SMCC

United Nations Nations Unies

Office of the Under-Secretary-General for Management

21 February 2007

Dear Secretary-General,

As you may recall the General Assembly is expecting your comments on the Report of the Redesign Panel. As discussed with you, your comments should reflect the SMCC agreements. We reviewed carefully the financial implications upon your request and the estimated additional resources, for 2008-2009 is 27 million for the regular budget.

76m approved.

Please note that the only difference with the UN New York Staff Union is regarding the proposed management evaluation process (previously called administrative review) which, if appropriately resourced and located outside OHRM can become the most essential tool to ensure accountability from the managerial perspective.

We need your urgent approval of this report so that it can be considered by ACABQ on Monday 26 February.

Respectfully,

Alicia Barcena

SG (Barbara),
Ms. Barcena recommends for your approval the SMCC report. Thanks LS
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27-08298

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United Nations A/61....

General Assembly

Distr.: General
.. March 2007

Original: English

Sixty-first session
Item 128 Administration of Justice

Report of the Redesign Panel on the United Nations system of administration of justice

Note by the Secretary-General

Summary

As requested by the General Assembly in its resolution 59/283, the Secretary-General submits his comments on the recommendations contained in the report of the Redesign Panel on the United Nations system of administration of justice (A/61/205), which was established under the same resolution. The comments reflect extensive consultations with the Staff Management Coordination Committee. The present document also contains the estimate of time and resources needed for the implementation of the Panel's recommendations.

The Secretary-General shares the view of the Redesign Panel that there are significant problems with the existing system of internal justice. He agrees that an entirely new system is needed – one that is professional, independent and decentralized. He requests the General Assembly to give due consideration to the proposals contained in his comments and to approve the necessary resources for full implementation.

I. Introduction

1. In its resolution 59/283 of 13 April 2005, the General Assembly decided that the Secretary-General should form a panel of external and independent experts to consider redesigning the system of administration of justice and decided on its terms of reference.[1] The Redesign Panel was established accordingly. The Secretary-General received the report of the Panel on 20 July 2006, and transmitted it to the General Assembly (A/61/205).

2. In August 2006, the Deputy Secretary-General requested the views of managers and staff representatives, on the findings and recommendations of the Redesign Panel. The views of 47 offices from the Secretariat and the United Nations Funds and Programmes were received. These comments served as the basis for the subsequent consultation process among the offices most directly involved in the justice system, including the Department of Management, the Office of the Ombudsman, the Office of Legal Affairs and the Department of Peacekeeping Operations, as well as the Funds and Programmes.

3. The Staff-Management Coordination Committee (SMCC) met in a special session from 31 January to 6 February 2007 to discuss the Panel's recommendations and express its views prior to the submission of the Secretary-General's comments on those recommendations. SMCC is the joint mechanism established under the Staff Rules at the global Secretariat level for consultation in good faith between staff and management on issues relating to staff welfare, including conditions of work, general conditions of life and other personnel policies, on which the Secretary-General is required to consult with the staff under staff regulation 8.1. The full membership of the SMCC, with the exception of staff representatives from New York, attended the special session.[2] The Secretary-General has endorsed the agreements reached at SMCC, which are reflected in the comments contained in this note.

4. The present note provides the Secretary-General's comments on the recommendations of the Redesign Panel, along with the estimate of time and resources needed for their implementation, as requested by the General Assembly in its resolution 59/283. Most of the Redesign Panel's recommendations have been accepted in their entirety. In other instances, SMCC agreed on modifications, which the Secretary-General fully endorses, that would enhance the viability and effectiveness of the new system. In addition, the SMCC agreed to establish a working group to discuss issues relating to disciplinary proceedings that require further elaboration before recommendations can be finalized.

[1] Resolution 59/283, Section IV.

[2] The participants included management representatives from all major duty stations, as well as from the Office of the High Commissioner for Refugees, the United Nations Development Programme and the United Nations Children's Fund, and staff representatives from the Economic Commission for Africa, the Economic Commission for Latin America and the Caribbean, the Economic and Social Commission for Asia and the Pacific, the Economic and Social Commission for Western Asia, the Field Staff Union, the United Nations Office at Geneva, the United Nations Office at Nairobi, the United Nations Office at Vienna, the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees and the United Nations University.

II. Overview

5. The Secretary-General fully shares the view expressed by the General Assembly that a transparent, impartial and effective system of administration of justice is a necessary condition for ensuring fair and just treatment of United Nations staff and is important for the success of human resources reform in the Organization [3] There are fundamental reasons why the UN needs a functioning, well-resourced system of internal justice:

a. UN staff members have no legal recourse to national courts in respect of employment-related grievances, due to the privileges and immunities enjoyed by the Organization. The Organization needs therefore to offer its personnel an effective recourse and must bear many of the attendant costs that might otherwise have been incurred in national judicial proceedings;

b. The UN, as an organization involved in setting norms and standards and advocating for the rule of law, has a special duty to offer its staff timely, effective and fair justice. It must, therefore, "practice what it preaches" with respect to the treatment and management of its own personnel. The Secretary-General believes that staff are entitled to a system of justice that fully complies with applicable international human rights standards;

c. Given heightened risks and increasingly complex situations in which the Organization operates, high ethical standards and "zero tolerance" for inappropriate conduct or wrongdoing have become paramount. Establishing an internal justice system that enjoys the confidence of both staff and management is essential to promoting mutual trust and enhancing accountability which, in turn, will strengthen the Organization.

d. The internal justice system needs to adapt to the changing requirements of an increasingly global Organization. The current system of justice was designed at a time when there were only a few thousand staff members, largely in Headquarters locations. At present, there are over 30,000 Secretariat staff members, of whom more than half perform a broad range of functions outside Headquarters locations , including in the context of peacekeeping, peace building, humanitarian and technical cooperation. The separately administered United Nations Funds and Programmes – such as UNDP, UNFPA and UNICEF whose staff total over 25,000 – also avail themselves of the United Nations internal justice system. The internal justice system needs to be structured in a manner that affords effective access to all staff members, wherever they are located.

6. The Organization's current system of internal justice was established several decades ago and is based largely on a peer review mechanism relying on volunteer staff members. The Secretary-General shares the view of the Panel that the entire system has "outlived its relevance". In so far as "a justice system is only as good as

[3] General Assembly resolution 59/283, 10th preambular paragraph.

the level of respect and confidence it commands", he agrees with the Panel that the existing system fails. Many staff and managers have grave doubts about the independence and impartiality of the existing system, and are not convinced that it assists in ensuring proper accountability.

7. The Secretary-General welcomes the report of the Redesign Panel which proposes comprehensive changes to the Organization's internal justice system aimed at enhancing its capacity to deliver justice in a timely and effective manner, with full respect for the due process rights of both parties. He considers that the Redesign Panel's report makes an important contribution towards the establishment of a transparent, impartial and effective internal justice system. He has used the Panel's report as the basis for his consultations with managers and staff. To the extent possible, the Secretary-General's comments follow the order of the Panel's report. The related recommendations of that report are footnoted in the subsequent sections of these comments.

III. A unified system

8. The Secretary-General agrees with the Panel's overall recommendation for the establishment of a professional, independent and decentralized internal justice system[4]. Consequently, he supports the recommendation for the early establishment of an Office of Administration of Justice in the United Nations, headed by an executive director with the rank of Assistant Secretary-General.[5]

9. Regarding legal assistance for staff members, the Secretary-General agrees with the Panel's recommendation to establish a professionalized office located in the Office of Administration of Justice.[6] The Secretary-General supports SMCC's recommendation to establish offices to provide staff legal assistance in Addis Ababa, Bangkok, Beirut, Dakar, Geneva, Nairobi, New York, Santiago and Vienna and in the peacekeeping missions in the Democratic Republic of Congo, Liberia and Sudan. The proposal for the additional locations in Bangkok and Dakar, which were not foreseen in the Panel's recommendations, is intended to reflect the geographic distribution of the staff of the Secretariat and the Funds and Programmes, and to enhance access for staff based in francophone countries in West Africa. He further endorses SMCC's recommendation that, in order to avoid confusion with the Office of the Legal Counsel which is part of the Office of Legal Affairs, the office should be named the "Office of Staff Legal Assistance", and that terms of reference and professional guidelines would need to be developed for staff serving in that Office.

10. The Panel raised concerns about the limited scope of the existing justice system, which currently excludes persons employed on special service agreements and individual contractors. The Panel recommended extending the scope of the new system to all persons employed by the United Nations in a remunerated post or performing personal services under contract with the Organization.[7] The Secretary-General concurs with its recommendation that the following individuals would have access to the informal and formal system of justice: staff members, former staff members and persons making claims in the name of deceased staff members, and all

[4] A/61/205, para. 152.
[5] A/61/205, para. 153.
[6] A/61/205, para. 170.
[7] A/61/205, paras. 20 and 156; Annex I (note).

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14. As for the Panel's proposal to decentralize the Office of the Ombudsman, by

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, but not including military or police personnel in peacekeeping operations, volunteers (other than United Nations Volunteers), interns, Type II gratis personnel,[8] 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. It is not yet possible to estimate the full impact this scope enlargement will have on the actual numbers of cases arising in both informal and formal systems. However, in view of the large numbers of individuals who perform services for the United Nations Secretariat and its separately administered Funds and Programmes under a variety of contractual arrangements, a sizable increase in the number of cases is expected[9].

11. The Secretary-General considers that, with respect to the Panel's view that persons appointed by the General Assembly or any principal organ (other than the Secretariat) to a remunerated post in the Organization should have access to the United Nations internal justice system,[10] a decision to extend the scope of the system to such individuals would require specific approval by the General Assembly or the principal organ concerned.

IV. The informal system of justice

12. A strong system of informal dispute resolution is needed in order to avoid unnecessary, costly litigation and to promote early problem-solving in disputes between managers and their staff. Recognizing the importance of effective and timely informal dispute resolution, the Secretary-General supports the Panel's recommendation to establish a single integrated Office of the Ombudsman for the United Nations Secretariat and the Funds and Programmes, which would be strengthened by creating a Mediation Division within the Office of the Ombudsman and by combining the functions of formal mediation with proactive monitoring of maladministration.[11] The Secretary-General also supports the SMCC agreement that any settlement reached at the end of a mediation should be signed and followed, if necessary, by an administrative decision and that verbal or written statements made during the mediation process should remain confidential and inadmissible in subsequent litigation.

13. On the selection and appointment of the Ombudsmans, the Panel proposed that the United Nations Ombudsman and the Ombudsman for the Funds and Programmes would be appointed by the Secretary-General and the executive heads of the Funds and Programmes, respectively, from a list of candidates compiled by a selection committee. The selection committee would be comprised of representatives of management and staff, as well as outside Ombudsmans. The Secretary-General agrees with these recommendations.[12]

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[8] As defined in ST/AI/1999/6.

[9] Approximately 35,000 individuals were engaged by the UN Funds and Programmes, including UNOPS, as individual consultants, UN Volunteers, or on Service Contracts or Special Service Agreements during the course of 2006.

[10] See A/61/205, para. 20(a).

[11] A/61/205, paras. 164, 166 - 167.

[12] A/61/205, para. 165.

14. As for the Panel's proposal to decentralize the Office of the Ombudsman, by appointing regional Ombudsmans as well as additional Ombudsmans to serve peacekeeping missions with large numbers of civilian staff,[13] the Secretary-General endorses SMCC's recommendation that regional Ombudsmans should be appointed to the duty stations in Addis Ababa, Bangkok, Beirut, Dakar, Geneva, Nairobi, New York, Santiago and Vienna and to the peacekeeping missions in the Democratic Republic of Congo, Liberia and Sudan. Again, the proposal for the appointment of an additional Ombudsman in Dakar - not foreseen in the Panel's recommendations - is intended to enhance access for staff based in francophone countries in West Africa.

15. In view of the strengthened role of the Office of the Ombudsman, the Secretary-General agrees with the Panel's recommendation to abolish the Panels on Discrimination and Other Grievances and to transfer their functions to the Office of the Ombudsman and the formal justice system, as appropriate.[14]

16. Annex I of this note maps out the proposed new structure of the informal system.

IV. The formal system of justice

17. The elements of the proposed formal system of internal justice are outlined below. The Secretary-General shares the Panel's view that the present system has major defects and limitations. A fundamentally different system is recommended, replacing the advisory bodies with a professional and decentralized first-instance tribunal that issues binding decisions that either party can appeal to an appeals tribunal.

A two-tiered system

18. The Panel recommended the establishment of a two-tiered system of formal justice, comprising a first-instance decentralized tribunal, the United Nations Dispute Tribunal (UNDT) and a UN Appeals Tribunal (UNAT), which will exercise appellate jurisdiction.[15]. The UNDT would be composed of professional judges, which would replace the Joint Appeals Boards and the Joint Disciplinary Committees. The Secretary-General agrees with the Panel's recommendations. He also shares the Panel's view that the performance appraisal system (PAS) rebuttal panels and Classification Appeals and Review Committees would be maintained.[16] The SMCC further indicated (and the Secretary-General agrees) that specialized or technical advisory bodies such as the medical boards and the Advisory Board on Compensation Claims would also need to be maintained.

[13] A/61/205, paras. 164 and 171.

[14] A/61/205, para. 168.

[15] A/61/205, para. 155. The Panel's recommendation included a reference to amendments to the UNAT Statute, as set out in Annex II. The Secretary-General considers that these amendments would not be sufficient, and that additional amendments would be necessary to more accurately describe UNAT's jurisdiction, discussed in para. 27 of the present note, as well as to address the issues relating to UNAT's role in respect of entities other than the United Nations.

[16] A/61/205, para. 154.

19. The Panel recommended that a single judge would normally decide cases.[17] The Secretary-General believes that in order to reflect the multicultural nature of the Organization, representation of more than one legal system would be required. In order to achieve this, cases at the first level should be reviewed by a panel of three judges. He therefore supports the SMCC recommendation that UNDT be composed of nine full-time judges who will sit in panels of three. The Secretary-General also agrees that no two judges in the UNDT should be of the same nationality and that gender and regional balance should be respected: the same considerations would also apply to the judges of the UNAT.

20. With this increased number of judges per panel, the Secretary-General proposes to establish UNDT panels in Geneva, Nairobi and New York, without the half-time UNDT judges in Santiago and Bangkok, as proposed by the Panel.[18] The respective workloads of the UNDT panels would be monitored by a Principal Registrar in the Office of Administration of Justice, who would schedule the travel of judges for sessions in Latin America and Asia, as required by the caseload.

Powers

21. The Secretary-General agrees that the UNDT and UNAT should make binding decisions, as recommended by the Panel.[19] As for the Panel's proposal for amending the Staff Regulations and Rules to allow the Secretary-General to declare a post vacant where the appointment process has been flawed,[20] the Secretary-General endorses SMCC's recommendation that when ordering "specific performance" in cases challenging appointments, promotions or terminations of appointment, the UNDT should be required to set an amount of compensation that could be paid as an alternative to specific performance[21]. Therefore, appointments would not be set aside. The UNAT, by contrast, could order specific performance without compensation as an alternative remedy.

22. As for other types of remedies which may be ordered by the UNDT and UNAT, the Secretary-General agrees that compensation ordered by the UNDT or UNAT should not be subject to the normal maximum limit of two years' salary currently applied by the UN Administrative Tribunal. With respect to the award of exemplary and punitive damages, as proposed by the Panel,[22] the Secretary-General considers that it would be improper to use public funds for this purpose and endorses the SMCC agreement that these types of damages should not be awarded.

Jurisdiction

23. The Panel recommended that the formal justice system should have jurisdiction over complaints alleging non-compliance with terms of appointment, conditions of employment or the duties of an international organization to its staff, whether or not there has been a formal decision.[23] The Secretary-General agrees

[17] A/61/205, para. 93.
[18] A/61/205, para. 76.
[19] A/61/205, para. 154.
[20] A/61/205, para. 169.
[21] The term "specific performance" in the context of UNDT and UNAT refers to the enforcement of an order for the performance or execution of an administrative action or process, as opposed to an order for payment of compensation. Specific performance may include, for example, the reinstatement of the staff member concerned or the removal of a document from the Applicant's Official Status File.

[22] A/61/205, para. 83(b).
[23] A/61/205, para. 77(a).

with the SMCC's recommendation that the formal system of justice should have jurisdiction over applications alleging non-compliance with the terms of appointment or the conditions of employment. The Secretary-General understands these allegations would be based on either an express or implied administrative decision.

24. The Panel also recommended that the formal justice system should allow for complaints with respect to conduct that is inconsistent with the duties of the Organization to its staff or that infringes their individual rights[24]. The Secretary-General endorses the proposed SMCC modification of this recommendation, namely, that, in the context of the management evaluation function[25], complaints of prejudicial or injurious conduct that do not conform to the Staff Regulations and Rules or administrative issuances would be reviewed promptly by management. This review would either:

a. 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; or

b. 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

25. The Secretary-General agrees with the Panel's recommendation that the formal system should have jurisdiction over disciplinary matters.[26] He also shares the Panel's observation that a clear framework of cooperation and coordination between the Office of Internal Oversight Services and the United Nations internal justice system should be established on a priority basis.[27] Noting that the Panel's consideration of disciplinary proceedings required further elaboration, the Secretary-General welcomes the SMCC's decision to establish an Intersessional Working Group on disciplinary matters, for immediate consideration of these matters. This Working Group will discuss issues relating to disciplinary proceedings, including the Panel's recommendations on delegating authority in misconduct and disciplinary cases to special representatives of the Secretary-General heading peacekeeping and political missions and to heads of offices away from Headquarters[28]. The Working Group would report to the next regular session of the SMCC, scheduled to take place in June 2007. The General Assembly will be informed of the outcome of the process, and of any action required to implement the Secretary-General's subsequent decisions concerning the disciplinary process.

26. The Panel also envisaged that staff associations should have an independent right to bring a class or representative action on behalf of their members.[29] In that regard, the Secretary-General supports the SMCC's recommendation that a staff

[24] A/61/205, para. 78.
[25] See paragraphs 29 - 31 of the present note regarding the management evaluation function
[26] A/61/205, para. 77(b).
[27] A/61/205, para. 162.
[28] A/61/205, paras. 161 and 163.
[29] A/61/205, para. 160.

association recognized under Staff Regulation 8.1 (b) may bring an application against the United Nations or its separately administered Funds and Programmes to:

(i) enforce the rights of the staff association, as recognized under the Staff Regulations and Rules;

(ii) file in its own name on behalf of a group of named staff members who are entitled to file an application and who are affected by the same administrative decision arising out of the same facts; or

(iii) support an application by one or more individuals who are entitled to file an application against the same administrative decision, by means of a submission of a friend of the court brief or by intervention.

27. The Panel also recommended that UNDT judges should have the power to refer appropriate cases to the Secretary-General for possible action to enforce accountability[30]. The Secretary-General agrees that both UNDT and UNAT judges should be empowered to make such referrals. On the Panel's proposal that the formal system should entertain applications for the enforcement of individual financial accountability,[31] the Secretary-General considers that he or the executive heads of separately administered Funds and Programmes should take appropriate administrative or disciplinary action to that effect, including application of rules on financial responsibility when the conditions are met. However, there would be no need to seek UNDT's approval prior to such action being taken. The Secretary-General also recognizes that existing mechanisms for enforcing financial accountability would need to be reviewed to ensure consistency with these changes[32].

28. With regard to the second tier of the formal justice system, the Secretary-General endorses SMCC's recommendation that UNAT may exercise appellate jurisdiction where the UNDT:

a. has exceeded its jurisdiction or competence;

b. has failed to exercise jurisdiction vested in it;

c. has committed a fundamental error in procedure which has occasioned a failure of justice;

d. has erred on a question of law; or

e. has erred on a question of material fact. The Statute of the UN Administrative Tribunal, which will form the basis for the Statute of the UN Appeals Tribunal, will need to be amended accordingly, beyond the Panel's recommendations as set out in paragraph 155 and Annex II of A/61/205.

Management evaluation of administrative decisions

[30] A/61/205, para. 159.

[31] A/61/205, para. 159.

[32] ST/AI/2004/3, "Financial responsibility of staff members for gross negligence", provides for advice from a Joint Disciplinary Committee in those cases. The procedures will need to be revised in view of the recommended abolition of Joint Disciplinary Committees.

29. The Secretary-General supports the Panel's proposal to abolish the current process of administrative review before action in the formal justice system.[33] However, he endorses the SMCC recommendation to replace this review with a properly-resourced and strengthened management evaluation function as a first step in the formal justice system. This will be an essential management tool for executive heads to hold managers accountable for their decisions, including in cases where an improper decision has been taken. It will give management an early opportunity to review a contested decision, to determine whether mistakes have been made or whether irregularities have occurred, and to rectify those mistakes or irregularities before a case proceeds to litigation. The SMCC agreed to review this management evaluation function one year after the new system of administration of justice is fully implemented

30. In order to ensure that this new function is more effective than the administrative review process which it will replace, the Secretary-General endorses the following new measures agreed to by SMCC to strengthen the management evaluation function:

(a) Staff members shall apply directly to the Secretary-General or the executive head of a separately administered Fund or Programme for an evaluation of the contested administrative decision.

(b) All staff members who file a request for review will receive a reasoned response in 45 days. In order to avoid the perception of conflict of interest, management evaluations will be carried out by a separate unit in the Department of Management. Sufficient resources will be requested in order that the reviews can be conducted in this time period.

(c) In cases where the contested decision is particularly time sensitive – separation and non-renewal cases – staff members may request that the Secretary-General or executive head suspend action on implementation of the decision until the management evaluation is completed and the staff member has been informed of the decision.

(d) In cases of decisions to terminate appointments of staff members prior to expiration of their contracts, such suspensions will be granted automatically upon request until the management evaluation has been completed.

(e) Staff members may file a request for suspension of action with the UNDT without making a suspension request to the executive head. They may also file a request for suspension of action with the UNDT in cases where the executive head has denied the staff member's request for suspension. UNDT decisions on suspension of action are not subject to appeal.

(f) In cases where the outcome of the management evaluation indicates that the decision was not in line with the staff regulations and rules, action will be taken by the Department of Management to ensure that the decision is changed or that an appropriate remedy is taken.

[33] A/61/205, para. 158.

(g) If the response is not provided within 45 days or is not satisfactory to the staff member, the staff member may proceed to the UNDT.

(h) The response will inform the staff member of his/her legal options, including the possibility to inform and seek advice from staff representation bodies and the Office of Staff Legal Assistance.

31. In addition, the Secretary-General agrees with SMCC's recommendation for the following measures to ensure managerial accountability:

(a) Managers' compliance with meeting their obligation to respond to requests for comments in a timely fashion will be reflected in their PAS and in departmental human resources action plans (HRAPs), and as appropriate in the Funds and Programmes. Where the outcome of the management evaluation indicates that a decision was improperly taken, in addition to action taken to rectify the situation, a record of the outcome would be made in the departmental HRAPs and the Head of Department's Compact with the Secretary-General or executive head, and as appropriate for the Funds and Programmes;

(b) Where the Under-Secretary-General for Management determines that a manager has improperly exercised his or her delegated authority, such authority may be withdrawn by the Under-Secretary-General for Management, and as appropriate for the Funds and Programmes;

(c) Where the Under-Secretary-General for Management determines that possible misconduct may have occurred, the matter will be referred for investigation, as appropriate. However, the case may still proceed to the UNDT.

Other issues

32. Regarding the selection and appointment of judges, the Secretary-General supports the Panel's recommendation to establish an Internal Justice Council to compile lists of candidates for appointment as judges in the Organization's internal justice system.[34] All judges of the UNDT and UNAT would be appointed by the Secretary-General and the General Assembly, respectively, from the list of candidates prepared by the Internal Justice Council.[35]

33. In terms of remuneration, the Secretary-General proposes that all UNDT judges be remunerated at the D-2 level. As recommended by the Panel, the Secretary-General agrees that UNAT judges should receive an honorarium similar to that paid to the judges of the ILO Administrative Tribunal.

34. The Secretary-General shares the Panel's view that proceedings in the formal justice system should be brought against the Organization or the relevant Fund or Programme, not the Secretary-General or the executive heads.[36]

35. The Secretary-General agrees with the Panel's recommendation that consultations should be held with the United Nations Joint Staff Pension Fund and other bodies subject to the administrative jurisdiction of the UN Administrative Tribunal with a view to amending its Statute, to expand its scope, to enable it to

[34] A/61/205, para. 173.
[35] A/61/205, para. 174.
[36] A/61/205, para. 172.

grant the appropriate relief and to bring it into harmony with the Statute of the Administrative Tribunal of the International Labour Organization.[37]

36. Annex II maps out the proposed new structure for the formal justice system.

VI. Education and training

37. The Secretary-General shares the assessment of the Panel that education and training will be the cornerstone of the successful operation of the new internal justice system and that intensive training should be provided to all persons involved in the internal justice system.[38] The Secretary-General agrees with the SMCC's recommendation that intensive training should be provided to managers, staff union representatives and staff-at-large and that a handbook on the new system should be produced in the working languages of the Organization, as used at the different duty stations.

VII. Financial implications

38. The Secretary-General agrees that the internal justice system needs to be fully resourced to ensure its functionality and equitable access. The Secretary-General's recommendations, based on the proposals of the Panel and modified by the SMCC, would entail $37,077,600 ($35,066,100 net of staff assessment) to be financed from the proposed programme budget for the biennium 2008-2009. This will cover the costs of the new informal and formal systems of justice. Estimates and distribution of new posts and related post and non-post costs are contained in the tables contained Annex III of this report. Additional costs of $774,200 in respect of various peacekeeping missions will be covered from separate peacekeeping budgets.

39. Of the total net requirement of $35,066,100 for the proposed programme budget for the biennium 2008-2009, existing resources amounting to $10,056,900 will be utilised and other resources will be redeployed between sections to meet the needs of the proposed new administration of justice system leaving an additional resource requirement for the biennium 2008-2009 in the amount of $25,009,200.

Posts

40. In addition to the 34 posts already provided for the administration of justice work under the existing programme budget, a further 79 posts financed from the programme budget would be required to staff the revamped administration of justice

[37] A/61/205, para. 157. The Panel's recommendation refers to amending the Statute of the UN Administrative Tribunal to "expand the definition of staff"(A/61/205, para. 157). While the Secretary-General agrees that the scope of individuals entitled to have access to the internal justice system should be expanded, along the lines discussed in paragraph 10 of the present note, this would not entail an expansion of the definition of staff. The Scope and Purpose provision of the Staff Regulations that defines a staff member as an individual "whose employment and contractual relationship are defined by a letter of appointment subject to regulations promulgated by the General Assembly pursuant to Article 101, paragraph 1, of the Charter."
[38] A/61/205, para. 177.

system (Annex III, Tables 1, 2 and 3). These 113 posts cover the requirements for the Office of Administration/Registry, the Judiciary, the Office of the Ombudsman, the Office of Staff Legal Assistance and the Management Evaluation Team. For peacekeeping operations, it is envisaged that 18 posts will be required. The peacekeeping missions in the Democratic Republic of Congo (MONUC), Sudan (UNMIS) and Liberia (UNMIL) will carry out the duties of regional ombudsmen. These missions will also have an office of staff legal assistance and a management evaluation capacity. (Annex III, Tables 1A and 2 A.)

41. The total resources required for posts 113 posts will be $21,629,800 under the proposed programme budget for the biennium 2008-2009 of which $8,790,200 is already provided under existing posts for the proposed programme budget for 2008-2009. In addition, $596,000 would be required under peacekeeping operations for the period 1 January to 30 June 2008. (Annex III Tables 5 and 5A)

Non post resources

42. Annex III Table 4 details the non posts requirements for the proposed programme budget for the biennium 2008-2009. The non-post additional requirements comprise of:

a. General temporary assistance related to training and preparation of the handbook. The training is to be provided to all persons involved in the internal justice system, through contractual services, at Headquarters, Offices away from Headquarters, and field missions. The programme will need to be delivered on a continuous basis to ensure training of new staff after initial launching, and to provide refresher courses and updates to existing staff. The handbook will require drafting of new rules, administrative issuances and guidelines to implement the new system, and subsequently conception, and preparation of the handbook, to be achieved through the process of extensive consultations before the contents are finalized and ready to be translated, and issued/posted;

b. Honoraria for UNAT judges based on ILOAT rates;

c. Consultancy funds for retaining on-call international professional mediators who will be called upon when the coordinating mediator determines that this is required for reasons of expedience, language or cultural sensitivity, and for the provision of panels to assist in the appointment of judges and ombudsmans;

d. Travel of judges and staff to hold sessions outside of New York, Geneva and Nairobi, travel of staff to appear personally for UNDT cases and travel for respondent's representative(s) to attend sessions;

e. Contractual Services includes servicing and interpretation for meetings, translation of documents and judgments; the design and development and delivery of new training programmes on the informal and formal justice system, including mediation, court administration and the system of UNDT and UNAT, (including development of pilot programmes and train the trainer

programmes); development of an on-line programme; translation of the handbook; and

f. General operating expenses, supplies, and furniture and equipment related to the proposed establishment of 79 new posts including office accommodation.

43. Non-post costs totalling $178,200 (Annex XXX Table 5A) for the peacekeeping operations in MONUC ($59,400), UNMIL ($59,400) and UNMIS ($59,400) will be required for the period ending 30 June 2008. It should be noted that resources required for the peacekeeping operations for the fiscal period 1 July 2008 to 30 June 2009 are estimated at $3,000,000. These resources will be included in the proposed budgets of MONUC, UNMIL and UNMIS for the period from 1 July 2008 to 30 June 2009.

44. The redesigned justice system will apply to the United Nations and its Funds and Programmes. The Funds and Programmes will be directly responsible for resources related to the Deputy Ombudsman in New York and the Office of the Ombudsman and the Office of Staff Legal Assistance in Dakar. Funds and Programmes will participate in other elements of the justice system and this will involve sharing of the costs for the Office of Staff Legal Assistance, the Office of the Ombudsman, the Office of the Administration of Justice and the Judiciary. Cost sharing for the current system is based on workload statistics for judgments issued and cases disposed. As the new system reaches maturity the basis for cost sharing will be revisited.

45. The following factors are important in considering the financial implications:

- The costs of the existing system have been included to the extent possible. However, the essence of the existing system relies on staff time provided on a part-time and volunteer basis to staff the Joint Appeals Board and Joint Disciplinary Committee. Full costing of the existing system cannot be accurately calculated, in the absence of an organization-wide time and cost-accounting system.

- The results of the SMCC working group on disciplinary matters and any subsequent recommendations endorsed by the Secretary-General may have additional implications.

- The total impact of the new system - in terms of case-load and related staff time - cannot be fully estimated until both informal and formal components of the system are implemented and staff and managers develop confidence in the new mechanisms. In this regard, the Secretary-General expects to prepare a report on the implementation of the system of administration of justice in the 64th session of the General Assembly.

VIII. Timeline for implementation

46. With regard to the Panel's recommendation for the new internal justice system to be operational by 1 January 2008[39], the timeline for implementation will depend on the outcome of the General Assembly deliberations on the issue of the administration of justice and allocation of adequate resources. As soon as a decision is taken, the Secretariat will expedite the drafting of proposed new text for staff regulations and rules along with related administrative issuances, as well as a proposed Statute for the UNDT and changes to the Statute of the UN Administrative Tribunal. In addition, the Internal Justice Council will need to be established, in line with the Panel's recommendations, as a first step in operationalizing the UNDT and UNAT mechanisms. The supporting Secretariat structure will be put in place as quickly as possible. In view of the extensive changes proposed, it is envisaged that implementation would be undertaken in a phased manner throughout 2007 and 2008.

VIII. Recommendation

47. The Secretary-General has prepared these comments on the recommendations of the Redesign Panel after intensive consultations with the staff and management, including at a dedicated session of the SMCC. He considers that the recommendations of the Panel, with the modifications set out above, will provide the Organization with an effective internal justice system in which staff, management and Member States can have confidence. He requests the General Assembly to give due consideration to these proposals and to approve the necessary resources for full implementation.

48. Should the General Assembly agree on the proposals herein, the requirements in respect of the programme budget for the biennium 2008-2009 will be $37,077,600 ($35,056,100 net of staff assessment). Of this total, $10,056,900 is already included in programme budget submissions for the biennium 2008-2009 and will be redeployed. Additional resources of $27,020,700 ($25,009,200 net of staff assessment) will be required in the biennium 2008-2009 to implement the proposals.

49. Should the General Assembly agree on the proposals herein, the action required to be taken by the General Assembly with respect to peacekeeping missions is as follows:

(a) In MONUC, approval of the amount of $257,400, being $198,000 for 6 (1 D1, 1 P4, 2 P3, 2 LL) posts in the context of the budget for United Nations Mission in the Democratic Republic of Congo for the period from 1 July 2007 to 30 June 2008 and other non post resources of $59,400, for travel $5,000, information technology $6,600 and Consultants $47,800;

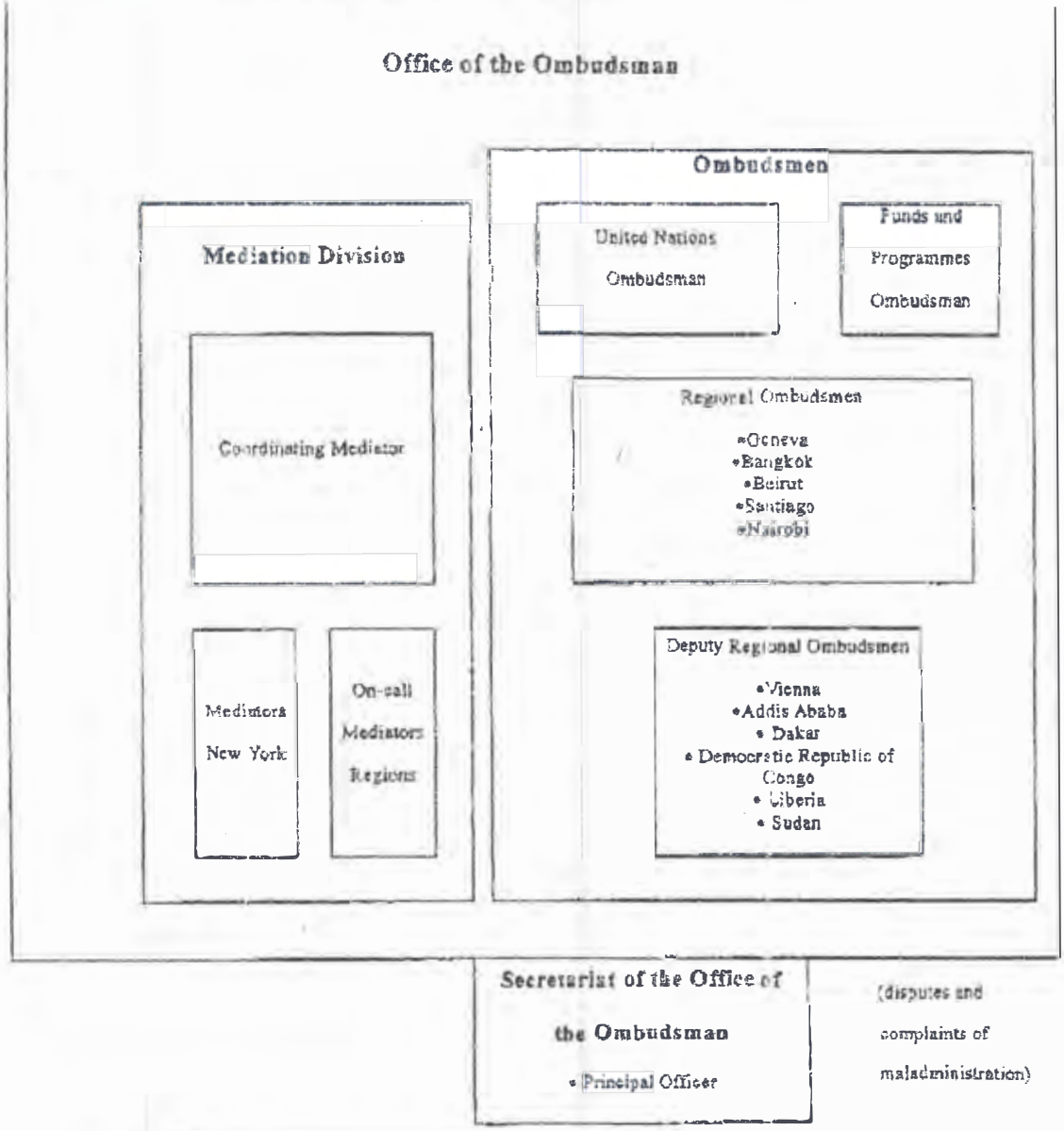
(b) In UNMIL, approval of the amount of $271,400, being $212,000 for 6 (1 D1, 1 P4, 2 P3, 2 LL) posts in the context of the budget for the United Nations Mission in Liberia the period from 1 July 2007 to 30 June 2008 and other non post resources of $59,400, for travel $5,000, information technology $6,600 and Consultants $47,800;

(c) In UNMIS, approval of the amount of $245,400, being $186,000 for 6 (1 D1, 1 P4, 2 P3, 2 LL) posts in the context of the budget for the United Nations Mission in the

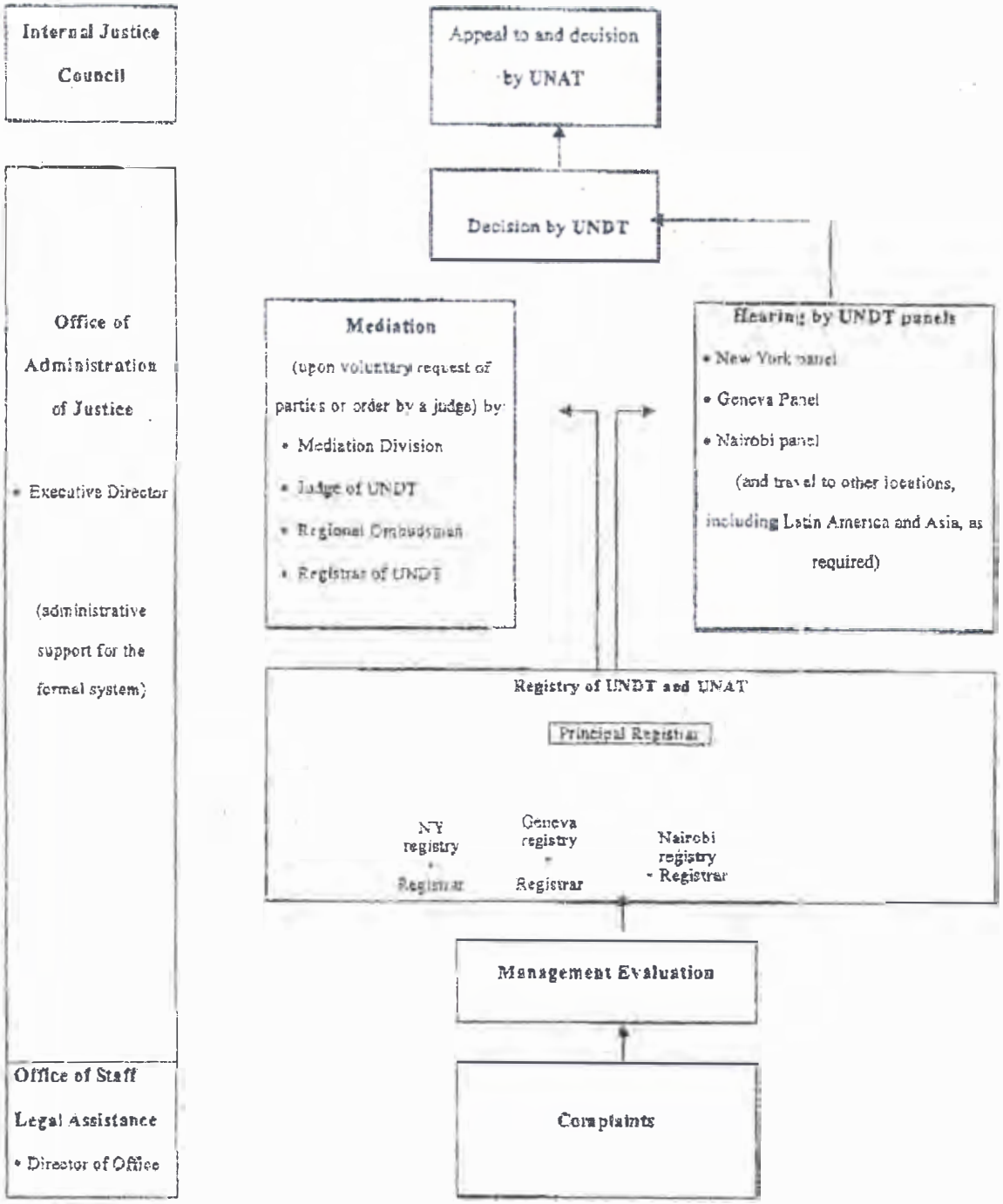
[39] A/61/205, para. 176.

Sudan for the period from 1 July 2007 to 30 June 2008 and other non post resources of $59,400, for travel $5,000, information technology $6,600 and Consultants $47,800

Annex I: Proposed system of United Nations internal justice: informal system



Annex II: Proposed system of United Nations internal justice: Formal system



20/3D87

Table 1
Regular budget for the biennium 2008-2009: Post requirements by duty station

	Existing	Additional Posts									Total Proposed
		New York	Geneva	Vienna	Nairobi	Addis Ababa	Bangkok	Beirut	Santiago	Subtotal	
Professional category and above											
ASG	1	1	-	-	-	-	-	-	-	1	2
D-2	-	3	3	-	3	-	-	-	-	9	9
D-1	1	4	1	-	1	-	1	1	1	9	10
P-5	9	4	1	1	-	1	-	-	-	9	18
P-4	2	5	2	-	2	-	-	-	-	10	12
P-3	7	5	1	1	1	3	3	3	3	19	26
P-2/1	-	1	-	-	-	-	-	-	-	1	1
Subtotal	20	23	8	2	8	3	4	4	4	58	78
General Service and related categories											
GS (PL)	-	2	-	-	-	-	-	-	-	2	2
GS (OL)	13	5	2	2	-	-	-	-	-	9	22
LL	1	-	-	-	2	2	2	2	2	10	11
Subtotal	14	7	2	2	2	2	2	2	2	21	35
Total	34	30	10	4	10	5	6	6	6	79	113

Table 2
Regular budget for the biennium 2008-2009: Distribution of posts by component

	Management Evaluation	Office of Legal Affairs	OHRM/ ALU	UNAT	Office of the Ombudsman	Administration of Justice	Judiciary	Office of Staff Legal Assistance	Total
Professional category and above									
ASG	-	-	-	-	1	1	-	-	2
D-2	-	-	-	-	-	-	9	-	9
D-1	1	-	-	-	7	1	-	1	10
P-5	1	9	1	1	4	1	-	1	18
P-4	6	1	-	-	2	1	-	2	12
P-3	5	-	2	1	6	3	3	6	26
P-2/1	-	-	-	-	-	-	-	1	1
Subtotal	13	8	3	2	20	9	12	11	78
General Service and related									
GS (PL)	-	-	-	-	1	1	-	-	2
GS (OL)	3	2	2	2	5	3	-	5	22
LL	-	-	-	-	5	1	-	5	11
Subtotal	3	2	2	2	11	5	-	10	35
Total	16	10	5	5	31	14	12	21	113

Table 1A
Peacekeeping budget for the year 2007-2008: Additional post requirements by duty station

	Existing	DR Congo (MONUC)	Liberia (UNMIL)	Sudan (UNMIS)	UNTSOM	UNOMIG	UNMIK	MINURSO	UNFICYP	UNDOF	UNIFIL	UNOCI	UNMEE	UNMIB	AMISOM	Total
Professional category																
D-1	-	1	1	1												3
P-4	-	2	2	2					1		3				1	9
P-3	-	2	2	2	1	1	1	1		1		1	1	1		14
Subtotal	-	5	5	5	1	1	1	1	1	1	1	1	1	1	1	26
General Service and																
GL	-	2	2	2												6
Subtotal	-	2	2	2												6
Total	-	7	7	7	1	1	1	1	1	1	1	1	1	1	1	32

Table 2A
Peacekeeping budget for the year 2007-2008: Distribution of posts by component

	Management Evaluation	Office of the Ombudsman	Office of Staff Legal Assistance	Office of the SRSG	Total
Professional category and above					
D-1	-	3	-		3
P-4	3	-	-	6	9
P-3	-	3	3	8	14
Subtotal	3	6	3	14	26
General Service and related categories					
GL	0	3	3		6
Subtotal	0	3	3		6
Total	3	9	6	14	32

Table 3
Distribution of the existing posts

	Office of the Ombudsman New York	United Nations Administrative Tribunal	Office of the Under Secretary-General - Department of Management	Office of Legal Affairs	Human Resources - New York	Human Resources - Geneva	Human Resources - Vienna	Human Resources - Nairobi	Total
Professional category and above									
ASG	1	-	-	-	-	-	-	-	1
D-1	1	-	-	-	-	-	-	-	1
P-5	1	1	2	4	1	-	-	-	9
P-4	1	-	1	-	-	-	-	-	2
P-3	1	1	-	-	2	1	1	1	7
Subtotal	5	2	3	4	3	1	1	1	20
General Service and related categories									
GS (OL)	2	2	5	1	2	1	-	-	13
LL	-	-	-	-		-	-	1	1
Subtotal	2	2	5	1	2	1	-	1	14
Total	7	4	8	5	5	2	1	2	34