



Fifth Committee Report No. 10 5-9 March 2007

During the week of 5-9 March 2007, the Fifth Committee began its first resumed session. Member States discussed, inter alia, the reform of the United Nations administration of justice system, an audit report of the tsunami relief operations, and a report on the progress of implementing a strengthened, unified United Nations security system. Here is a summary of some of the issues presented and raised.

ADMINISTRATION OF JUSTICE

INFORMAL CONSULTATIONS

On Wednesday, 7 March 2007, the Fifth and Sixth Committees discussed a report issued in July 2006: “Report of the Redesign Panel on the United Nations system of administration of justice” ([A/61/205](#)) with the panel of external and independent experts [appointed by the Secretary General in January 2006](#).

During the informal consultations, Ms. Mary Gaudron discussed the report with Member States and replied to their questions.

Member States welcomed the report and congratulated the panel for the excellent output. They also declared that they were alarmed by the lack of efficiency and transparency in the current UN system of internal justice.

Some of the points made by Ms. Gaudron during the discussion included:

While fifteen years ago the existing system could have been improved, today we need a new one in which people can have confidence. A new system has to be able to provide final decisions in order to earn people’s trust.

The panel redesigned the system of internal justice to provide for disincentives to resort to the formal litigation system. First of all, most people prefer resolving an issue without confrontation, and offering the opportunity to do so through the promotion of mediation is already a big incentive to avoid using formal litigation avenues. Another element that will discourage the use of the formal litigation system is that the panel is proposing that the decisions made through formal litigation be made public. This would increase transparency and management accountability because management will be out of its comfort zone. Decisions being made public will also contribute to developing a consistent jurisprudence in the system and to normalizing it, thus fostering transparency.

The Secretary General suggested a maximum of 45 days to review a case, but we expect that there will be cases that will not be reviewed within this timeframe. Reviewing a case could take anywhere from 10 days for the most simple to 3 months for the more complex.

When there is a serious dispute, the panel suggests that there be formal mediation. People will, at the request of the judge, or at the request of both parties, engage in mediation. Mediation will help to identify the issues to be resolved. During the mediation process, the time counted towards the limit set for the review of the case (45 days) will stop. Still, in order to ensure that the mediation process does not get out of control, there will be time limits for the mediation itself.

The need for a two-tiered system (see box below) stems from the awareness that judges are only human and they will eventually make mistakes. Judges might cross the line sometimes, but the two-tiered system would

keep them within the balance of judicial behavior, ensuring that there is procedural fairness and that there is no bullying.

If the proposal is accepted, Member States should be aware that there will be serious difficulties for a couple of years, due to the backlog of accumulated cases that will have to be transferred to the new system (from United Nations Dispute Tribunal (UNDT) to United Nations Administrative Tribunal (UNAT)). Because the system is new, people will be testing its margins, including by appealing earlier cases. Of course, some tweaking will be needed, but after a short while, there will be fewer appeals and a significant contraction in cases going to the UNAT. Also, the procedure and the filing of documents would become much simpler.

As to the interaction of the new system with the authority of the Secretary General, there have been objections that it would take away some of his/her power; however, the SG never personally conducted a review of the decisions taken by the internal justice system. He has no time to review cases or to take decisions himself, so if the new system is ever taking away someone's power, it would not be the SG's. Also, the Charter does not give the SG the power to act contrary to the law. Whether or not a right has been infringed upon or a duty not observed is for the law to establish, not the SG.

The new system is also intended to improve accountability of management and management evaluation. The fact that everyone can file a notice of dispute will be extremely useful because then you will have a record of it that management could use in their evaluations. Also, if management reviews are not conducted properly, distrust will creep in again.

Member States expressed concerns that with the new system more litigation and consequently more financial settlements will ensue. It was noted that the UN is not a profit making body, as profit making bodies can often witness 'personnel against management' types of conflict. In the case of the UN instead both personnel and management are accountable to Member States, did the panel and the new system take this aspect into account?

In fact, there will be fewer cases of reimbursement as we would be able to address grievances sooner, before the situation deteriorates. Thus, the damages to be paid would be significantly less. A good example is ILO's administration of justice system. Since it was implemented, fewer cases came to UNDT. After the first two years, after clearing the backlog mentioned previously, there will be fewer cases of litigation and thus, lesser damages to be paid.

Member States also doubted the wisdom of eliminating the peer review system used to date, and whether making the results of the proceedings public would effectively work as a deterrent for litigation. They also questioned the proposal of having only one judge for the dispute tribunal, instead of a panel of three judges. They also wondered if there should be different categories of cases to be assigned to different judges.

The Panel recommends that the peer review system be eliminated even though the Secretary General expressed a preference to maintain it. The Panel's perception is that the peer review system is not fully independent. It can be useful, but generally, it is much better if the judge makes a decision.

A three judge panel is not necessarily going to bring better justice. On the contrary, the larger the membership, the longer the time needed to take decisions. In fact, it is very easy to put the panel out of action when you have a three judge panel. If one of them is missing, the whole panel is disabled. It is not an efficient system, it can work, but to a limited extent. The Panel addresses this with the system of delegation to a single judge for the interim arrangements.

Member States asked to receive more information on how the new system would interact with internal oversight bodies and in particular with OIOS. They also asked for further information on the proposed panel of counsel, what its role would be and if its purpose would be to be of assistance to the staff. Doubts were expressed on the feasibility of the "class action" proposal. Some Member States added that unless they receive more information on the proposal, an early agreement might not be reachable.

A great number of the details requested by the Member States were not included in the report because the panel could only produce a 30 page document. The panel did not look at the interaction with the other bodies because it was not in the terms of reference to do so, but this is indeed a crucial issue and it will be necessary to define OIOS' responsibilities in this respect.

In regards to the "class action" proposal, this would only occur in exceptional cases. An example could be grievances with regards to contracts and contractual rights. If it is decided that a person cannot be employed longer than a certain number of years, there would be several similar requests for intervention. The class action would then provide for employees with a contract signed in the same year to file a complaint together.

Member States also wondered about the scope of the new system. Currently, an average of 55,000 people have access to the UN's internal justice system. Short term contractors and consultants, for example, are now shut out of the system. Are you going to expand the scope of the new system to locally recruited staff as well? Would it involve another 20,000 to 35,000 people? Did the panel consider coordination with The United Nations Special Committee on Peacekeeping Operations (C34)? Administration of Justice does not affect uniformed staff but there are also civilians involved in peacekeeping. Doubts were also expressed about the re-eligibility of judges as very often re-eligibility of judges can lead to corruption.

Ms. Gaudron confirmed the intention to expand the base of the staff eligible to make use of the internal justice system, and this should include locally recruited staff.

Administration of Justice Report:

CORE ISSUES AND RECOMMENDATIONS

In January of 2006, the Secretary-General established the Redesign Panel on the United Nations system, 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. To this end, a new redesigned system would be more effective than an attempt to improve the current system. Among the Panel's recommendations was a new, decentralized, independent, and streamlined internal justice system, fully consistent with international human rights standards.

The present informal justice system has failed for various reasons, which the Redesign Panel made recommendations on for the new system. Aspects of the current system that helped produce the lack of efficiency and effectiveness include the fact that members of Joint Disciplinary Committees (JDC) and Joint Appeal Boards (JAB) are volunteers who generally lack legal qualifications, and the fact that disciplinary proceedings become protracted and are delayed to such an extent as to cause significant problems in the process of justice. The structure of the formal justice system is fragmented and over-centralized, slow, expensive, and inefficient, and does not provide proper or adequate remedies and fails to guarantee individual rights. It also promotes neither managerial efficiency nor accountability and generally lacks transparency and fails to satisfy minimum requirements of the rule of law.

The Redesign Panel recommended that the new informal justice system include the establishment of a **two-tiered system of formal justice**, comprised of a first-instance decentralized tribunal known as the UN Dispute Tribunal, which would be composed of professional judges with the power to make binding decisions. The UN Dispute Tribunal would replace existing advisory bodies, including Joint Disciplinary Committees and Joint Appeals Boards, however, not the rebuttal panels and Classification Appeals and Review Committees. Also, the jurisdiction of UNAT should be expanded to hear appeals from the Dispute Tribunal on behalf of the Organization, the funds, and programs of staff alike. The Dispute Tribunal would also have jurisdiction in four areas which include complaints alleging non-compliance with terms of appointment, conditions of employment or the duties of an international organization to its staff; disciplinary matters; applications by the Organization or funds and programs to enforce the relevant staff and financial rules relating to accountability against staff members; and actions by a staff association on behalf of its members to enforce the Staff Rules and Regulations and related administrative

instructions or on behalf of a particular class of its members affected by a particular administrative decision.

The new system would include an establishment of an Office of Administration of Justice in the UN, headed by an executive director with the rank of Assistant Secretary-General. They also called for the United Nations Administrative Tribunal (UNAT) to be renamed the United Nations Appeals Tribunal and to amend its statute to include a new appellate jurisdiction. Furthermore, the Panel called for the scope and jurisdiction of the informal and formal internal justice system to include all employees of the United Nations. The Redesign Panel stated that the process of administrative review before action in the formal justice system should be abolished, and that full delegation of authority should be granted to special representatives of the Secretary-General heading peacekeeping and political missions and to the heads of offices away from Headquarters in misconduct and disciplinary cases. Also recommended was the establishment of Standing Boards of Inquiry in all peacekeeping missions.

Given that two thirds of UN staff is employed in field operations away from Headquarters, it is important to note that the system of justice in the field is extremely weak due to an almost total lack of knowledge among staff of their rights and avenues for remuneration. The Redesign Panel stresses that unless a robust system of justice is established in the field at both the informal and formal levels, reform will be of limited impact. The Panel also found that there is a perception of unequal justice in the UN, which is particularly acute in field duty stations. Because of this, the Redesign Panel states that local staff who work for the UN in field missions and offices away from Headquarters should be fully represented in all consultative committees and advisory boards. There is also an absence of clear frameworks governing the relationship between the Office of Internal Oversight Services and the Conduct and Discipline Unit of the missions, and due to this, it is necessary to clear up the significant coordination gap that this creates. The Panel called for a clear framework of cooperation and delimitation of roles between the Office of Internal Oversight Services and the UN internal justice system to be established. Furthermore, the Panel recommended that Ombudsmen be appointed for peacekeeping missions that have a large number of civilian staff.

Regarding the Office of the Ombudsman, the Panel recommended a single but decentralized office for the Secretariat, and appointment of the UN Ombudsman by the Secretary-General. The Office should combine the functions of formal mediation with proactive monitoring of maladministration in order to strengthen it, and a Mediation Division should be established within the Office of the Ombudsman as well. Furthermore, it was recommended that the Panels on Discrimination and Other Grievances should be abolished and the functions transferred to the Office of the Ombudsman.

The Redesign Panel also called for the establishment of an Internal Justice Council with the duty of compiling lists of candidates for appointment as judges in the UN's internal justice system and to monitor the system as well. The judges of the UN Administrative Tribunal would then be appointed by the General Assembly from the list prepared by the Internal Justice Council, and judges for the UN Dispute Tribunal would be appointed by the Secretary-General from a similar list prepared by the Internal Justice Council. Finally, the Panel recommended that the new system be approved by the General Assembly and become operational upon approval on 1 January 2008.

AUDIT REVIEW OF THE UN TSUNAMI RELIEF OPERATIONS

GENERAL DISCUSSION

On Monday, 5 March 2007, Member States began discussions on a report issued by the Office of Internal Oversight Services (OIOS) on the review of the United Nations tsunami relief operations ([A/61/669](#)).

- [Budget committee takes up report on audit of tsunami relief operations](#), DPI Report, 8 March 2007

INFORMAL CONSULTATIONS

Informal consultations on the subject, chaired by Ms. Stefania Rossini of Italy, began on 5 March 2007:

The chair noted that the report showed weaknesses and shortages in the UN system. She stated that the independence of the individual programs should be increased, but that better communication within the

system is also necessary. She added that the 38th floor (the Secretary General's) should explain why the system does not work and reminded the Secretariat that Member States had requested such an explanation already three times previously.

Member States lamented the late issuance of the report and its scarce exhaustiveness in explaining the operation's failures, lack of sufficient control and monitoring of the funds assigned, and its general disorganization. Member States also expressed dissatisfaction that no USG-level representative was present at the consultation.

Further consultations took place on Thursday 8 March 2007.

OTHER ISSUES

- [Budget committee takes up report on progress implementing strengthened, unified United Nations security system. Also Considers Joint Inspection Unit's 2007 Work Programme, DPI Report, 6 March 2007](#)

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