution of the dispute during its annual session, held from 29 April to 7 May 2019. It held individual mediation sessions with some judges, including Judges Bravo and Izuako, and with the entire bench on two occasions. Despite investing extensive time and effort, the Council was unable to facilitate a resolution among the Tribunal judges. As a consequence, the impasse in directing the Tribunal's work, which began in late February 2019, has continued to date. Reputational damage to the administration of justice system has undoubtedly occurred, and the situation is ongoing.

23. Moreover, judicial and operational efficiency has been negatively affected in several significant ways, including the following:

(a) The implementation of the mandate identified above has been significantly delayed and may not be substantially accomplished in 2019 as expected, and therefore, the remedial actions requested by the General Assembly in resolution 73/276 to dispose of the backlog of cases and establish performance expectation standards for judges, common to most judicial systems, will likely not be achieved;

(b) A formal induction programme for new judges planned for early July 2019 has been postponed.

24. In addition, two sitting judges have filed a formal complaint under the mechanism for addressing complaints regarding alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (General Assembly resolution 70/112, annex) against one of their colleagues. Although it is too soon to tell whether significant costs will be incurred in that case, the Council notes that a previous formal complaint under the mechanism against a sitting judge by registry staff has cost the Organization some \$38,000 in expenses,

given the necessity to engage external jurists to investigate the complaint. That case is ongoing as at the time of reporting.

25. Some of the Council's recommendations are based on the events described above, which revealed deficiencies that require immediate change. Among the deficiencies is the lack of clear terms of reference for the President of the Dispute Tribunal to direct the Tribunal's work and a process for holding judges accountable for poor performance and non-compliance with announced efficiency measures. The Council also considers that the mechanism is administratively cumbersome and potentially costly for dealing with complaints against judges and recommends a different approach for the consideration of the General Assembly, as indicated below.

Recommendation 10

The Council recommends that article 1 (2) of the rules of procedure of the Dispute Tribunal be amended to provide that the President of the Tribunal sits for a two-year term and may be removed from office prior to the expiration of the term only for proven misconduct or failure to perform the responsibilities of the office, to be determined pursuant to the mechanism for addressing alleged misconduct or incapacity of the judges of the United Nations Dispute Tribunal and the United Nations Appeal Tribunal.

Recommendation 11

The Council recommends that paragraph 15 of the mechanism be amended to provide that the President or receiving judge first convene the Council to render a non-binding fact-finding report concerning the allegations and that, upon considering such report, the President or receiving judge should determine whether a panel of outside experts is necessary.

Recommendation 12

The Dispute Tribunal is encouraged to promulgate terms of reference for the President for the purpose of directing the Tribunal's work. Those terms of reference should include provisions holding individual judges accountable for failure to adhere to the standards of conduct set out in the code of conduct, including those concerning judicial conduct, the diligent performance of judicial duties, the prompt issuance of rulings and judgments and attending chambers during normal working hours.

Recommendation 13

The Council urges the President of the Dispute Tribunal, in consultation with the other Tribunal judges and the Principal Registrar, to promulgate procedures to ensure timely case management and early action in every case, streamlining the handling of requests for suspension of action, including dispensing with written replies in appropriate cases, grouping cases in which similar issues are raised, early consideration of mediation in appropriate cases and active monitoring of cases exceeding the 90-day time limit for the issuance of judgments.

26. In addition to the frictions among judges and the operational inefficiencies considered above, the Council notes that the Dispute Tribunal will likely have six new judges by the end of 2019. Two are scheduled to take office on 1 July 2019, and four others are likely to be appointed before 31 December 2019. Moreover, the Tribunal is changing from a mostly full-time judiciary to one that is primarily composed of half-time judges. Those factors, in the Council's view, place a premium on good communication and respectful collaboration between the judiciary, the Office of Administration of Justice and the Registry, elements which have heretofore been

somewhat lacking. It is expected that an in-person training session would help to effectively integrate the new judges into Tribunal operations in a positive manner and lead to a better and more productive work environment. Such a session can be arranged within the scope of the Tribunal's annual plenary meeting which, under article 2 (1) of the rules of procedure, is held to deal with questions affecting the administration or operation of the Dispute Tribunal.

Recommendation 14

The General Assembly should direct the Dispute Tribunal to include at its next plenary meeting an in-person training session for the Tribunal judges and registry staff. The training should be developed and designed in consultation with the United Nations Ombudsman and Mediation Services and the Office of Human Resources, with the possible assistance of external experts, as appropriate, and should focus on enhancing communication skills and building skills for effective, smooth conflict resolution competence.

27. Apart from matters concerning the Dispute Tribunal, the Council makes the following recommendations that concern the Appeals Tribunal and the Dispute Tribunal, respectively:

Recommendation 15

The General Assembly should allocate sufficient funds to permit the promulgation of and ongoing maintenance of a readily accessible digest of Appeals Tribunal jurisprudence.

Recommendation 16

The Appeals Tribunal is encouraged to hold more frequent open hearings, especially for cases of systemic importance.

28. In a further effort to promote the efficiency of the Dispute Tribunal, the Council sought the views of stakeholders on whether the current procedure governing suspension of action applications could be handled in a more efficient manner than has heretofore been the case. Under article 13 of the Dispute Tribunal's rules of procedure, the Tribunal may order a suspension of action as interim relief during the pendency of the management evaluation of an administrative decision. Applicants seeking suspension of action must show, prima facie, that the administrative decision is unlawful, that there is an urgent need for the suspension and that implementation of the administrative decision during the pendency of the management evaluation would irreparably harm the applicant.

29. Data provided to the Council reveals that, in 2017, some 24 per cent of all new applications filed with the Dispute Tribunal involved suspension of action cases, with a similar percentage in 2018. A significant portion of the Tribunal's workload therefore involves suspension of action applications which, in accordance with the provisions of article 13 of the rules of procedure, must be decided by the Tribunal within five business days. Based on comments received from numerous interlocutors, that time limit has proven difficult to adhere to in most cases. Moreover, it is the consensus view of the Tribunal judges that any order suspending implementation of an administrative action is only temporary and becomes moot following the completion of the management evaluation of the contested decision, which often occurs within a few days of the Court's issuance of the temporary order of suspension. Furthermore, suspension of action applications require immediate attention by multiple parties and can be disruptive to operational and judicial efficiency.

30. The Council sought the views of interlocutors on whether consideration should be given to granting automatic suspensions of action for certain types of cases during the pendency of the management evaluation. Such an approach would obviate the need for judicial review of those cases, thereby freeing up resources to work on other matters. Most of the Council's interlocutors considered that such an approach was not advisable, given that it would likely lead to a significant increase in unmeritorious suspension of action applications because, in such cases as those involving non-renewal of appointments, the Organization would be obliged to retain applicants in employment until the management evaluation was completed, which would be both administratively burdensome and costly in its implementation. The Council found those arguments convincing and concluded that automatic suspension of action for certain types of cases was not an approach that would lend itself to operational or judicial efficiency.

31. However, the Council's consideration of the issue revealed that Dispute Tribunal practice in handling suspension of action applications varied among the three tribunal locations and among individual judges. Some judges decided suspension of action applications without requiring a reply from respondents, whereas others described suspension of action applications as tantamount to "mini-trials", with the need to hold hearings and call witnesses with short notice. The latter approach posed challenges in particular in field and peacekeeping settings.

Recommendation 17

In the Council's view, in order to bring about judicial and operational efficiency in handling suspension of action applications, the Dispute Tribunal should examine and seek to harmonize its approach to handling suspension of action applications based on its determination of the best practices for doing so.

E. Rescission or specific performance as a remedy

32. Under the statute of the Dispute Tribunal, when staff have been found to be unlawfully terminated, respondents are given the choice of reinstatement or rescission, or payment in lieu thereof of an amount not normally exceeding two years of base salary. They have uniformly opted for the payment of the compensation option. As noted by the Council in its previous report (A/73/218, para. 31), the "no rescission and no reinstatement" approach has probably existed in the United Nations administration of justice system for decades, predating the current administration of justice system's establishment in 2009.

33. The Council recognizes that reinstatement, or rescission, may not be practicable or desirable for operational reasons in some cases, however, it is difficult to believe that it would be impracticable in all cases. Both the Dispute Tribunal and the Appeals Tribunal have critically commented on numerous occasions on the standard approach practised by respondents. The Council joins that criticism and is of the view that more needs to be done to make sure that, where it is practicable, unlawfully terminated staff members are reinstated or instated, where justice demands, to comparable open positions. The Council recommends that respondents be required under the statute of the Dispute Tribunal to show to the Tribunal's satisfaction that a good faith effort has been made and that reinstatement or instatement is not practicable.

Recommendation 18

The Council recommends that article 10 (5) of the statute of the Dispute Tribunal be amended to provide that, prior to any election by management to pay compensation in lieu of reinstatement or instatement to the denied position, the

respondent should provide satisfactory evidence to the Tribunal that rescission or specific performance in such cases is not feasible owing to compelling operational, administrative or budgetary reasons. The Council recommends therefore that article 10 (5) (a) of the statute of the Tribunal be modified to read as follows:

Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered. The election available to the respondent to pay compensation shall be subject to prior review and approval by the Tribunal, which shall undertake to ensure that exercise of the election is both reasoned and reasonable under the totality of the circumstances existing at the time of judgment. The compensation referred to in the present subparagraph is further subject to the provisions set out in subparagraph (b) below.

F. Information on unexpected judicial vacancies

34. In its resolution [73/276](#), the General Assembly took note of paragraph 30 of the report of the Advisory Committee on Administrative and Budgetary Questions ([A/73/438](#)), and invited the Council to provide more detailed information on unexpected judicial vacancies, including information on the scope of a formal roster of candidates, to the Assembly in the context of its next report.

35. The Council recalls that, in its report on the appointment of judges of the Tribunals ([A/70/190](#)), it recommended that the General Assembly authorize the Council to make its recommendations for filling vacancies from a roster of fully qualified candidates, to avoid, if possible, the need for additional costly recruitment exercises. The Assembly did not take any decision on that recommendation.

36. The Advisory Committee was not convinced of the need to establish a formal roster of candidates for a very limited number of judicial positions, given that permanent judges were appointed for a term of seven years. According to the Committee, recourse to the roster would only be required infrequently, making it a challenge to keep the list of pre-vetted candidates up to date. Recruitments with a focus on certain specific requirements for a particular exercise presents another challenge.

37. Timing is another challenge. The next recruitment that might utilize a roster is the one that would take place to fill those positions that will become vacant in 2023 and would include candidates for both the Dispute Tribunal and the Appeals Tribunal. Roster membership should, in the view of the Council, have a clear expiration date not extending too far into the future, because having too long of a validity might be viewed as tying the hands of a future Council and might prove to be based on outdated information thereby requiring renewed interviews with rostered candidates. In addition, an unexpected vacancy may or may not align with the full-time or part-time position for which rostered candidates were assessed by the Council.

38. As indicated in the Council's recruitment report ([A/73/911](#)), the Council will maintain a roster consisting of recommended candidates that the General Assembly did not select for appointment in 2019 and the candidates that the Council did not recommend for appointment because they were of the same nationality as existing judges on the Tribunals.

G. Authority to settle cases under the new management reform

39. The Council considered whether the new scheme for delegation of authority (ST/SGB/2019/2) had introduced changes in the management's authority to settle cases and also in the framework for the imposition of disciplinary measures and overseeing of related investigations. The Council was informed that no changes in those two areas are being contemplated, and that authority will continue to be exercised in a centralized manner. Centralization is particularly appropriate, in view of the need to harmonize courses of action in connection with settlements, the sensitive nature of disciplinary proceedings and the need to secure uniform treatment and equal access to due process rights.

40. The Council intends to follow up on the implementation of the new framework for delegation of authority insofar as it may affect the system of administration of justice, and report accordingly in its next report to the General Assembly.

III. Acknowledgements

41. The Council wishes to express its gratitude to all stakeholders for their availability and their clarifying and constructive contributions during the interviews and thereafter. Their input was crucial to the understanding of many challenges and to the development of the recommendations contained in the present report.

42. The Council is also indebted to the Office of Administration of Justice for its support.

(Signed) Yvonne **Mokgoro**

(Signed) Carmen **Artigas**

(Signed) Samuel **Estreicher**

(Signed) Frank **Eppert**

(Signed) Jamshid **Gaziyev**

Annex I

Disposal flow for judgments issued by the United Nations Dispute Tribunal in 2017 and 2018, by duty station

Table 1
Disposal of judgments by the United Nations Dispute Tribunal in Geneva, 2017

1	2	3		4	5	6	
No.	Open date	Date		No. of days between 2 and 3	Date of issuance of judgment ^a	No. of days between 3 and 5 ^b	
		End of hearing and close of oral pleadings	End of hearing and close of written pleadings	Close of pleadings without a hearing			
1.	15 December 2016			28 December 2016	13	3 January 2017	6
2.	4 March 2015	13 December 2016			650	27 January 2017	45
3.	30 August 2015			11 November 2016	439	6 February 2017	88
4.	9 June 2016			13 July 2016	34	22 February 2017	224
5.	4 October 2016			15 February 2017	134	7 March 2017	20
6.	18 February 2017			25 February 2017	7	9 March 2017	12
7.	1 February 2016	3 March 2017			396	15 March 2017	12
8.	11 April 2016			16 February 2017	311	21 March 2017	33
9.	20 March 2017			27 March 2017	7	4 April 2017	8
10.	27 June 2016	28 February 2017			246	10 April 2017	41
11.	20 April 2016			24 March 2017	338	21 April 2017	28
12.	28 September 2016			25 November 2016	58	30 May 2017	186
13.	1 May 2017			1 May 2017	0	31 May 2017	30
14.	31 August 2016	2 May 2017			244	9 June 2017	38
15.	30 May 2016			24 February 2017	270	21 June 2017	117
16.	8 July 2016			12 October 2016	96	23 June 2017	254
17.	18 May 2015	9 March 2017			661	27 June 2017	110
18.	11 May 2015	9 March 2017			668	27 June 2017	110
19.	24 March 2016	17 March 2017			358	29 June 2017	104
20.	12 August 2016			3 November 2016	83	6 July 2017	245
21.	24 November 2015			27 March 2017	489	13 July 2017	108
22.	11 August 2016			14 March 2017	215	16 August 2017	155
23.	11 August 2016			3 November 2016	84	22 August 2017	292
24.	27 February 2017	9 June 2017			102	31 August 2017	83
25.	10 June 2016	4 August 2017			420	12 September 2017	39
26.	23 December 2015	4 August 2017			590	12 September 2017	39
27.	15 August 2016	28 July 2017			347	12 September 2017	46
28.	14 October 2016			19 June 2017	248	13 September 2017	86
29.	5 February 2017	26 September 2017			233	20 October 2017	24
30.	23 December 2016			2 June 2017	161	7 November 2017	158
31.	7 October 2015	27 June 2017			629	17 November 2017	143
32.	30 September 2017			15 November 2017	46	17 November 2017	2
33.	27 April 2017	31 October 2017			187	29 November 2017	29

1	2	3		4	5	6
No.	Open date	Date		No. of days between 2 and 3	Date of issuance of judgment ^a	No. of days between 3 and 5 ^b
		End of hearing and close of oral pleadings	End of hearing and close of written pleadings			
34.	17 September 2016	26 October 2017		404	14 December 2017	49
35.	19 April 2017	4 October 2017		168	29 December 2017	86
36.	25 May 2017	4 October 2017		132	29 December 2017	86
37.	30 May 2017	4 October 2017		127	29 December 2017	86
Total						3 222

^a Judgments adjudicating two or more cases: difference in opening dates did not warrant individualization of data.

^b Average number of days from closing to issuance of judgment: 87; percentage of judgments issued within 92 days from closing: 65 per cent.

Table 2
Disposal of judgments by the United Nations Dispute Tribunal in Geneva, 2018

1	2	3		4	5	6
No.	Open date	Date		No. of days between 2 and 3	Date of issuance of judgment ^a	No. of days between 3 and 5 ^b
		End of hearing and close of oral pleadings	End of hearing and close of written pleadings			
1.	23 March 2016	22 November 2017		609	11 January 2018	50
2.	1 April 2016			643	12 January 2018	8
3.	6 November 2017	21 December 2017		45	22 January 2018	32
4.	1 February 2016			115	30 January 2018	614
5.	16 January 2018			6	31 January 2018	9
6.	6 April 2017	17 November 2017		225	5 February 2018	80
7.	1 February 2017			384	26 February 2018	6
8.	11 October 2016			429	27 February 2018	75
9.	8 March 2016	11 October 2017		582	28 February 2018	141
10.	5 April 2016			672	6 March 2018	28
11.	27 March 2016	11 October 2017		563	14 March 2018	154
12.	22 October 2016	11 October 2017		354	15 March 2018	155
13.	18 January 2018			47	20 March 2018	14
14.	23 March 2018			5	11 April 2018	14
15.	1 June 2017			35	23 April 2018	291
16.	19 April 2016			528	30 April 2018	213
17.	13 July 2016			603	1 May 2018	54
18.	26 March 2018			48	23 May 2018	10
19.	12 April 2016			569	25 May 2018	204
20.	21 April 2017	7 February 2018		292	31 May 2018	113
21.	14 October 2013	28 February 2018		1598	27 June 2018	119
22.	22 July 2013	28 February 2018		1682	27 June 2018	120
23.	2 May 2016	3 May 2018		731	6 July 2018	64

<i>1</i>	<i>2</i>	<i>3</i>			<i>4</i>	<i>5</i>	<i>6</i>
<i>No.</i>	<i>Open date</i>	<i>Date</i>			<i>No. of days between 2 and 3</i>	<i>Date of issuance of judgment^a</i>	<i>No. of days between 3 and 5^b</i>
		<i>End of hearing and close of oral pleadings</i>	<i>End of hearing and close of written pleadings</i>	<i>Close of pleadings without a hearing</i>			
24.	6 August 2018			6 August 2018	0	14 August 2018	8
25.	13 May 2018			13 May 2018	0	16 August 2018	95
26.	4 October 2016			26 May 2018	599	20 August 2018	86
27.	10 September 2015			25 May 2018	988	28 August 2018	95
28.	7 May 2017			17 May 2018	375	29 August 2018	104
29.	1 February 2018	4 June 2018			123	3 September 2018	91
30.	6 June 2017	10 July 2018			399	19 September 2018	71
31.	29 December 2016			19 June 2018	537	20 September 2018	93
32.	13 December 2016			30 January 2018	413	21 September 2018	234
33.	14 September 2018			21 September 2018	7	24 September 2018	3
34.	20 July 2017			19 September 2018	426	1 October 2018	12
35.	24 November 2017			15 December 2017	21	2 October 2018	291
36.	10 May 2016	19 September 2018			862	9 October 2018	20
37.	29 November 2016			10 October 2018	680	17 October 2018	7
38.	20 October 2017			10 October 2018	355	17 October 2018	7
39.	6 August 2017	3 October 2018			423	25 October 2018	23
40.	19 June 2018			26 June 2018	7	14 November 2018	141
41.	22 February 2017			9 November 2018	625	19 November 2018	10
42.	20 February 2017	31 October 2018			618	19 November 2018	19
43.	30 August 2018			9 November 2018	71	21 November 2018	12
44.	22 March 2017	15 November 2018			603	21 November 2018	6
45.	1 June 2017			16 November 2018	533	23 November 2018	7
46.	2 August 2017			27 March 2018	237	3 December 2018	251
47.	19 September 2017	22 November 2018			429	4 December 2018	12
48.	18 April 2018	24 October 2018			189	14 December 2018	52
49.	16 June 2017			21 November 2018	523	20 December 2018	29
Total							4 347

^a Judgments adjudicating two or more cases: difference in opening dates did not warrant the individualization of data.

^b Average number of days from closing to judgment: 89; percentage of judgments issued within 92 days from closing: 65 per cent.

Table 3
Disposal of judgments by the United Nations Dispute Tribunal in Nairobi, 2017

1	2	3		4	5	6	
No.	Open date	Date		No. of days between 2 and 3	Date of issuance of judgment ^a	No. of days between 3 and 5 ^b	
		End of hearing and close of oral pleadings	End of hearing (H) and close of written pleadings (P)				Close of pleadings without a hearing
1.	23 January 2017			23 January 2017	0	30 January 2017	7
2.	26 May 2016			24 January 2017	243	13 February 2017	20
3.	28 December 2015			8 February 2016	42	3 March 2017	389
4.	23 November 2015			16 February 2017	451	8 March 2017	20
5.	30 March 2016			4 January 2017	280	8 March 2017	63
6.	3 January 2017			8 March 2017	64	10 March 2017	2
7.	5 May 2014			6 July 2015	427	10 March 2017	613
8.	15 February 2017			30 March 2017	43	6 April 2017	7
9.	25 November 2015			15 February 2017	448	26 April 2017	70
10.	27 October 2014		13 July 2016 (H), 2 August 2016 (P)		645	26 April 2017	267
11.	27 July 2014		2 March 2016 (H), 19 July 2016 (P)		723	26 April 2017	259
12.	11 May 2015			13 February 2017	644	8 May 2017	84
13.	4 December 2015		9 February 2017 (H), 20 February 2017 (P)		444	9 May 2017	78
14.	30 November 2015			20 March 2017	476	10 May 2017	51
15.	21 December 2015		27 March 2017 (H), 3 April 2017 (P)		469	29 May 2017	56
16.	2 November 2016			5 December 2016	33	12 June 2017	189
17.	30 November 2016		17 January 2017 (H), 26 April 2017 (P)		147	27 June 2017	62
18.	16 May 2017			23 June 2017	38	27 June 2017	4
19.	28 March 2017			3 May 2017	36	28 June 2017	56
20.	21 March 2014			1 October 2015	559	13 July 2017	651
21.	12 May 2016			28 April 2017	351	13 July 2017	76
22.	6 April 2017			8 May 2017	32	14 July 2017	67
23.	2 March 2015		17 August 2016 (H), 16 September 2016 (P)		564	14 July 2017	301
24.	6 March 2017			6 April 2017	31	17 July 2017	102
25.	13 June 2017			21 July 2017	38	21 July 2017	0
26.	2 January 2017			17 July 2017	196	21 July 2017	4
27.	10 March 2017			20 July 2017	132	24 July 2017	4
28.	1 March 2016			25 July 2017	511	4 August 2017	22
29.	20 March 2017			28 July 2017	130	16 August 2017	19
30.	5 January 2016			5 February 2016	31	24 August 2017	570
31.	22 March 2016			4 August 2016	135	9 November 2017	462
32.	28 June 2017			9 August 2017	42	13 September 2017	31
33.	27 June 2013			5 December 2016	1257	28 September 2017	297

<i>1</i>	<i>2</i>	<i>3</i>		<i>4</i>	<i>5</i>	<i>6</i>	
<i>No.</i>	<i>Open date</i>	<i>Date</i>			<i>No. of days between 2 and 3</i>	<i>Date of issuance of judgment^a</i>	<i>No. of days between 3 and 5^b</i>
		<i>End of hearing and close of oral pleadings</i>	<i>End of hearing (H) and close of written pleadings (P)</i>	<i>Close of pleadings without a hearing</i>			
34.	10 May 2016			18 July 2016	69	17 October 2017	456
35.	16 October 2017			16 October 2017	0	24 October 2017	8
36.	13 March 2015		13 January 2016 (H), 15 February 2016 (P)		339	31 October 2017	624
37.	5 January 2017			28 September 2017	266	16 November 2017	49
38.	7 January 2017		6 June 2017 (H), 17 July 2017 (P)		191	28 November 2017	134
39.	16 November 2017			21 November 2017	5	28 November 2017	7
40.	8 March 2016		31 October 2017 (H), 18 November 2017 (P)		620	13 December 2017	25
41.	12 August 2017			1 December 2017	111	15 December 2017	14
42.	16 October 2017			1 December 2017	46	15 December 2017	14
43.	19 July 2017		14 November 2017 (H), 21 November 2017 (P)		125	28 December 2017	37
Total							6 271

^a Judgments adjudicating two or more cases: difference in opening dates did not warrant the individualization of data.

^b Average number of days from closing to judgment: 146; percentage of judgments issued within 92 days from closing: 67 per cent.

Table 4
Disposal of judgments by the United Nations Dispute Tribunal in Nairobi, 2018

1	2	3		4	5	6	
<i>Date</i>							
<i>No.</i>	<i>Open date</i>	<i>End of hearing and close of oral pleadings</i>	<i>End of hearing (H) and close of written pleadings (P)</i>	<i>Close of pleadings without a hearing</i>	<i>No. of days between 2 and 3</i>	<i>Date of issuance of judgment^a</i>	<i>No. of days between 3 and 5^b</i>
1.	3 January 2018			3 January 2018	0	5 January 2018	2
2.	19 October 2016			25 November 2017	402	11 January 2018	47
3.	28 December 2017			28 December 2017	0	17 January 2018	20
4.	31 December 2017			9 January 2018	9	22 January 2018	13
5.	2 January 2018			9 January 2018	7	22 January 2018	13
6.	5 October 2016			26 January 2018	478	29 January 2018	3
7.	28 January 2016			26 May 2016	119	29 January 2018	613
8.	5 September 2017			15 September 2017	10	2 February 2018	140
9.	22 March 2017			16 August 2017	147	7 February 2018	175
10.	19 October 2016	26 January 2018			464	8 February 2018	13
11.	13 March 2015			14 October 2015	215	14 February 2018	868
12.	5 September 2017			31 October 2017	56	23 February 2018	115
13.	5 September 2017			31 October 2017	56	23 February 2018	115
14.	5 September 2017			31 October 2017	56	23 February 2018	115
15.	5 September 2017			31 October 2017	56	23 February 2018	115
16.	5 September 2017			31 October 2017	56	23 February 2018	115
17.	5 September 2017			31 October 2017	56	23 February 2018	115
18.	5 February 2018			19 February 2018	14	1 March 2018	10
19.	15 November 2017			27 December 2017	42	8 March 2018	71
20.	15 November 2017			27 December 2017	42	8 March 2018	71
21.	15 November 2017			27 December 2017	42	8 March 2018	71
22.	15 November 2017			27 December 2017	42	8 March 2018	71
23.	16 March 2018			16 March 2018	0	21 March 2018	5
24.	11 February 2018			2 March 2018	19	21 March 2018	19
25.	25 May 2015, 8 June 2015, 16 July 2015		17 February 2016 (H), 9 May 2016 (P)		350, 336, 298	29 March 2018	689
26.	25 April 2017			21 September 2017	149	4 April 2018	195
27.	17 October 2017			25 March 2018	159	4 April 2018	10
28.	9 January 2018			18 April 2018	99	25 April 2018	7
29.	25 October 2016			25 November 2016	31	26 April 2018	517
30.	19 April 2016			3 June 2016	45	8 May 2018	704
31.	25 May 2016			30 April 2018	705	15 May 2018	15
32.	21 October 2016	26 January 2018			462	30 May 2018	124
33.	1 December 2017			5 January 2018	35	31 May 2018	146
34.	1 December 2017			5 January 2018	35	8 June 2018	146
35.	11 December 2017			14 June 2018	185	26 June 2018	12

<i>1</i>	<i>2</i>	<i>3</i>		<i>4</i>	<i>5</i>	<i>6</i>	
		<i>Date</i>					
<i>No.</i>	<i>Open date</i>	<i>End of hearing and close of oral pleadings</i>	<i>End of hearing (H) and close of written pleadings (P)</i>	<i>Close of pleadings without a hearing</i>	<i>No. of days between 2 and 3</i>	<i>Date of issuance of judgment^a</i>	<i>No. of days between 3 and 5^b</i>
36.	1 December 2017			5 January 2018	35	26 June 2018	146
37.	1 December 2017			5 January 2018	35	27 June 2018	146
38.	1 December 2017			5 January 2018	35	27 June 2018	146
39.	2 June 2015		7 February 2017 (H), 7 March 2018 (P)		1 009	28 June 2018	113
40.	1 December 2017			5 January 2018	35	28 June 2018	146
41.	1 December 2017			5 January 2018	35	28 June 2018	146
42.	21 September 2015		14 February 2017 (H), 13 March 2017 (P)		539	31 July 2018	505
43.	13 April 2015		27 January 2016 (H), 5 May 2016 (P)		388	28 August 2018	845
44.	13 February 2016		18 October 2017 (H), 2 November 2017 (P)		628	19 September 2018	321
45.	21 November 2016			7 September 2018	655	08 October 2018	31
46.	28 November 2016			5 October 2018	676	11 October 2018	6
47.	1 February 2016			14 June 2018	864	2 November 2018	141
48.	21 July 2015			24 September 2018	1 161	21 November 2018	58
49.	29 June 2017			17 April 2018	292	22 November 2018	219
50.	12 October 2018			14 November 2018	33	27 November 2018	13
51.	7 December 2016			12 October 2018	674	28 November 2018	47
52.	23 May 2016		19 September 2017 (H), 12 October 2017 (P)		507	5 December 2018	419
53.	11 November 2018			5 December 2018	24	7 December 2018	2
Total						8 930	

^a Judgments adjudicating two or more cases: difference in opening dates did not warrant the individualization of data.

^b Average number of days from closing to judgment: 168; percentage of judgments issued within 92 days from closing: 45 per cent.

Table 5
Disposal of judgments by the United Nations Dispute Tribunal in New York, 2017

1	2	3		4	5	6	
No.	Open date	Date			No. of days between 2 and 3	Date of issuance of judgment ^a	No. of days between 3 and 5 ^b
		End of hearing (H) and close of oral pleadings	End of hearing and close of written pleadings	Close of pleadings without a hearing			
1.	10 July 2015			11 October 2016	460	17 January 2017	99
2.	8 June 2015	12 January 2017 (H)			585	1 February 2017	21
3.	20 November 2015	12 January 2017 (H)			420	1 February 2017	21
4.	23 September 2016			11 November 2016	50	6 March 2017	116
5.	10 January 2017			^c		16 March 2017	66
6.	3 February 2017			^c		31 March 2017	57
7.	20 June 2016			29 September 2016	102	26 April 2017	210
8.	13 March 2017			^c		28 April 2017	47
9.	20 February 2015			21 February 2017	733	11 May 2017	80
10.	5 June 2015			15 November 2016	530	31 May 2017	198
11.	23 September 2016			11 November 2016	50	16 June 2017	218
12.	27 December 2016			26 April 2017	121	22 June 2017	58
13.	1 August 2017			^c		9 August 2017	9
14.	24 August 2016			17 March 2017	206	25 August 2017	162
15.	21 November 2016			17 March 2017	117	6 September 2017	174
16.	26 October 2016			10 March 2017	136	25 September 2017	200
17.	21 November 2016			25 July 2017	247	28 September 2017	66
18.	18 January 2017			24 May 2017	127	29 September 2017	129
19.	24 November 2016			22 June 2017	211	29 December 2017	191
Total							2 122

^a Judgments adjudicating two or more cases: difference in opening dates did not warrant the individualization of data.

^b Average number of days from closing to judgment: 112; percentage of judgments issued within 92 days from closing: 53 per cent.

^c Applications for correction, interpretation and revision generally do not prompt a hearing.

Table 6
Disposal of judgments by the United Nations Dispute Tribunal in New York, 2018

1	2	3		4	5	6	
No.	Open date	Date		No. of days between 2 and 3	Date of issuance of judgment ^a	No. of days between 3 and 5 ^b	
		End of hearing (H) and close of oral pleadings	End of hearing and close of written pleadings				Close of pleadings without a hearing
1.	26 September 2016			30 May 2017	247	12 January 2018	228
2.	13 September 2017			^c		1 February 2018	142
3.	24 April 2017			28 July 2018	461	20 February 2018	159
4.	12 February 2015			18 August 2017	919	28 February 2018	195
5.	9 January 2017	14 February 2018 (H)			402	22 March 2018	37
6.	18 November 2016			14 December 2017	392	4 May 2018	142
7.	9 March 2017			3 October 2018	574	14 June 2018	112
8.	10 November 2016			1 December 2017	387	26 June 2018	208
9.	25 August 2016			3 February 2017	163	30 July 2018	543
10.	25 August 2016			3 February 2017	163	30 July 2018	543
11.	22 November 2016			3 February 2017	74	30 July 2018	543
12.	20 March 2017			26 December 2017	282	4 September 2018	253
13.	14 December 2017			16 March 2018	93	7 September 2018	176
14.	18 August 2017			9 February 2018	176	20 September 2018	224
15.	18 January 2017			14 February 2018	393	27 September 2018	226
16.	24 June 2016			1 June 2018	708	2 October 2018	124
17.	9 January 2017			18 August 2017	222	5 October 2018	414
18.	13 February 2017			3 November 2018	629	19 October 2018	16
19.	16 March 2017			25 September 2018	559	26 October 2018	32
20.	16 January 2017			22 June 2018	523	18 December 2018	180
21.	8 February 2017			2 April 2018	419	21 December 2018	264
Total						4 761	

^a Judgments adjudicating two or more cases: difference in opening dates did not warrant the individualization of data.

^b Average number of days from closing to judgment: 227; percentage of judgments issued within 92 days from closing: 14 per cent.

^c Applications for correction, interpretation and revision generally do not prompt a hearing.

Annex II

Views of the United Nations Appeals Tribunal

1. The United Nations Appeals Tribunal is the tribunal of final instance in the internal justice system of the United Nations dealing with employment law issues of staff members of the United Nations, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the International Civil Aviation Organization and several other international agencies and entities, as well as for participants of the United Nations Joint Staff Pension Fund.

2. As at 30 June 2019, the Appeals Tribunal was composed of six judges, namely (in alphabetical order):

Martha Halfeld (Brazil)
Sabine Knierim (Germany)
Richard Lussick (Samoa)
John Murphy (South Africa)
Dimitrios Raikos (Greece)
Deborah Thomas-Felix (Trinidad and Tobago)

At the 41st plenary meeting of its seventy-third session, on 28 November 2018, the General Assembly appointed Graeme Colgan (New Zealand), Jean-François Neven (Belgium) and Kanwaldeep Sandhu (Canada) as judges of the Appeals Tribunal, for a term of office beginning on 1 July 2019 and expiring on 30 June 2026, to fill one vacancy occurring as a result of the resignation of Rosalyn M. Chapman on 3 November 2017 and two vacancies occurring on the expiration of the terms of office of Richard Lussick and Deborah Thomas-Felix, effective 30 June 2019.

3. In the period from July 2018 to June 2019, the Appeals Tribunal held three two-week sessions in New York.

4. As at 30 June 2019, the Appeals Tribunal had received 1,284 appeals and disposed of 1,245 of them. It is important to note that, where appeals are similar in nature, the Tribunal consolidates the cases and disposes of them in one judgment, even if they relate to different staff members.

5. The Appeals Tribunal functions well and implements its mandate within the limitations of its jurisdiction and powers. There is a strong sense of collegiality among the judges and the registry staff and a conscientious commitment to the tasks at hand.

6. The Appeals Tribunal is ably assisted by a small complement of registry staff and legal officers and administrators in administrative support, preparatory work, legal research, the drafting of briefing notes and the finalization and publication of judgments. The extensive and demanding tasks are consistently carried out by staff with professionalism, efficiency and enthusiasm.

7. The attenuated power of the Appeals Tribunal to award reinstatement remains a major concern among judges. Article 9 (1) of the statute of the Tribunal provides that, when the Tribunal orders reinstatement (specific performance) in dismissal or termination cases, it shall also set an amount of compensation that the Secretary-General may elect to pay as an alternative to reinstatement. Anecdotal evidence suggests that management routinely does not give effect to orders of reinstatement and opts rather to pay the amount of in-lieu compensation. Undeniably, the lack of an effective reinstatement remedy is tantamount, in the majority of the cases, to a lack of effective legal and judicial protection of staff members by the Tribunals and renders their respective right to seek justice meaningless. Moreover, the power of the Tribunals to award in-lieu compensation and/or damages does not counterbalance the detriment (material and non-material) caused to the dismissed staff member and to

the legitimacy of the Tribunals – and eventually to the internal justice system of the Organization as a whole. Arguably, this situation is not consistent with the universally recognized principles of legal and judicial protection and could possibly jeopardize the interests of the United Nations, e.g. immunity, in the future.

8. It may be prudent to consider the following amendment to article 9 (1) of the statute of the Appeals Tribunal. When an administrative decision (ordering the dismissal, etc.) is rescinded by the Tribunal as unlawful, the staff member should, as a rule, be reinstated. Only in very exceptional circumstances justified by the peculiar operational requirements of the United Nations should the administration have the option to pay an in-lieu compensation set by the Tribunal. In such cases, the administration will need to provide a clearly reasoned submission in support of its selection to pay in-lieu compensation which would be susceptible to the judicial scrutiny through an appeal to the same Tribunal that ordered the rescission. In this way, the discretion of the administration to opt for the in-lieu compensation will not be arbitrary. Consequently, article 9 (a) of the statute of the Appeals Tribunal, as well as the relevant article of the statute of the Dispute Tribunal, should be amended to read as follows (amended text in bold):

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph. **The selection of the in-lieu compensation by the respondent shall be reasoned and allowed only in exceptional circumstances subject to an appeal and review by the Appeals Tribunal.**

9. With regard to the matter of referrals for accountability, it may be prudent from a judicial point of view for the Secretary-General to report on actions taken pursuant to individual referrals for accountability. This will guarantee the efficacy of the remedy. Futile referrals to the Secretary-General will further undermine the legitimacy of the Tribunals and will do little to foster the values of transparency or accountability aimed at changing managerial behaviour in compliance with the applicable ethos.

Annex III**Views of the United Nations Dispute Tribunal****A. Views provided by Judge Teresa da Silva Bravo****Letter dated 21 June 2019 from the President of the United Nations Dispute Tribunal**

I am writing as the incumbent President of the United Nations Dispute Tribunal to provide you with the necessary information about the first set of results following the adoption of General Assembly resolution [73/276](#).

Please appreciate that, for the composition of the report, I was not able to have a meaningful consultation with my colleagues, for the reasons explained below.

(Signed) Teresa da Silva **Bravo**
United Nations Dispute Tribunal President

Report of the President of the United Nations Dispute Tribunal for the period from 1 January to 21 June 2019

1. I was elected President of the Dispute Tribunal for a one-year mandate starting in January 2019. Between 7 and 11 January, I started to work with the Principal Registrar in order to assess what the caseload was and, in particular, what the backlog was. I also worked with the Principal Registrar and the Registrars at each seat of the Tribunal (Geneva, Nairobi and New York) in that regard.

2. The purpose of those meetings was to identify the actual situation at each seat of the Dispute Tribunal concerning the caseload and the backlog of cases, i.e. cases pending before the Tribunal for more than 400 days without decision on the merits, as well as the resources allocated to each of the three locations.

3. Based on the data collected, three main goals were identified and defined as priorities, namely, to assess the caseload of Judge Alessandra Greceanu and its status, to establish productivity targets for the Dispute Tribunal concerning the disposal of judgments and the disposal of cases, and to reduce the backlog of cases in all three locations, i.e. cases pending in the Tribunal for more than 400 days without a decision on the merits, without neglecting work on other pending cases.

4. Having the data at hand, I extensively consulted and communicated with each of my Dispute Tribunal judge colleagues as to what the challenges were, and I informed them that I was devising a case disposal plan in line with General Assembly resolution [73/276](#). I received no particular comments or any objections from my colleagues at the time.

5. Based on the available data on the duration pending of unit cases, I undertook the following first steps of a case disposal plan, which was then put into practice, focusing on the backlog elimination:

(a) Each seat of the Tribunal should aim to issue four judgments and to close a total of six cases per month;

(b) By 31 December 2019, the backlog of cases of the overall tribunal should be largely reduced;

(c) Based on the data, and in consultation with the half-time judges, I decided to extend the deployment of Judge Alexander W. Hunter, Jr. to the Registry in New

York, where he lives, until 30 June 2019 and to deploy Judge Goolam Meeran to the Registry in New York, from 1 April to 30 June 2019. The deployment on location of Judge Meeran was for two months with two weeks of telecommuting from London at the beginning and end of the deployment;

(d) Several of the cases that were pending before Judge Greceanu were reassigned to Judge Hunter so that they could be finalized before 30 June 2019;

(e) I accepted a recommendation to rejoin 32 pending unified salary-scale cases and to have them reassigned to a single judge in New York; they were all disposed of by the end of June 2019;

(f) Following the issuance of the order¹ in the *Prasad et al* joined cases assigned to Judge Rowan Downing and pending in Geneva since 2016, I directed the Registrar to reassign those cases to me; I disposed of most of them in May 2019 and the remaining cases shortly thereafter.

6. Having consulted with the other judges and the registrars with regard to technical questions, I issued a framework for the deployment of half-time judges, which is available on the website of the Dispute Tribunal.

7. However, having consulted the other judges on their caseloads and disposal planning, working with registrars, I issued the necessary directions to get the caseload and delays under control.

8. I regret to report that, subsequently, the working atmosphere at the Dispute Tribunal became toxic. Since February 2019, Judges Downing, Nkemdilim Amelia Izuako, Hunter and Agnieszka Klonowiecka-Milart and former Judge Meeran expressed disagreement with the measures that were implemented following the General Assembly resolution, claimed a lack of confidence in my mandate and sent a letter to the Internal Justice Council and me in which, inter alia, they requested my resignation.

9. I remained committed to my mandate and to implementing the resolution. The Council made several attempts to facilitate dialogue and expressed the view that the mandate of the Dispute Tribunal President is for one year and runs until 31 December 2019. Only in cases of misconduct can a presiding judge be removed.

10. Nonetheless, on 6 April, all other judges of the Dispute Tribunal supported Judge Izuako's self-proclamation as the new Tribunal President. Judges of the Tribunal alleged, inter alia, that the reason for that removal was "lack of consultation" and my alleged far-reaching initiatives.

11. In my perception, the attacks were not necessarily directed at me, as I have always had a good working relationship with my colleagues. It appears to me that the resistance was against the content of the resolution. Since that proclamation, Judge Izuako has presented herself as the "new Tribunal President" and, as far as I am aware, wrote various letters to various stakeholders, including the Office of Administration of Justice, the Internal Justice Council, the Secretary-General and the General Assembly, entitling herself as the new Tribunal President.

12. Allegations of misconduct have been made against me by two judges in particular and seem of a purely retaliatory nature. They relate to the *Prasad et al* joined cases and a complaint against a judge, which had been filed previously and with which I am currently dealing in my role as President. There was an attempt to interfere with my role in that regard.

¹ Available at www.un.org/en/oaj/files/undt/orders/gva-2019-002.pdf.

13. As indicated, the work environment at the Dispute Tribunal became progressively toxic for me and I was harassed. Unfortunately, that had a negative effect on my mandate as President, which, since April, I have been unable to carry out as I intended.

14. Planning for the induction of new judges, for a plenary with a credible work agenda and other initiatives have been stalled as I compose the present document.

15. For planning purposes, I would like to address further issues during my presidency. Several targets that I would intend to tackle are:

(a) To eliminate the backlog of cases completely at each seat of the Tribunal;

(b) To define a set of criteria to allow for a more efficient disposal of cases and reduce the time between when an application is filed and when the case is finally disposed of;

(c) To revise the rules of procedure, which will include rules of evidence and uniformed procedural practices among the three locations of the Tribunal and deadlines for taking action on applications filed;

(d) To approve and implement a set of principles that will govern judges' absences from chambers;

(e) To enhance the accountability framework for judges.

16. The number of judgments (case disposal is displayed on the website) has taken a turn for the better.

17. In my observation, the disposal plan works, in spite of all the problems. Two large group cases have been concluded and the target numbers are largely delivered.

18. I reiterate my commitment to the internal justice system and appreciate the essential support provided to me by the Registrars during the first half of 2019 in my role as President and as judge.

19. Please appreciate that, for the composition of the present document, I was not able to have a meaningful consultation with my colleagues, for the reasons explained above.

(Signed) Teresa da Silva **Bravo**
United Nations Dispute Tribunal President

B. Views provided by Judge Nkemdilim Amelia Izuako

Report of the President of the United Nations Dispute Tribunal for the period from 1 January to 31 December 2018

Introduction

1. The present report of the Dispute Tribunal judges covers the period from 1 January to 31 December 2018. It provides a summary of the Tribunal's activities and achievements during the period and identifies and addresses the challenges that the Tribunal faced during the reporting period.

2. Following the establishment of the Dispute Tribunal by the General Assembly, in its resolution [63/253](#), and the appointment and swearing in of its judges, the Tribunal commenced operations on 1 July 2009 at its three locations of Geneva, Nairobi and New York.

3. As the first instance Tribunal that deals with cases brought by United Nations staff members challenging administrative decisions which negatively affect their interests, the Tribunal has always referred appropriate cases to the United Nations Ombudsman and Mediation Services.

4. In the matters that it adjudicates, the Tribunal interprets and applies relevant United Nations legislation and administrative issuances, as well as relevant international human rights norms. It renders and issues reasoned judicial decisions. The Tribunal's decisions encompass all aspects of international administrative law and include judicial review of administrative decisions in such matters as disciplinary cases, the observance of due process and the proportionality of sanctions imposed.

5. The Tribunal also deals with cases of prohibited conduct which include harassment, sexual harassment and abuse of authority. It similarly deals with cases of sexual exploitation and abuse and retaliation against whistle-blowers and staff members who bring applications before it or testify in judicial proceedings.

6. The Tribunal's decisions not only affect policy development and behaviours within the Organization, they also inform the amendment of some of the Organization's rules, policies and procedures.²

7. The Tribunal has been constrained in its work by certain major challenges, which are set out below.

8. During the period covered by the present report, the Tribunal held a plenary meeting in New York in October 2018.

President of the Dispute Tribunal

9. At its plenary meeting in May 2017, the judges elected Judge Izuako as President for a period of one year, from 1 January to 31 December 2018. At the same meeting, the judges mandated Judge Downing to continue as President until 31 December 2017.

Judges of the Dispute Tribunal

10. During the reporting period, the Dispute Tribunal was composed of the following:

Judges

- (a) Memooda Ebrahim-Carstens (Botswana), full-time, New York;
- (b) Teresa Maria da Silva Bravo (Portugal), full-time, Geneva;
- (c) Rowan Downing (Australia), ad litem, Geneva;
- (d) Alessandra Greceanu (Romania), ad litem, New York;
- (e) Alexander W. Hunter, Jr. (United States of America), half-time;
- (f) Nkemdilim Amelia Izuako, (Nigeria), ad litem, Nairobi;
- (g) Agnieszka Klonowiecka-Milart (Poland), full-time, Nairobi;
- (h) Goolam Meeran (United Kingdom of Great Britain and Northern Ireland), half-time;

² See, for instance, paragraph 11.2 of [ST/AI/2017/1](#), in which a more humane element was imported into the conditions of administrative leave, following Dispute Tribunal decisions.

Registrars

- (i) Abena Kwakye-Berko, Nairobi;
- (j) René Vargas, Geneva;
- (k) Nerea Suero Fontecha, New York.

Deployment of half-time judges

11. During the period covered by the present report, the Dispute Tribunal had two half-time judges, namely, Judges Meeran and Hunter. The deployment of half-time judges is governed by Tribunal resolution No. 2 of 13 September 2010.

12. Judge Meeran was deployed to Nairobi in 2018 for the period from 3 April to 3 July 2018 and to Geneva from 27 August to 27 November 2018.

13. Judge Hunter was deployed to New York from 2 January to 23 March 2018 in New York and to Nairobi from 3 September to 3 December 2018.

Judicial statistics of the Dispute Tribunal

14. During the reporting period, the Dispute Tribunal received a total of 348 new cases, of which 84 were suspension of action applications under article 2.2 of the Tribunal Statute, and 262 cases were applications on the merits. A total of 317 cases were disposed of within the reporting period, with 78 of those remanded from the United Nations Appeals Tribunal.

15. While 137 judgments were rendered, the addition of the 78 remanded cases to the 326 pending cases brought the total number of pending cases to 404 at the end of the reporting period.

16. A break down by duty station indicates that, during the reporting period, 127 new cases were received by the Registry in Geneva, 132 cases in Nairobi and 89 in New York. Of those cases, Geneva received 29 suspension of action applications, Nairobi received 30 and New York 25.

Orders

17. A total of 649 orders were issued by the Dispute Tribunal, of which Geneva issued 206 orders, Nairobi issued 193 and New York 250.

Judgments

18. The Tribunal issued 137 judgments during the reporting period, of which Geneva issued 49 judgments, Nairobi issued 56 and New York 32.

Hearings

19. In 2018, a total of 237 cases were heard across the three locations of the Dispute Tribunal, of which 205 were case management hearings and directions hearings.

20. There were 31 hearings on the merits, preliminary issues and matters concerning compensation.

21. A total of 170 court sessions were held across the locations of the Dispute Tribunal in 2018.

Meetings

22. The judges held several meetings during the reporting period to discuss matters related to the harmonization of practice, redistribution of the caseload between the

three duty stations, training and conferences and the tardiness in the recruitment of registry staff, as well as to plan for their annual plenary meeting.

23. The judges also continued to meet with stakeholders and engage in outreach activities and continuing legal education sessions at some duty stations in 2018.

24. In May 2018, the judges held three meetings with the Internal Justice Council to discuss matters and problems affecting the Tribunal.

Nairobi

25. In Nairobi, the judges held two such meetings, the first of which was a town hall meeting for staff members and the leadership of the staff association in Nairobi, held on 18 May 2018. The town hall meeting was attended by then Director-General of the United Nations Office at Nairobi, Sahle-Work Zewde. The Dispute Tribunal invited staff members of the Office of Staff Legal Assistance and the United Nations Ombudsman and Mediation Services and fielded several questions on the workings of the internal justice system.

26. At the request of the leadership of the staff association in Nairobi, the Dispute Tribunal judges and Registrar held another meeting with them to further explain how the Tribunal worked to bring formal justice to the Organization and to ensure accountability of staff members and managers alike. The meeting took place on 24 June 2018, and the staff association leadership thereafter attended a court sitting presided over by Judge Meeran, on the same day, to observe the working of the Tribunal first-hand.

Geneva

27. In February and August 2018, the judges in Geneva and the members of the Dispute Tribunal's Registry organized and conducted continuing legal education courses for the legal representatives that appear before the Tribunal at the Geneva duty station. During the courses, the Tribunal's rules of procedure and related matters of procedure, law and courtroom techniques such as cross-examination were part of the agenda.

Attendance at international conferences

28. Four judges of the Tribunal attended a two-day colloquium organized to mark the twentieth anniversary of the establishment of the Administrative Tribunal of the African Development Bank in Abidjan in June 2018. Each of the four judges presented papers on different topics concerning the administration of justice in international administrative tribunals.

29. In September 2018, four judges attended a conference of international administrative tribunals in Athens.

Challenges

30. Challenges include:

- (a) The increasingly large numbers of cases brought before the Tribunal;
- (b) The true realization of judicial independence and autonomy;
- (c) The absence of an established body to deal with the problems faced by judges;
- (d) The absence of a direct reporting line to the General Assembly;

- (e) The need for the relocation of the Tribunal in New York, its Registry and judges' chambers to within the Secretariat and away from the offices of the Office of Administration of Justice;
- (f) Judicial and operational efficiency;
- (g) Recruitment delays;
- (h) The disclosure of information.

Increasingly large numbers of cases brought before the Tribunal

31. Across the Dispute Tribunal's three duty stations, and in the course of the first nine years of its operation, the number of cases brought before it has not decreased. Instead, it has remained largely the same. In its first year of operation, the Tribunal received 510 cases, which included new cases, cases from the former peer review bodies – the Joint Appeals Board and Joint Disciplinary Committee – and the former United Nations Administrative Tribunal. A total of 220 cases were disposed of that year.

32. In 2015, 438 cases were received, while 480 were disposed of, but 275 cases were still pending at the end of that year. In 2016, 383 cases were received, while 401 cases were disposed of, with 257 cases pending at the end of that year. In 2018, 348 new cases were filed, 317 cases were disposed of, while 404 cases were still pending at the end of the reporting period.

33. It remains to be seen whether the trend will continue and, in particular: whether more cases are being filed at the Tribunal, owing to the confidence reposed in it by staff members; whether managers have not learned enough from the Tribunal's issuances to minimize workplace conflicts; and whether the outreach efforts conducted by the Office of Administration of Justice are making a sufficient impact. The case numbers put a great deal of pressure on the Tribunal with the reduction in the number of judges.

Judicial and operational efficiency

34. Judicial efficiency depends to some extent on the availability of qualified independent judicial support. Competencies required from candidates for the positions of legal officers must be determined by judges, rather than the administration. It is necessary that all legal officers have experience and extensive training in legal research and writing.

35. Current staffing methods often result in situations in which staff face a conflict of interest in cases, having served elsewhere in the United Nations, staff prospects of promotion and mobility are adversely affected and staff loyalties are divided between serving the Tribunal on the one hand and the Office of Administration of Justice on the other, the latter being responsible for their selection and performance appraisal.

36. The integrity and standing of the formal system of justice is not enhanced when there is a credible basis for suspecting cronyism in decisions of the appointment of staff members. The judges stress that a staff selection and performance appraisal system and reporting line that are independent of the administration and the Office of Administration of Justice are required.

37. In recruiting judges, the Council must consider the ability of candidates to clearly identify the issues in a case, to analyse the facts and to apply the law. Given the importance of case management skills and experience, that must be an essential competence for appointments, and so too should experience in the conduct of hearings.

38. Judicial efficiency may be improved by the training of counsel appearing before the Dispute Tribunal, given that matters are delayed by cumbersome pleadings, the failure to identify salient issues and make necessary admissions, knee-jerk and specious defences, failure in the professional duty to alert the Tribunal of authorities contrary to the contended legal position and the inability or failure of counsel to have pretrial discussions of their own volition, without a judge's direction, with a view to facilitating a speedy and amicable resolution.

39. The sudden abolition of ad litem positions in favour of part-time Dispute Tribunal judgeship, a decision taken contrary to consistent recommendations for regularizing the ad litem positions, does not seem to have been based on any analysis of efficiency. The abrupt loss of over 60 per cent of the institutional memory of the Tribunal in 2019 will have a negative and long-lasting impact on the efficient disposal of cases.

40. At the plenary meeting of the Dispute Tribunal held from 15 to 19 October 2018, targets were set for each duty station. It was consequently decided by the judges that each duty station should aim to produce a minimum of four substantive judgments per month, apart from orders, with a view to greater efficiency and the clearing of backlogs.

True realization of judicial independence and autonomy

41. It is essential to state at the outset that the principles of the independence and the autonomy of judges and the courts or tribunals the world over are not intended for the benefit of the judges. Those time-honoured principles and standards exist for the benefit of the judicial institution, the State and, in the case of internal justice systems, for the organization concerned and ultimately for the parties appearing before the tribunal.

42. The present report is the fourth report of the Dispute Tribunal in which the twin issues of judicial independence and judicial autonomy have been raised. The judges of the Tribunal are most concerned that, during the reporting period, significant disruptions to the work of the Tribunal have occurred, because those matters have never been addressed, even though the views of the Internal Justice Council are the same as that of the Tribunal judges.

43. It is obvious that the Organization has still not administratively adapted to the concepts of independence for the judges and the Dispute Tribunal, after more than nine years. That approach suggests that the administration regards the Tribunal as a mere replacement of the former peer review bodies. It is not recognized that Tribunal judges are professional judges who are appointed by the General Assembly and that there are reasons and consequences for such appointments.

44. The Organization must seriously consider the fact that the new internal justice system includes a properly constituted judicial body. The fact that it is referred to as part of an internal justice system does not mean that it is not a fully fledged institution for the delivery of justice. It is patently harmful for the Tribunal to be viewed as an organ of the administration.

45. The judges efforts to call the attention of the administration to the requisite international norms and standards with regard to the independence of the judiciary, most of which the United Nations has been involved in formulating or which were internationally formulated under the Organization's auspices, have been ignored.

46. In adopting that attitude, there is a failure to recognize the nature of the judicial appointments made by the General Assembly, the repeated assertions by the General Assembly regarding the independence of the judges and the Dispute Tribunal and

article 4 (8) of the statute of the Tribunal, which provides for the independence of the Tribunal.

47. Inexorably and unfortunately tied to the matter of the judicial independence of the Dispute Tribunal is the manifestly faulty structure of the Office of Administration of Justice, which, in its capacity as the adviser of the Secretary-General and the General Assembly, compromises any independence it may assert. It cannot advise the General Assembly and advise and represent the Secretary-General and be independent of them.

48. Regarding those functions, the Office of Administration of Justice is in an incurable position of conflict in its role of administering the staff of the Tribunal. The fact that the Office continues to call upon the staff working in the chambers of the judges to carry out other functions not related to the administration of the Dispute Tribunal is also a matter of concern, because the perception is such that the independence of the judges is compromised.

49. In the same vein, the administrative supervision of the Dispute Tribunal's registry staff by the Office of Administration of Justice provides its personnel with the clout and opportunity to demand to be informed by their supervisees of the ways in which judicial matters are handled. Even though article 21 of the Tribunal's rules of procedure provides that the Registrars are to work at the direction of the judges, that is compromised in practice by the actions of Office of Administration of Justice personnel who supervise the registry staff.

50. It is also a matter of concern that management units within the Organization were informed by the Office of Administration of Justice that all correspondence with the judges was to be passed through the Executive Director of the Office. That advice is totally wrong and flies in the face of the principles of judicial independence and autonomy.

51. The judges still do not have terms and conditions of service that are definitive. It is apparent that they are provided for with conditions that are expressed to "include" a number of stated benefits. Some of those so-called "benefits" are not clearly or properly spelled out. The decision as to what they may or may not be lies in the hands of human resources officers who make other decisions that are subject to review by the judges. There is therefore a direct and serious conflict of interest and the urgent need to provide conditions of service for judges in an exhaustive and definitive manner.

Relocation of the Dispute Tribunal premises in New York

52. Concern has been expressed over several years and in several reports about the refusal of the Office of Administration of Justice to relocate out of the chambers of the judges of the Dispute Tribunal and the staff working with them. That is despite the reasoned recommendations of the Internal Justice Council and the reasoned demands of the judges. This situation fuels the perception that independence is compromised.

Absence of an established body to deal with the problems faced by judges

53. In its previous report, the judges raised the matter of dispute resolution (see [A/73/218](#), annex II) with regard to disputes between the administration and the judges of the Dispute Tribunal regarding their conditions of service and its application, but it has elicited no response to date. The General Assembly is urged and requested to address the matter. As it stands, the only avenue open to the judges would be to proceed to a domestic court, given that everyone is entitled to legal redress. If that

were to happen, the assertion of the immunity of the United Nations would be put to unnecessary test.

Absence of a direct reporting line to the General Assembly

54. In nearly every annual report of the Dispute Tribunal, the Tribunal has called attention to the absence of a direct reporting line to the General Assembly. The only option available to the Tribunal since it commenced operations in 2009 has been to send its report to the Internal Justice Council to be annexed to the report of the Council. There is little to indicate that the Tribunal's reports are read by the Assembly, because the concerns expressed and repeated in subsequent reports have received scant attention.

55. The seeming tradition of the General Assembly to ignore the concerns expressed by the judges means that some serious issues concerning the administration of justice, such as judicial independence and autonomy and respect for the rule of law, are not considered or addressed.

56. In 2018, the Executive Director and the Principal Registrar, both personnel of the Office of Administration of Justice, produced erroneous statistics and narratives with regard to the Dispute Tribunal in the report of the Secretary-General on the internal justice system. For the first time in the existence of the Tribunal, neither the Principal Registrar nor the Executive Director consulted with the judges regarding the correctness of the statistics or their accompanying narratives, so that they could be readily and properly understood.

57. That inaccurate reporting led to the recommendations of the Advisory Committee on Administrative and Budgetary Questions not being properly informed and to some of the decisions of the General Assembly not being based on credible information.

58. The failure of the Executive Director and the Principal Registrar to inform the General Assembly that the ad litem judge in New York had partly heard matters and some judgments nearing completion caused a loss to the Organization that is estimated to be at least \$100,000.

59. The Executive Director and the Principal Registrar further failed to inform the General Assembly with regard to paragraphs 24, 32, 35 and 37 of General Assembly resolution [73/276](#), including:

(a) That the judges treat the Dispute Tribunal as one Tribunal, and not three, with the President of the Tribunal in agreement with most judges to rebalance cases between Registries to ensure the most efficient disposal of cases and ensure that the number of cases filed at any Registry does not become unwieldy for the Registry (paragraph 32);

(b) The actual costs with regard to half-time judges and the workflow implications at the registry level (paragraph 32);

(c) That the judges in plenary had already fully considered the matter of the deployment of half-time judges and adopted resolution No. 2 of 13 September 2010, therefore paragraph 35 of resolution [73/276](#) was not required;

(d) That the General Assembly needed to take note of article 3 of the rules of procedure of the United Nations Dispute Tribunal (Assembly resolution [64/119](#), annex I) with regard to the "commencement" date of the office of new judges being different from that of their date of election and that there would therefore be a period within which judges are missing from the Tribunal, which would have an impact on matters of access to justice and the disposal of cases. Furthermore, the wording of paragraph 37 of Assembly resolution [73/276](#) would result in the ad litem judges being

unable to efficiently plan their dockets of cases owing to the uncertainty of their termination dates.

Recruitment delays

60. In paragraph 135 of the previous report of the Dispute Tribunal, the judges raised the issue of delays in recruitments. The delays continue to dog the Tribunal, with positions taking more than nine months to fill after the notification of the fact that a position will become vacant. That has an impact on the operation of the Tribunal, but the matter was not brought to the attention of the General Assembly when the statistics were presented to it by the Office of Administration of Justice. One of the direct effects of such delays is the inability to rebalance cases in a proper manner. It also causes the transfer of cases from one registry with insufficient staff to another where the judges are already overburdened.

Disclosure of information

61. The judges are concerned about the lack of candour of the counsel who represent the Secretary-General before the Dispute Tribunal. It has been sometimes observed that those instructing such counsel do not disclose all the relevant documents to the applicants and the Tribunal in a timely manner, or even at all, unless they are directly ordered by the Tribunal to do so.

62. It has become apparent too that, in some cases, managers have also failed to disclose all relevant information when a management evaluation of an administrative decision is undertaken. That tends to prolong cases before the Dispute Tribunal, rather than being resolved earlier had full disclosure been made. It also represents a cost to all parties, the Tribunal and thereby to the international tax payer.

Acknowledgement

63. The judges of the Dispute Tribunal hereby express their appreciation for the work of the registry staff and for their dedication to duty.
