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PERSONNEL QUESTIONS

Establishment of an Office of Ombudsman in the Secretariat
and Streamlining of the Appeals Procedures

Report of the Secretary-General

INTRODUCTION

1. By resolution 39/245 of 18 December 1984, the General Assembly requested the Secretary-General "to strengthen the various appeals machinery, with a view to eliminating the backlog of cases" and to report to it at its fortieth session on the feasibility of establishing an office of Ombudsman in the United Nations. Such a report (A/C.5/40/38) was submitted to the Assembly at its fortieth session. In paragraph 43 of the report, the Secretary-General concluded that the establishment of an Ombudsman institution in the United Nations was feasible, that further discussion with staff representatives on a Secretariat-wide basis needed to be undertaken and that specific proposals for the institution of an office of Ombudsman would be submitted to the Assembly at its forty-first session.
2. Furthermore, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) noted in its first report on the proposed programme budget for the biennium 1986-1987 that the Organization was facing "significant and growing problems in the form of the multiplicity of time-consuming and cumbersome procedures ..., the growing number of appeals and other grievances which are filed and long delays in the administration of justice". 1/ ACABQ pointed out that those matters had a significant financial impact and that to the direct financial costs must be added the considerable distraction of staff from normal duties resulting from their involvement in an appeal. The Advisory Committee felt therefore that there was "an urgent need to simplify administrative procedures with a view to achieving a significant reduction in the number of cases requiring full-scale review". 2/ It then recommended that the Secretary-General should be requested to prepare an

analysis of the problem, together with an indication of the specific steps taken or plans to remedy it. The Advisory Committee further recommended that the report to be prepared by the Secretary-General and to be submitted to the General Assembly at its forty-second session should focus, inter alia, on "streamlining the appeals procedures so as to provide for (i) quick settlement of minor disputes prior to the appeals stage, (ii) a mechanism to reject applications for review that are frivolous and (iii) a more efficient handling of cases that reach the Joint Appeals Board and Administrative Tribunal". 3/ The Assembly, by section XII of resolution 40/252 of 18 December 1985, approved the observations and recommendations of ACABQ on the appeals system.

3. At the same time, the General Assembly, by resolution 40/258 A of 18 December 1985, requested the Secretary-General, "in his efforts to guarantee to staff members a just and expeditious resolution of disputes and grievances, to streamline the appeals procedures and to continue the study on the feasibility of establishing an Office of Ombudsman, and to report thereon to the General Assembly at its forty-first session".

4. In regard to the administration of justice in the United Nations, the Joint Inspection Unit submitted a report to the General Assembly at its forty-first session proposing major structural changes in the present recourse system (A/41/640).

5. It will also be recalled that, in recommendation 60 of its report, the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations stated that:

"The system of administration of justice, as constituted at present, is cumbersome. The procedures should therefore be simplified to render the system more efficient and less costly. In its resolution 40/252 of 18 December 1985, the General Assembly endorsed the recommendations of the Advisory Committee on Administrative and Budgetary Questions that the Secretary-General be requested to prepare an analysis of the problem and indicate which steps he has taken or intends to take to simplify the procedures. This recommendation should be implemented without delay and the measures recommended taken as rapidly as possible." 4/

This recommendation was endorsed by the General Assembly in section I of its resolution 41/213 of 19 December 1986.

6. Reference is also made to the reports of ACABQ to the General Assembly at its forty-first and forty-second sessions (A/41/632 and A/42/579) on financial reports and audited financial statements, and reports of the Board of Auditors, as regards the implementation of disciplinary procedures.

7. By decision 41/462 of 11 December 1986, the General Assembly decided to defer until its forty-second session consideration of the report of the Secretary-General (A/C.5/41/14) on the establishment of an office of Ombudsman and the streamlining of appeals procedures.

STEPS TOWARDS A REFORMED REDRESS AND DISCIPLINARY PROCESS

8. With its diverse political and cultural background, the Organization is particularly dependent, as regards the efficiency and morale of its staff, on there being transparent fairness of procedures and equality of treatment. Thus, the Staff Rules of the United Nations regulate decision-making and the contractual situation of international civil servants is necessarily more studied and more complex than that of many other employees. The jurisdictional immunity of the Organization legally obligates it to have just and effective internal processes. Their existence also minimizes governmental intervention in the day-to-day administration of the Organization.

9. Priority attention has been given during 1987 to reform of the processes of internal justice. A working group was appointed in January to evaluate the present system and the various reform proposals that have been put forward in recent years. The group's report provided the basis for consultations with programme managers and staff associations throughout the Secretariat, as well as with a number of other organizations of the common system. There was widespread agreement on the need for a thorough revision of both redress and disciplinary systems. Formal consultations then took place at a special session of the Staff-Management Co-ordination Committee (SMCC) on 14 and 15 October 1987. Proposals were put forward based on the need for a qualitative improvement in administrative decision-making and the resolution of disputes as quickly and informally as possible and thus, where practicable, avoiding formalization of complaints and a triggering of the adjudicative process. In this connection, it was stated that the emphasis of the redress system had to be shifted back, from its present focus on litigation, to a search for administrative settlements in accordance with fairness and equality of treatment. Adjudication, the administration stated, must be regarded as a last resort. Where, however, such settlement process failed, for whatever reason, swift and decisive justice had to be applied. Among other things, that meant a willingness on the part of the central administration to insist on compliance with common standards on the part of senior programme managers, as well as the restructuring of the adjudicative process so as to deal effectively with frivolous appeals and to focus scarce resources on those deserving its attention, which, exceptionally, had not previously been settled.

10. A number of other steps had already been taken during the year to rationalize and streamline the appellate process. Renewed efforts were made to negotiate the settlement of indefensible cases before the Administrative Tribunal and the Joint Appeals Board. The Board was asked to take procedural measures to expedite its work, certain additional resources being made temporarily available to it. A marked improvement was achieved in regard to the backlog of cases requiring administrative review and in complying with procedural time-limits. Administrative measures were taken with the aim of ensuring the availability of adequate numbers of Board members. While reports of the Board continued to be advisory to the Secretary-General, it was decided that unanimous reports would, as a matter of practice, be accepted, provided that they did not impinge on major questions of law or principle. In accordance with this new departure, intended as part of a series of measures to raise the status of the Joint Appeals Board, 49 out of 52 reports have so far been approved in 1987 by the Secretary-General. The Under-Secretary-

General for Administration and Management requested, in a keynote address to the Joint Appeals Board in February 1987, that it give priority to the hearing of disciplinary appeals. Also as an interim measure, it was decided to make available support for the voluntary work conducted through the panel of counsel of advising and assisting staff members with contractual problems. While these various measures had some impact on the situation, it became increasingly clear during the year that more far-reaching changes were required.

11. Having regard also to the staff-management consultations referred to above at which, on matters other than the Ombudsman, a substantial measure of consensus emerged, a series of further decisions has now been taken. They are aimed at shortening and simplifying the administrative process, and at expediting the appellate stage, as well as ensuring a mandatory and substantive administrative review of grievances. The Under-Secretary-General will assume direct responsibility for the functioning of the appellate process. The proliferation of joint appeals boards will cease, and the existence of those away from headquarters will be reappraised. The remaining boards will in future report directly to the Under-Secretary-General for Administration and Management, who will consult as necessary with the Legal Counsel, the Controller and the Assistant Secretary-General, Office of Human Resources Management, where questions of law or of principle arise. This will substantially streamline and abbreviate the post-Joint Appeals Board stage in the appellate process. The composition, structure, functioning and procedures of the joint appeals boards will be revised. Without prejudice to this review, rosters of Board members and of alternate secretaries will be established to ensure the availability of suitably-qualified personnel to clear the current backlog. This will mean the reassignment for limited periods from their normal duties of staff members with suitable qualifications. Procedural time-limits will be strictly enforced. A joint working group will be established to consider whether and how to amalgamate the functioning of other specialized appeal bodies with the Joint Appeals Board. As regards disciplinary procedures, which have occasionally been delayed because of a lack of personnel, it has been decided to assign a qualified staff member as full-time secretary for as long as is necessary to clear the backlog and to reinforce the membership of the Joint Disciplinary Committee with a number of new appointments. As agreed at the SMCC session in October, a joint working group will also be established to look at the possibility of drawing up a new disciplinary code, together with the necessary procedural standards. Provision will be made for appeals from the Joint Disciplinary Committee to go directly to the Administrative Tribunal rather than, as now, to the Joint Appeals Board.

12. The Discrimination and Grievance Panels established under administrative instructions ST/AI/246 and ST/AI/308/Rev.1 will be reviewed. In many instances they have not functioned as intended. Consideration will be given to the question of whether their procedures can be reformed, so as to provide objective and useful means of informal dispute-settlement, or whether some other means, such as mandatory conciliation or some form of Ombudsman system, should now replace them. Further study will be given to all elements of this aspect of the question subsequent to the SMCC meeting mentioned above and to the implementation of the other changes described in paragraphs 10 and 11.

13. As the Secretary-General stated to the Fifth Committee on 16 October 1987, he is convinced that "We must ... in compliance with resolution 41/213, take effective action to overhaul and streamline our system of redress and appeals, which has not developed evenly. A just and speedy system of dealing with grievances is not only right in itself, and necessary, it is also an indispensable aid to staff/management relations, and to the upgrading of management practices" (see A/C.5/42/SR.12). The restructuring of the present organs of administrative justice to achieve a fully co-ordinated approach to staff grievances and administrative justice has now been brought forward for immediate review. Some of the proposed measures will require changes to the Staff Rules. Within the present strict financial constraints, and in the framework of a reduction of staff resources by 15 per cent, means will continue to be sought to expedite adjudication of claims and of disciplinary allegations, and the Secretary-General will report further to the General Assembly at its forty-third session on other actions that he will have taken on these matters.

Notes

1/ Official Records of the General Assembly, Fortieth Session, Supplement No. 7 (A/40/7), chap. I, para. 69.

2/ Ibid., para. 71.

3/ Ibid., para. 72 (c).

4/ Ibid., Forty-first Session, Supplement No. 49 (A/41/49).
