

**Remarks of Ms. Paulina Analena, Vice-President of SMCC and President of United Nations Staff Council-Vienna November 2007**

Thank you Ms. Barcena-Under Secretary General for Management, Mr. Chairman and Distinguished delegates of the 5<sup>th</sup> Committee, Ladies and Gentlemen:

I stand before you today, as Vice President of SMCC, to speak to you on behalf of the staff of the following staff representative bodies, who attended SMCC in Nairobi and Nicosia this year: ECA, ECLAC, ESCAP, ESCWA, Field Staff Union, ICTR, ICTY, UNICEF, UNHCR, UNOG, UNON and UNOV.

To begin with, we wish to thank the Member States for recognizing how critical the overhaul of the UN's internal

justice system is to the health of the organization and the well being of its staff. We, the Staff of the United Nations, rejoiced when the General Assembly adopted Resolution A/61/261 in March of this year, because it signalled to us that the Member States understood the significance of the Redesign Panel Report, and agreed with this Panel that the existing system is “outmoded, dysfunctional, ineffective and lacks independence.”

In Resolution A/61/261 the General Assembly pledged itself to establish a new system of justice. One that was “independent, transparent, professionalized, adequately resourced and decentralized.” A system that is “consistent with the relevant rules of international law and the principles of the rule of law and due process.” One, that respects “the rights and obligations of staff members and

the accountability of managers and staff members alike.”

We, the Staff of the United Nations, fully agree with these inspiring words.

We urge you to transform those inspirational words of Resolution A/61/261 into a tangible, functional system that positions the UN as an employer second to none and sits as the cornerstone of much needed organizational reform.

One of the Redesign Panel’s most scathing critiques of the existing system related to the disparity in legal resources available to the management and staff members, which it regarded as “an egregious inequality of arms in the internal justice system.”

In today's system, professional legal staff represents management before the adjudicative bodies as part of their normal duties.

By contrast, staff members -- even in those cases where they are defending themselves against disciplinary action -- rely solely on advice provided by volunteer staff members.

These volunteers work above and beyond their normal duties to do so. The system of voluntary counsel leaves many staff with no assistance whatsoever, particularly those staff in the field-- who may have no volunteer counsel located in their duty station. The Redesign Panel was clear that the responsibilities of the voluntary counsel are onerous. In fact, the Redesign Panel noted that the very service of these tireless volunteers often pits them against the management reviewing their contracts of employment.

This causes some to worry that serving on panel of counsel risk their own future opportunities in the organization, particularly as the majority of staff hold fixed term contracts of short duration. This system is not sustainable. It cannot be a key component of a fair system.

We believe that the adequately resourced Office of Staff Legal Assistance outlined in the Secretary-General's report addresses the glaring inequity that exists in the present system.

Some may think that there are other, less costly ways to address this problem: For example, the use of outside counsel, or establishing an office with just a handful of junior officers. We strongly urge this Committee to see these "solutions" for what they are-- false economies.

Outside legal counsel are not available to most staff, for the simple reason that they are unaffordable. Unlike many national legal systems, the UN's justice system does not generally provide for the payment of attorney fees. Money judgements are not of sufficient size to allow for attorneys to take cases on a contingent fee basis. Staff members would be forced to pay for legal counsel out of pocket, with little hope that these expenses would be recouped-- even if their claim was successful. Few, if any, would be able to afford this. Most staff would forego counsel. Others would fall prey to unscrupulous outside counsel who take these cases to pursue their own political agendas rather than to assist the staff member.

Limiting staff access to counsel does not discourage litigation. Staff will continue to bring cases without any legal assistance. Many of these cases will be unnecessarily complicated and time-consuming. This dooms the future system to today's plague of delay. An adequately resourced Office of Staff Legal Assistance will limit claims to those with a prospect of success and focus those that do move forward on meritorious issues. Providing adequate resources to this office is a prudent expenditure for future efficiency.

The second false economy is the idea that the Office of Staff Legal Assistance can function fully and efficiently when staffed only by junior legal officers. This would perpetuate the very "equality of arms" problem highlighted by the Redesign Panel. The office structure outlined in the

Secretary-General's Report is based on a model widely accepted in legal practices, public and private, civil and common law, throughout the world. Oversight from senior counsel increases office efficiency and focuses the litigation produced by the office on only the relevant issues

We urge this body to give the OSLA adequate funding and sufficient senior-level legal leadership to allow it to fulfil the role envisioned in Resolution A/61/261.

You have indicated, in Resolution A/61/261, that independence is central to the new internal justice system. For this reason, we, the Staff who attended SMCC reached consensus with management that the appointment process for senior figures in the new justice system should be



transparent. For that reason, we strongly endorse the Internal Justice Council.

We further believe that all senior personnel in the new system must have the professional skills and qualifications necessary to perform their tasks. This requires that persons at all levels hold specific judicial and legal qualifications in administrative and employment law. Only by selecting candidates of the highest calibre can the UN have an internal justice system second to none. The Internal Justice Council plays an important role in securing the best and the brightest talent for the new system.

We fully concur with the General Assembly and the Secretary-General that the organization must embrace informal dispute resolution. We believe that informal

mechanisms play a pivotal role in resolving disputes at an early stage and preventing recourse to the formal system. Informal mechanisms encourage managers to be accountable for their decisions and responsive to staff concerns. This fosters better communication between staff and management.

Let us be clear. There are very high expectations for the informal system. It is anticipated to reduce the workload of the formal system by as much as 75%. But it cannot hope to reach this target if not adequately resourced. Nor can it succeed if it is not global in its reach.

This means that internal dispute mechanisms must be available to all staff irrespective of where they serve. Staff serving away from Headquarters, who constitute the

majority of the staff, must have the same rights and access as those at Headquarters duty stations. This is critical for the system to work. If the informal system remains principally headquarters based, it cannot be expected to meaningfully diminish the workload of the formal system. Because we strongly believe that a decentralized system is essential for internal dispute resolution to take root in the UN, we strongly support the proposals for informal resolution of disputes outlined in Secretary-General's Report.

In closing, we urge you to act expeditiously to realise the new internal justice system outlined in Resolution A/61/261. We implore you to keep the core principles of independence, transparency and decentralization firmly in mind when you act to give this new system life. Any

attempt to import aspects of the current system, which is demonstrably inefficient and unfair, must be avoided. We urge you to reject false economies and to give the system the resources needed to signal a true departure from the hopelessly inadequate current system, which was rightfully scorned by Staff, Management and the experts of the Redesign Panel.

Please, give the organization the tools that it needs to make the UN's system of justice the paragon that it must be to serve as the guiding light around the world.

Thank you.