

Statement by Under-Secretary-General for Management, Alicia Bárcena
Introduction of SG report A/62/294 to the Fifth Committee

5 November 2007

Mr. Chairman, Distinguished Members of the Committee,

As you are aware, last spring, the General Assembly took a landmark decision in Resolution 61/261 to create a new system of “internal justice” or dispute resolution for the United Nations. The system is to be fully implemented by January 2009. Let me convey to you the Secretary-General’s appreciation for this outcome and his readiness to move forward with this important, I might even say ground-breaking reform. He and I both believe that this reform has the potential to have an enormous positive impact on the way we manage our most important resource: the 60,000 staff of the UN Secretariat, Funds and Programmes – 52% of whom now serve outside headquarters duty stations in the field, and only 5,300 of which now work in the New York Secretariat.

Let me take a moment now to describe the genesis of the reports you have before you today and the sequence of the long process leading to their completion. These reports are the end result of a long process of review, analysis, negotiation and consensus.

Nearly three years ago, you, the Member States asked the Secretary-General to constitute a panel of outside experts – a Redesign Panel – to assess the way the Organization dealt with internal disputes between staff and management. This Panel made a very severe diagnosis of the state of the existing system, which was contained in report A/61/205 of July 2006. Our system was, the Panel said, “outmoded, dysfunctional and ineffective”, relying on unpaid volunteers and leading to protracted delays and unsatisfactory decisions.

Following this, the Secretary-General entered into a comprehensive set of negotiations with the management and staff from the Secretariat, Funds and Programmes, including the representatives of 12 different unions and staff associations – the results of which were transmitted to you in his note A/61/758 of February this year.

You, the Member States, then took an unequivocal decision in Resolution 61/261 that a complete overhaul was needed in the way the Organization’s system of internal justice. You recognized that our current system, designed 60 years ago, fails on almost every count. You recognized that today’s United Nations is a complex, multi-faceted entity with large numbers of staff dispersed across multiple locations and functions – very different from the Headquarters-based organization of a few thousand staff, for which the current system was designed in the late 1940s. For this reason, you agreed that a fundamentally new system was needed rather than incremental patching of the old system.

The two principal reports you have before you today - A/61/891 and A/62/294 respond to specific requests contained in Resolution 61/261. The first report, issued last Spring, which you did not have time to consider in the last session of the General Assembly, makes proposals for resources to address the case backlog in the existing system and the creation of some early capacity for implementation of the new system. The second report, A/62/294, is an omnibus report which combines a number of General Assembly requests for additional information on the proposed redesign of the administration of justice. It describes the essential elements of a proposed legal framework and further clarifies how the new system would work in detail. Most notably, it lays out the resource requirements of the new system.

Distinguished delegates, in your resolution, you stressed that the new system should meet five key criteria – 1) independence; 2) transparency; 3) professionalism; 4) decentralization; and 5) adequacy of resourcing. The Secretary General's proposal is a fully integrated proposal, which provides for well-functioning, properly-resourced formal and informal pillars. I would like to stress, therefore, that any alteration of this proposal's integrity could have a detrimental and unforeseen impact on the delivery of justice. In addition, it represents the outcome of extensive negotiations with 12 unions, representing the majority of UN staff around the world. It would have been my hope that the ACABQ would have fully realized the justification and rationale for the Secretary-General's proposal.

I would make a special plea to you therefore NOT to replicate or even exacerbate the weaknesses in the current system – the delays resulting from an under-resourced system, the lack of objectivity, independence and professionalism of peer-review or volunteerism and the blockages and bottle-necks encountered at different stages. It is essential therefore, that the five key characteristics you wisely laid down in resolution 61/261 be kept at the forefront, during the course of your deliberations.

Effective justice – swift, professional and independent – comes at a price. The Secretary-General's recommendations, based on the Redesign Panel proposals and modified by the two sessions now held with the Staff-Management Coordination Committee and the guidance provided by the General Assembly in 61/261, would entail approximately \$23.5million additional resources to be financed from the 2008/9 regular programme budget and \$811,000 coming from the peacekeeping support account. The \$23.5million figure includes \$6.8million already identified in the Secretary-General's report, A/61/891. This report, which could not be taken up by this Committee last session, addresses our desire to reduce current case backlogs and create some dedicated new professional capacity in 2008, prior to full implementation of the new system.

You will note that approximately \$4.2 million is proposed to deal with the case backlog during the course of 2008. At this juncture, I would also like to draw your attention to the report of the Secretary-General A/62/179, which contains the workload statistics and outcomes for the existing Joint Appeals Board during 2005 and 2006 and statistics on the disposition of cases and the work of the Panel of Counsel. The current backlog of cases and underlying statistics are explained in more detail in A/61/891.

As far as the staffing of the new system is concerned, in addition to the 34 posts already provided under the existing justice system, the two reports before you request a further 79 posts, to be funded from the regular budget. We would expect that these figures could be significantly reduced, by as much as one-third, once workable cost-sharing arrangements with the UN Funds and Programmes have been agreed. The staffing requirements in respect of peacekeeping operations would comprise 21 posts.

Mr. Chairman, the case for fundamental change has already been made and accepted. However, I would like, if you permit me, to recap the three essential pillars of the new internal justice system, as proposed by the Secretary-General:

- (i) The informal system of dispute resolution
- (ii) The new “management evaluation” capacity
- (iii) The two-tier system of formal judicial review

First, A/62/294 describes in some detail the proposed expansion of an integrated, de-centralized Office of the Ombudsman which would include a dedicated Mediation Division. The intention is that this capacity would help staff and managers resolve their differences quickly and amicably in the major duty stations and missions outside Headquarters, including in the regional commissions, without resorting to the formal system or relying on an overly-centralized capacity thousands of miles away. It will put an emphasis on finding mutually beneficial solutions in a collegial, non-confrontational manner. It is expected that this will reduce the number of cases going forward in the formal system, particularly since mediated agreements could not be further litigated. I would add here, that based on the wishes of the staff and management in the UN Funds and Programmes, we added the proposal for the establishment of a small regional presence in Dakar, to provide to services of the many staff in the West-African region.

A second feature, which was supported by Member States in Resolution 61/261, will be to develop a credible capacity for undertaking effective, impartial management evaluation of every contested administrative decision. This will be the final stage for the administration to correct mistakes or reverse faulty decisions prior to judicial review and reduce the number of unnecessary cases going to formal litigation. We also believe that it is a crucial element in the Secretary-General’s efforts to enhance managerial accountability – an issue of key concern for many of you, I know. I would add that this is a feature of many national systems and has proven extremely successful in UNDP, where it is adequately-resourced.

The previous two elements will not function properly without the establishment of a strong formal system – namely: the two-tier system of formal judicial review, staffed by experienced, qualified judges. The General Assembly has agreed with the creation of a first-instance UN Disputes Tribunal, with an appellate instance, the UN Appeals Tribunal, both of which would render binding decisions. This is an important shift from the powers of the existing JAB/JDC bodies that only have the power to make non-binding recommendations. The Secretary-General has put forward a proposal for the UNDT to

consist of three panels of three judges. On this particular issue, I would like to offer some explanation for this very important modification:

First, unlike staff of national civil services, the staff of the UN Secretariat, Funds and Programmes are extremely diverse, in terms of nationality, culture and religion and serve in up to 140 different duty stations. Likewise, the judges will come from varied backgrounds, which will inevitably result in different interpretations of rules and approaches taken in a given case. We know from experience that interpretation and application of UN rules is not always a straightforward exercise. The diversity provided by a 3-judge panel would help minimize any real or perceived bias towards a particular legal approach or system;

Second, the UNDT will take over the essential fact-finding function of the JABs/JDCs. A panel of three judges, as opposed to a single judge, can help maximize accuracy, objectivity and fairness at this important stage. As a consequence the quality and reliability of the UNDT judgments would be ensured, resulting in decisions more likely to be accepted by the parties, without further appeal;

Third, a panel will allow for deliberations prior to the issuance of a judgment – a process which is common to nearly all existing comparable tribunals. This deliberative process helps to ensure that judgments are well-argued and properly substantiated by the facts; and

Fourth, in view of the limited grounds of appeal to the UNAT, the UNDT is likely to be the final decision-making body in many cases, making the perceived legitimacy of its decisions extremely important. I would even go so far as to say the legitimacy of the UNDT decisions could be among the most important factors in restoring the confidence of staff and managers in the Organization's internal justice system.

Of course, the credibility of the formal system will very much depend on the quality of the judges appointed to serve on the two tribunals. It is for this reason that the Secretary-General fully supports the notion of a comprehensive process for vetting the candidacies to these bodies. The proposal before you is for the Secretary-General to retain appointment authority for the UNDT judges and the General Assembly to appoint the UNAT judges.

Another important feature of the proposed new justice system will also be a significant strengthening of the legal advice and representation provided to staff through an enhanced, decentralized Office of Staff Legal Assistance. We believe that it is in everybody's interest for staff to have access to a knowledgeable source of legal advice. This will help to ensure that only valid complaints move forward in the formal system. It also puts both parties on an equal footing in the formal justice system.

Finally, I would like to stress that all aspects of the Secretary-General's proposal have been fully consulted and agreed with our staff in the context of two Staff Management Coordination Committee (SMCC) meetings undertaken this year (in Nairobi and Nicosia). The SMCC is the highest level staff-management consultative body at the disposal of the Secretary-General. I would add that despite the repeated attempts of the senior management team, including the Secretary-General, the New York Staff Union chose not to participate in these meetings. However, as they have stated, they fully concur with the provisions of Resolution 61/261. Together, staff and management have come along way together and face you together here today with a delicate negotiated equilibrium in the form of the Secretary-General's proposal.

Mr. Chairman, as you have agreed with the Bureau, I would now like to invite the Vice-President of the SMCC, Ms. Paulina Analena, to deliver a statement on behalf of all 12 unions that were represented and participated fully in these two meetings and endorsed the Secretary-General's proposal.

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Thank you Paulina.

Mr. Chairman, distinguished delegates, experience shows that change does NOT happen without an appropriate commitment of time and resources. We will NOT meet the implementation deadline of January 2009 if all the necessary preparations are not completed between now and then. There is a lot of work to do: the finalization and adoption of the statutes, staff regulation and rule changes, job descriptions, terms of reference for the new offices of the Administration of Justice and Staff Legal Assistance and early identification of possible candidates for staff positions, the Ombudsman's office as well as the UNDT/UNAT judges. Managers and staff will also need to be properly briefed and trained on all features of the new system and the important implications for their work. Approval of some temporary resources for the early creation of the independent new Office for the Administration of Justice will assist us in getting the new system up and running.

Mr. Chairman, we have all been grappling with the issue of internal justice for a number of years now. After an exhaustive process of diagnosis, assessment, debate and deliberation, there is a strong consensus that a fundamental and urgent overhaul is needed. The current system is facing an acute crisis of confidence. It is therefore critical that the roots of the new system take hold without further delay. I would urge you, the Member States, therefore, to build on the clarity and sense of purpose you expressed in 61/261 by approving the resources required for the full functioning of a robust new system of internal justice.

Thank you.