

**ADMINISTRATION OF JUSTICE
RESUMED SESSION OF THE SIXTH COMMITTEE
INFORMAL PAPER**

12-22 March 2007

The present paper was prepared in order to facilitate the debate on the item "Administration of justice at the United Nations". It is simply indicative and non-exhaustive of the legal issues raised in the Redesign Panel Report and the Note by the Secretary-General. It is not meant to prejudge any views on the identification of the legal issues by the delegations.

In accordance with GA decision A/61/511, adopted under the item "Administration of justice at the United Nations", the Sixth Committee will "hold a resumed session of 10 meetings in March 2007 [12-22] to continue the consideration of the legal aspects of the report of the Redesign Panel on the United Nations system of administration of justice (document A/61/205), taking into account, as appropriate, the comments that will be made by the Secretary-General on the report of the Redesign Panel, as well as those that may be made by the Advisory Committee on Administrative and Budgetary Questions (ACABQ)."[Emphasis added.]

The present paper aims at identifying legal issues for discussion as well as some procedural aspects relating to the consideration of the item during the resumed session. It is prepared on the basis of the currently available documents: Report of the Redesign Panel (A/61/205), and a Note by the Secretary-General on the Report of the Redesign Panel (A/61/758).

I. The informal system of justice

The Office of the Ombudsman¹

Proposal

The Redesign Panel proposed to combine "in an office of the ombudsman both the monitoring of maladministration and the mediation of disputes". The Redesign Panel also proposed two components for the Office of the Ombudsman: the Ombudsman and the Mediation Division (Report of the Redesign Panel, paras. 44-45 and 49).

The Secretary-General expressed his support for strengthening the Office of the Ombudsman, and agreed with the proposal to establish a single integrated but decentralized Office of the Ombudsman for the United Nations Secretariat and the Funds and Programmers (Note by the Secretary-General, para. 12). He also agreed that

¹ Report of the Redesign Panel, paras. 40-61 and 164-168; Note by the Secretary-General, paras. 9 and 12-16.

ombudsmen should be appointed to serve peacekeeping missions with large numbers of civilian staff (Note by the Secretary-General, para. 14). He further endorsed the proposal that the United Nations Ombudsman and Ombudsman for the Funds and Programmes would be appointed by the Secretary-General and the executive heads of the Funds and Programmes, respectively (Note by the Secretary-General, para. 13).

In view of the strengthened role of the Office of the Ombudsman, the Secretary-General agreed with the proposal to abolish the Panels on Discrimination and Other Grievances² and to transfer their functions to the Office of the Ombudsman and the formal system of justice³ (Report of the Redesign Panel, para. 16; Note by the Secretary-General, para. 15).

Legal Aspects

General consideration of the office of the ombudsman and its terms of reference.

Mediation

Proposal

The Redesign Panel proposed that the Mediation Division, located at Headquarters and under the authority of the United Nations, "will provide formal mediation services for the Organization and funds and programmes". The Mediation Division will also "complement" the mediation functions of the Ombudsmen (Report of the Redesign Panel, para. 55). The Redesign Panel suggested that the Ombudsman mediate "high-profile disputes and also monitor and report on the problems of maladministration", whereas "the Mediation Division will mediate disputes upon referral by the Ombudsman or from judges in the formal system of justice (para. 49).

The Secretary-General agreed with the Panel's proposal to include the functions of formal mediation within the responsibilities of the Office of the Ombudsman and to establish, within that Office, a Mediation Division (Note by the Secretary-General, para. 12).

Legal Aspects

- Terms of reference for mediation:
 - o Conditions and procedure for the referral of a case to mediation by the Ombudsman or by judges in the formal system of justice (Report of the Redesign Panel, paras. 49 and 56);
 - o confidentiality of the mediation process, notably as regards the inadmissibility in subsequent litigation of any oral or written statement made during the process (Report of the Redesign Panel, para. 57), etc.

² The Panels on Discrimination and Other Grievances were established in 1977.

³ The Redesign Panel had proposed that "the United Nations Dispute Tribunal should also have jurisdiction on matters that in the past were dealt with by the Panels on Discrimination and Other Grievances". (Report of the Redesign Panel, para. 78)

- Legal value and effects of the settlement reached through mediation, in particular in such cases in which an administrative decision is necessary to give effect to the agreement (Report of the Redesign Panel, para. 57).

Panel of Counsel⁴

Proposal

The Redesign Panel observed that the Panel of Counsel was extremely underresourced and not professionalized; this created an inequality of arms between staff and management in the internal justice system. The Redesign Panel recommended, and the Secretary-General agreed, to establish a professional Office of Counsel, staffed by persons with legal qualifications.

To avoid conflicts of interest and to ensure independence, the Redesign Panel as well as the Secretary-General recommended the relocation of the Office of Staff Legal Assistance from the Department of Management to the proposed Office of Administration of Justice. Based in New York, the Office of Staff Legal Assistance would comprise coordinators in Addis Abeba, Bangkok, Beirut, Dakar, Geneva, Nairobi, Santiago, Vienna, as well as in the following peacekeeping locations: Democratic Republic of Congo, Liberia and Sudan.

The Secretary-General further agreed on the need to develop terms of reference and professional guidelines for the Office of Staff Legal Assistance.

Legal Aspects

General consideration of the need for adequate legal assistance to the staff.

II. The formal system of justice

Proposal

General Design: The Redesign Panel, with which the Secretary-General agrees, proposes the establishment of a two-tiered professional, independent and decentralized system of justice, comprising two instances, the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT), with power to make binding decisions. Prior to judicial action, the contested decision would have to be subject to a management evaluation mechanism (Note by the Secretary-General, paras. 29-31).

Jurisdiction *Ratione Personae* (Report of the Redesign Panel, paras. 15-20 and 156-157; Note by the Secretary-General, paras. 10 and 11):

Categories of individuals who should be granted access to the justice system⁵:

⁴ Report of the Redesign Panel, paras. 100-111, 170-171 and Annex V; Note by the Secretary-General, para. 9.

⁵ The definition of who could have access to the formal administration of justice would also apply to the informal administration of justice.

(a) Inclusion:

- “Staff members, former staff members and persons making claims in the name of deceased staff members, and all persons who perform work by way of their own personal service for the organization, no matter the type of contract by which they are engaged” (Note by the Secretary-General, para. 10);
- “persons appointed by the General Assembly or any principal organ (other than the Secretariat) to a remunerated post in the organization”, *but only subject to the approval of the General Assembly or the principal organ making the appointment*” (Note by the Secretary-General, para. 11).

(b) Exclusion:

“military or police personnel in peacekeeping operations, volunteers (other than United Nations Volunteers), interns, Type II Gratis personnel, or persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or a consulting firm” (Note by the Secretary-General, para. 10).

(c) To grant, under certain conditions, *locus standi* to staff associations. (See Report of the Redesign Panel, paras. 82 and 160 and Note by the Secretary-General, para. 26.)

Jurisdiction Ratione Materiae for the UNDT: (*Redesign Panel Report para. 77 (also Annex I) and Note by the Secretary-General, paras. 23-26*)

Staff and management agreed on the recommendation of the Redesign panel with the following modifications:

- (a) Applications by individuals instituting proceedings against the UN or its separately administered Funds and Programmes:
- Alleging non-compliance with the terms of their appointment or the conditions of their employment;
 - In specialized or technical matters, where the advice of a joint body is required before administrative decision is taken, proceedings would be instituted afterwards. This would be the case, for instance, for PAS rebuttal panels, the Classification Appeals and Review Committee, the Advisory Board on Compensation Claims, and Medical Boards;
 - Concerning an administrative decision imposing disciplinary measures (in this respect, the Secretary-General endorsed the SMCC’s decision to establish an intersessional working group on disciplinary matters – see Note by the Secretary-General, para. 25).
- (b) Applications by a staff association recognized under Staff Regulation 8.1 (b) against the United Nations or its separately administered Funds and Programmes:
- To enforce the rights of the staff association, as recognized under the Staff Regulations and Rules;

- To fill in its own name an application on behalf of a group of named staff members instituting proceedings under sub-paragraph (a) above who are affected by the same administrative decision arising out of the same facts;
 - To support an application by one or more individuals instituting proceedings under sub-paragraph (a) above against the same administrative decision, by means of a submission of a friend of the court brief or by intervention.
- (c) In the context of the management evaluation, complaints of prejudicial or injurious conduct that does not conform to the Staff Regulations and Rules or administrative issuances would be reviewed promptly by management and would either:
- Trigger an investigation of the person accused of prejudicial or injurious conduct. If the evidence indicates the existence of misconduct, disciplinary action would be taken. The resulting disciplinary decision would be subject to UNDT's jurisdiction.
 - Lead to the conclusion that the claim is not detailed or specific enough to justify an investigation, or was not corroborated, in which case the staff member will be informed that no action will be taken. The resulting administrative decision would be subject to UNDT's jurisdiction.

Jurisdiction Ratione Materiae for the UNAT: *(Redesign Panel Report para. 15 and Annex II, and Note by the Secretary-General, para. 28)*

The United Nations Administrative Tribunal will be renamed the United Nations Appeals Tribunal and its Statute will be amended to include a new appellate jurisdiction while retaining competence over such disputes not falling within the jurisdiction of the UNDT alleging non-observance of contract of employment of staff members of the UN or the terms appoint of such staff members. SG's comments support the recommendations by the Redesign Panel with the following modifications to grounds for appeal:

- UNDT has exceeded its jurisdiction or competence
- UNDT has failed to exercise jurisdiction vested in it
- UNDT has committed a fundamental error in procedure which has occasioned a failure of justice
- UNDT has erred on a question of law
- UNDT has erred on a question of material fact

The Statute of the United Nations Administrative Tribunal, which will form the basis for the Statute of the Appeals Tribunal, will need to be amended accordingly, beyond the Panel's recommendations (Note by the Secretary-General, para. 28).

Structure and other related issues of UNDT: *(Redesign Panel Report para. 154 and Note by the Secretary-General, paras. 19-20 and 32-36)*

SG comments supports the recommendations of the Redesign Panel with the following modifications:

- Composition: The UNDT will consist on nine judges, who will sit in panels of three. No two judges could be of the same nationality. Gender and regional balance will be respect.
- Location: UNDT panels will be based in NY, Geneva and Nairobi. Their respective workloads will be monitored by the Principal Registrar in the Office of

the Administration of Justice, who could schedule travel of judges for sessions in Latin America, Asia, as required by caseload.

- Appointment: The judges will be appointed in accordance with the requirements and procedures set out by the Panel in paras. 127-130 of the its report (also paras 173 and 174).

- Remuneration: UNDT judges will be remunerated at the D-2 level.

- Procedures: UNDT decisions will be published. Proceedings will be open to the public in principle but UNDT may order closed hearings, at its initiative or at the request of one of the parties.

- Binding decisions: UNDT will issue binding decisions.

- Specific performance: In case challenging appointment, promotion or termination, UNDT will need to set the amount of compensation to be paid as an alternative to specific performance. Appointments will not be set aside.

- Compensation: Compensation ordered by UNDT will not be subject to the normal maximum of two years' salary currently applicable to UN Administrative Tribunal.

- Punitive damages: Punitive damages could NOT be awarded.

- Referral to the Secretary-General: the Dispute Tribunal Judges would have the power to refer appropriate cases to the Secretary-General for possible action to enforce accountability (Report of the Redesign Panel, para. 159; Note by the Secretary-General, para. 27).

Structure and other related issues of UNAT: *(Redesign Panel Report para. 155 and Note by the Secretary-General, paras. 19 and 32-36)*

SG's comments supports the recommendations of the Redesign Panel with the following modifications:

- Composition: The UNAT will consist of seven judges. No two judges could be of the same nationality. Gender and regional balance will be respected.

- Location: The UNAT will normally hold one session in Geneva and one session in New York each year.

- Appointment: The UNAT judges will be appointed in accordance with the requirements and procedures set out by the Panel in paragraph 127-130 of its report.

- Remuneration: As recommended by the Panel, in para. 99 of its report, UNAT judges will receive an honorarium similar to that paid to judges of the ILO Administrative Tribunal.

- Parties: Either party (the Organization or the staff member) may appeal a UNDT decision to UNAT.

- Procedures: UNAT decisions will be published. Proceedings will be open to the public in principle but UNAT may order closed hearings, at its initiative or at the request of one of the parties.

- Binding decision: UNAT will issue binding decisions.

- Specific Performance: In all cases, UNAT may order specific performance without the need to order compensation as an alternative remedy.

- Compensation: Compensation ordered by UNAT will not be subject to the current limit of two years' salary.

- Punitive damages: Punitive damages could NOT be awarded.

- Referral to the Secretary-General: the Dispute Tribunal Judges would have the power to refer appropriate cases to the Secretary-General for possible action to

enforce accountability (Report of the Redesign Panel, para. 159; Note by the Secretary-General, para. 27).

Legal Aspects

A. See in II under “Proposal”

B. The elaboration of the draft statute of the proposed United Nations Dispute Tribunal (“UNDT”)

(The draft contained in annex I of the report of the Redesign Panel is confined to the jurisdiction of the tribunal. Paragraphs 83 to 94 cover some other elements such as: the seat of UNDT; the composition of UNDT (9 judges seating in panels of 3, as agreed by staff and management, instead of 1 judge as proposed by the Redesign Panel); procedure for the appointment/election of judges; jurisdiction of UNDT; rules of procedure; remedies; and enforcement.)

C. Proposed amendments to the Statute of UNAT as an appellate tribunal

(Renaming it as “UN Appeals Tribunal” (Report of the Redesign Panel, para. 74); amendments to Articles 2, 7, 8 and 10 (annex II of the same report); see also Note by the Secretary-General, para. 28)

C. Adoption of transitional measures and timetable for the implementation of the new system (Report of the Redesign Panel, para. 148).