Statement of the United States of America
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Stephen Townley, Counselor
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Thank you Mr. Chairman. As we – and the panel of experts – review the system of administration of justice, there are many things of which to be justifiably proud.

As both the Internal Justice Council and the Secretary-General have highlighted, in 2014, more than 200 cases pending in the formal system were resolved without the need for final adjudication on the merits. This cannot but be commended.

The figures presented in the Secretary General's Report indicate that both the management evaluation and formal adjudication system are working, too. As the Secretary-General's report indicates, 75 per cent of the management evaluation requests received in 2014 were not pursued beyond that stage – indicating that the Organization's system for reviewing its own actions, and explaining those actions to employees, is effective. In the formal system, the caseload is stabilizing, and jurisprudence and practice is developing.

We are also pleased that the assessment of the administration of justice system is underway, and look forward to the report on the matter at the seventy-first session. While much is working, there remain areas where further study would be quite useful and where improvements could surely be made, and I'd like to address a few of them.

First, it's striking that the Secretary-General reports that challenges to large-scale actions have had a serious effect of the caseload of the Dispute Tribunal. Article 2(4) of the statute of the Dispute Tribunal provides that an individual may intervene in a matter brought by another staff member, if he or she is also entitled to appeal the same underlying administrative decision. It would be useful to understand whether that procedural mechanism has been considered to address large numbers of applications challenging a single process or decision, and, if not, whether further changes to the statute of the Dispute Tribunal might more readily facilitate consolidation of large numbers of appeals against a single action by the Organization, in the interest of efficiency.

Second, we take note with interest of the revised proposed complaint procedure. We agree with the Internal Justice Council that the mechanism for addressing complaints under the code of conduct for judges should ensure due process, including for the judges themselves. We specifically agree that individuals against whom a complaint is brought should not be identified unless and until the complaint is upheld. We were pleased to see this concept reflected in the Secretary-General's revised proposal.

Third, and further to the heartening numbers we have seen with regard to settlement of cases, we were quite interested in the proposal identified by the Internal Justice Council to provide for Dispute Tribunal authority to order the parties to attempt to settle a case. We agree that this should be explored by the panel of experts.

Fourth, with regard to the effects of the amendment adopted last year to the statutes that permits appeals against interlocutory orders, we agree that it would be useful for the panel of experts to study the possibility of assigning one of the appeals judges to serve as 'duty judge' to handle this, although note also the explanation of the Appeals Tribunal for why that system ceased to function in 2014, and stress that consideration would also have to be given to the possible cost of such an approach.

Finally, I would like to highlight the critical issue of protection of those who report misconduct or cooperate with investigations. Recent horrific incidents of sexual exploitation and sexual abuse have only made this issue more salient. It goes without saying that managers must effectively discipline staff that engage in sexual exploitation or sexual abuse. The U.S. also looks forward to the external review of the UN's handling of sexual exploitation and sexual abuse allegations in the Central African Republic, and to the recommendations expected in November.

We note with interest the perspective of the Internal Justice Council on this matter, indicating their view that decisions of the Director of the Ethics Office should be subject to judicial review. In the United States, federal employees who believe that they have been retaliated against for whistleblower activity have two options: (1) they can go to the Office of Special Counsel, which is dedicated to investigating whistleblower claims; or, (2) they can challenge a personnel action already within the jurisdiction of the Merit Systems Protection Board before that body on the basis that it was taken for retaliatory reasons. Prior to 1989, if an employee went the first route – to the OSC – they could not then appeal to the MSPB if the OSC did not decide to pursue action on the employee's behalf. But with the adoption of the Whistleblower Protection Act, employees now have an Individual Right of Action before the MSPB even after going to the OSC. We would be interested for the panel of experts to address how whistleblower actions are handled in various national systems and what the advantages and disadvantages to various approaches might be.

Beyond the question of addressing personnel actions that are alleged to have been taken by the Organization for retaliatory reasons after the fact, we also need to be sure that employees feel safe reporting misconduct. One option that might warrant consideration would be to encourage the Dispute Tribunal to exercise its referral power under Article 10(8) where it is clear from proceedings, for instance a challenge to an allegedly retaliatory action, that a manager has created an environment that seeks to discourage reporting of misconduct. This, then, might provide a good basis for the Secretary-General to take action that would discourage repetition of such behavior. Likewise, we support revision of the Secretary General's 2003 Bulletin on special measures for protection from sexual exploitation and sexual abuse to make absolutely clear the expected standard of behavior.

Thank you, Mr. Chairman.