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Over the past two weeks the Fifth Committee, in conjunction with the Sixth Committee, has been engaged in discussions on the subject of the reform of the Internal Justice system at the UN. A [draft resolution](#) was approved by the Committee on 29 March 2007.

Administration of Justice

The necessity to reform the currently dysfunctional system of the Administration of Justice is based on the premise that there can be no effective reform of the United Nations without an efficient, independent and well-resourced internal justice system that will safeguard the rights of staff members and ensure accountability of managers and staff.

Member States agreed to the broad framework proposed by the [Redesign Panel on the United Nations system of administration of justice](#) for a new system of internal justice, but deferred a great deal of the decisions to the sixty-second session of the GA upon formulation of more detailed proposals by the Secretariat.

Among the issues that were agreed upon, the draft resolution concurs with the proposal of instituting a single, integrated, but decentralized Office of the Ombudsman for the UN Secretariat, funds and programs. Member States also approved the establishment of a two-tiered system of formal justice.

With respect to the informal system, the [draft resolution](#) agrees with strengthening the Office of the Ombudsman and decides to establish a Mediation division within the Office. The SG is required to provide proposals on resource requirements for the new division.

In regards to the formal system, the draft resolution provides for the establishment of an Office of Administration of Justice, within the office of the SG, with the responsibility for coordination of system-wide internal justice, including supervision and coordination of transitional measures. The SG is required to provide proposals on the constitution of the Office of Administration of Justice.

The draft resolution also asks for further reports on the proposed Internal Justice Council, management evaluation; resource requirements to implement the reform; delegation of authority on disciplinary proceedings; a detailed proposal for the Office of Legal Assistance; and criteria to determine which peacekeeping missions should be provided with internal justice organisms, among others.

Background

During the first resumed session of the Fifth Committee Member States discussed a series of reports relating to Administration of Justice. Strictly pertinent to the reform of the system were discussions on the report of the Redesign Panel on the United Nations system of administration of justice ([A/61/205](#)), the note of the Secretary General ([A/61/758](#)) and the report of ACABQ ([A/61/815](#)) on the Redesign Panel's report.

The reform of the United Nations internal justice system was also discussed by Sixth Committee delegates who looked at the legal aspects of the matter. On 21 March 2007 the Sixth Committee sent a [communication](#) to the Chairman of the Fifth Committee through the Office of the President of the General Assembly. The letter provides the Fifth Committee with [12 points of agreement](#) aimed at helping the Fifth Committee in their deliberations.

In January of 2006, the Secretary-General established the Redesign Panel, which was asked to review and possibly redesign the system of administration of justice at the United Nations. Its main finding was that the

internal justice system is outmoded, dysfunctional, and ineffective and that it lacks independence. Among the Panel's recommendations was a new, decentralized, independent, and streamlined internal justice system, fully consistent with international human rights standards. Once approved, the system should become operational on 1 January 2008.

The new system envisioned by the Panel puts great emphasis on the informal¹ resolution of disputes through mediation. This would involve a significant strengthening of the Office of the Ombudsman at the Secretariat, through the establishment of a mediation division, and the creation of Ombudsmen field offices. Administrative review before action in the formal system (litigation) should be abolished. The Panel also outlines a new formal system for the litigation of disputes carried out by a de-centralized first instance tribunal, the United Nations Dispute Tribunal (UNDT), presided over by independent judges, with power to issue binding decisions. Decisions can be appealed by either party to an appeals tribunal. The UNDT will be replacing the Joint Appeals Boards ([JAB](#)) and the Joint Disciplinary Committees (JDC). The existing Administrative Tribunal's ([UNAT](#)) terms of reference will be redesigned for it to function as an appellate court. An Office of Administration of Justice will be established within the Secretariat to administer the new system. An Internal Justice Council will be constituted to appoint the judges and monitor the system. The Panel also recommended that the system of Internal Justice be expanded to all staff with a remunerated post in the organization.

In his [note](#) on the report by the Redesign Panel, the Secretary General, based on the indications of the Staff Management Coordination Committee, agrees with the majority of the recommendations offered by the Panel but suggests a few modifications. In particular, with regards to the Panel's recommendation that a single judge would normally decide cases, the Secretary General proposes instead that the Dispute Tribunal be composed by nine judges sitting in panels of three. This would allow representation of more than one legal system and thus better reflect the multicultural nature of the organization.

In response to the suggestion by the Panel to abolish the administrative review before action in the formal system, the SG report suggested that it should be substituted by a strengthened management evaluation function, which would become the first step in the formal system. This would allow executives to hold management accountable for their decisions and eventual wrongdoings. In turn, management will have an opportunity to review decisions before they proceed to litigation.

The SG estimates that the reform of the UN system of administration of justice will cost the organization \$37.65 million, to be allocated within the programme budget for the biennium 2008-2009 (of which \$10.63 million have already been included in budget proposals and will simply have to be redeployed), thus additional resources of \$27.08 million will be required to implement the proposals. Further costs will be born by the three large peacekeeping missions where justice staff will be deployed. Once in place, the system promises to be substantially more cost-efficient and more effective than the one currently in place.

The [ACABO's report](#) commented on both the Redesign Panel and the SG proposals. It suggested that costs related to resource requirements need to be better formulated. It also found that no compelling reasons were provided by the Panel or by the SG to expand the scope of the coverage of the system, and that internal justice should apply only to those covered by the UN Staff Rules and Regulations. If Member States wish to consider expanding the scope of the system, further analysis and proposals will be needed. In reaction to the SG proposal to place management evaluation in the Department of Management, ACABQ underlined that this could be perceived as a conflict of interest. "Responsibility for management evaluation should not be with those whose policies or decisions are, in fact, under scrutiny... It is essential to promote full confidence in the new system of internal justice by assuring the independence and impartiality of the process. Safeguards should also be provided against undue pressure being brought on staff availing themselves of the new system... The Assembly should consider placing the Management Evaluation Unit elsewhere; for example in the Executive Office of the Secretary General."(par. 36-40) It also added that the Unit should be given operational independence to ensure its objectivity.

ACABQ found the establishment of a two-tiered system of formal justice suitable. It did not agree with the SG suggestion that there should be three judges instead of one, as proposed by the Panel, to take decisions. ACABQ also expressed uncertainty with respect to how the Internal Justice Council, which will be selecting the judges, will be constituted and asked the SG to elaborate a proposal on its terms of reference and the selection criteria of its members.

During formal discussions on Thursday 22 March 2007, when some of the reports were introduced to the Fifth Committee, the **UN Staff Union's** President, Stephen Kisambira, found that the recommendations by the panel had been watered down by the SG report with the result of creating a system not as fully independent as needed. He also added that the terms of reference and members selection criteria for the Internal Justice Council should be prepared by an independent panel, maybe the Redesign Panel itself. He also noted that the SG offered estimates based on the creation of posts recommended in his proposal but not on those recommended by the Panel. He found the management evaluation proposed by the SG too similar to the current Administrative Review system, as setting a period aside for evaluation by management as a precondition for legal action contributes greatly to delays in the process.

The **G77 and China** regretted the late submission of the SG note on the report of the Redesign Panel. The Group agrees that the system of informal justice at the UN is ineffective and needs to be replaced by strengthening the mediation capacity of the Office of the Ombudsman. In general, the Group found the proposal on the two-tiered system of justice acceptable; however, it is concerned that the effectiveness of the new formal justice system would rely heavily on the competence of the judges. In fact, in the formal justice system, the judges' decisions in the first instance tribunal (UNDT) would determine the case loads as well as the scale of litigation. The Group thus suggested that judges should be given high stature,² and be provided with suitable compensation. Although the Group agrees with the broad framework of the system it also underlined that it needs further clarification on issues such as the scope of the internal justice system, management evaluation, the selection criteria for appointing judges, disciplinary proceedings, the composition and competence of the United Nations Dispute Tribunal, and transitional measures.

The **EU** agrees with the proposals advanced by the panel and insisted that, in order to gain the trust of the staff and management, the system should conform to international law, the principles of the rule of law and due process. It also underlined that information on disincentives to pursue frivolous claims was needed, and legal assistance to staff seeking redress should be considered. The EU asked to receive further information from the SG on the proposed management evaluation system.

The **African Group** supports the broad parameters of the system proposed by the Panel and insisted that the SG seeks for the views of staff in implementing the reforms.

The **Rio Group** also found the Panel's recommendation a good basis for negotiations but lamented that the late issuance of the SG report and consequently of the ACABQ report could cause further delays in reaching agreement on the reform.

CANZ also supports the proposals contained in the Redesign Panel report but noted that further details are needed for Member States to take a decision on the specifics of the new internal justice system. It asked that more information be provided on issues such as disciplinary matters, cost-sharing arrangements, transitional measures and the interaction with OIOS, among others. CANZ also suggested the prompt establishment of an Office of Administration of Justice and the appointment of an Assistant SG (ASG), as proposed by the Panel, to support the SG in the implementing phase of the reform.

The **US** underlined that the cost implications of the reform could not be quantified at present and more time would be needed to consider the reform proposals. The US agrees with establishing an informal system of mediation that would allow the promotion of informal resolution of disputes in order to avoid recurring to costly litigation when possible but asked for provisions to guarantee, once a mediated outcome is reached, that there would be no opportunity for recourse to the formal system of justice. It also expressed concerns on the expansion of the scope of jurisdiction for administration of justice at the UN. It also disagrees with the proposal that the Staff Association might bring class action suits on behalf of its members. The US sides with the Secretary General in opposing the recommendation on punitive damages and suggested that personal liability remains under the current provisions that allow for its application only in cases of gross negligence. For a full account of the formal discussions on Thursday 22 March 2007:

- [Budget Committee...Begins Debate on Redesign Panel's Proposals For New System of Internal Justice at United Nations](#), DPI Report, 22 March 2007

INFORMALS

Q&As - A few of the issues raised include:

Guatemala on behalf of the G-77 and China:

What is the appropriate time frame for the Administration of Justice and where will the office be housed to ensure its independence? Paragraph 122 of the Redesign Panel changes the litigation process so that claims are not directly filed against the Secretary General. How will this be reconciled with Article 97 of the Charter? What is the result of the separation of the litigation process from the office of the Secretariat? As far as accountability is concerned, what other cases may occur, other than those referring to gross negligence? This is important as any additional cases would extend into the realm of personal responsibility.

Secretariat:

The time frame for Administrative Review is currently within 60 days, although this is not always possible due to a lack of resources. The new proposal is for a 45-day timeframe, which is a reasonable time frame, and this should not be a problem for claims filed at headquarters, but in the field there will have to be a heavy reliance on local resources.

The proposal is that the administration of justice will be handled in the front office of the Department of Management. ACABQ says that this is not independent enough, however, and suggests that the administration of justice be handled by the office of the secretary general, although, the office of the secretary general is too small to have another office added to it.

The Panel of Council will serve both as an advisory body for staff members as well as legal representation. The reasoning behind cases no longer being brought directly against the secretary general is that it was artificial to do so in the first place, so in the proposal, claims will be brought against specific departments or programs.

Netherlands, on behalf of the EU, inquired as to whether or not there will be an effort to decentralize the administrative review process in the UN as they have done in the EU.

Secretariat:

In regards to a decentralized process versus a centralized process, there are different levels of fact finding. Unmonitored data from the formal level to the informal level would need to be monitored. There may be some sharing of information or one level of justice can be used to lay the groundwork for a fact finding mission on the other level, and there can also be sharing of information between the levels if there is no question of confidentiality and/or if it is coming from the informal level up to the formal level.

RESPONSES FROM THE SECRETARIAT TO QUESTIONS FROM MEMBER STATES

- [Responses to requests of the Fifth Committee on Administration of Justice](#), 27 March 2007
- [Responses to requests of the Fifth Committee on Administration of Justice](#), 28 March 2007

OTHER RELATED MATERIALS

- [Supplementary Information on Administration of Justice](#), 28 March 2007
- [Sixth Committee Informal Paper on Administration of Justice](#), 12 March 2006

OTHER ISSUES

- [Fifth Committee concludes discussions on Administration of Justice as officials respond to questions on procurement task force investigation](#), DPI Report, 29 March, 2007
- [Fifth Committee recommends assets from completed Burundi operation be donated to government](#), DPI Report, 21 March 2007

¹ Some Sixth Committee delegates pointed out during 'informals' that the term 'extra-judicial' would be more consistent with international law than the term 'informal'

² Syria suggested they would be appointed at the ASG level

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