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Chairman: Mr. Tulbure . . . . . (Moldova)

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07-53242 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 137: Administration of justice at the United Nations (A/62/179, A/62/294 and A/62/311)

1. **Mr. Kemp** (Australia), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), said that the staff members of the United Nations were entitled to a fair and efficient system of internal justice that was consistent with the relevant rules of international law and with the principles of the rule of law and due process. Since the Organization should lead by example in that respect, CANZ attached great importance to the implementation of General Assembly resolution 61/261 on the administration of justice at the United Nations, with a view to establishing a new, independent, transparent and professionalized system in which staff, management and Member States could have confidence.

2. Since the proposed implementation deadline of January 2009 was fast approaching, it was incumbent on the Committee to review again the various legal aspects of the proposals, in particular the draft element of the statutes of the tribunals and to offer guidance to colleagues in the Fifth Committee when they addressed the question of providing an adequate funding and staffing base for the new internal justice system, in order to ensure that it was legally sound and met the required standards of justice and due process.

3. He looked forward to discussing access to legal representation so as to secure equality of arms for all parties and to finding means of allowing all parties to receive a fair hearing before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. Since it was necessary to make sure that the process for selecting judges was appropriate to the unique context of the United Nations, where the Organization's rules and standards had to be applied to staff members in various locations, CANZ supported the proposal that an Internal Justice Council of eminent persons should identify a list of eligible candidates for appointment to judicial positions in the tribunals and that the Secretary-General and the General Assembly should then appoint the judges from that list.

4. **Mr. Madureira** (Portugal), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey, the stabilization and association process countries and potential candidates Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Azerbaijan, Georgia, Iceland, Moldova, Norway and Ukraine, said that it was essential that the new system of internal justice should enjoy the full confidence of both staff and management and should be appropriate for an organization known for its work in setting, promoting and developing international norms in the field of human rights and the rule of law. For that reason, the European Union was committed to achieving the goals set out in General Assembly resolution 61/261 in order to arrive at a system able to deliver timely, effective and fair justice.

5. The complexity of the task ahead required close collaboration between the Fifth and Sixth Committees, with the Sixth Committee focusing on the requisite legal components of the new system, especially the draft statutes of the new United Nations Dispute Tribunal and United Nations Appeals Tribunal, so as to enable Fifth Committee to decide on the corresponding financial and administrative arrangements.

6. The formal system was, however, only part of the new structure; other key elements included improved legal assistance for staff, a decentralized informal system to avoid unnecessary litigation, new management evaluation mechanisms to increase the rates of dispute resolution at a relatively early stage and the question of registries.

7. The introduction of a new system for the administration of justice meeting the requirements of a modern organization which respected the rights of its staff while at the same time ensuring that they fulfilled their obligations would represent a milestone in the Organization's history. The European Union would therefore spare no effort in working to build a fair, strong and efficient system for the administration of justice at the United Nations in the twenty-first century.

8. **Mr. Barriga** (Liechtenstein) said that reforming the administration of justice at the United Nations was not a mere technical exercise, but was central to comprehensive efforts to equip the Organization with the tools it needed to confront growing challenges. Such a reform had been long overdue and was vital in order to ensure the fair and just treatment of United Nations staff, to improve staff morale, to enhance accountability and to improve the Organization's overall performance. His Government was fully committed to the reform process initiated by the

General Assembly's decision to establish a new, independent, transparent, decentralized system for the administration of justice which was professionalized and adequately resourced.

9. The decision to implement the new system by January 2009 was welcome. If that ambitious timeline was to be kept, the Sixth Committee must again focus its attention on the legal issues involved and see to it that the new system would be fully consistent not only with the relevant rules of international law, but also with the principles of the rule of law and due process. The scope of the new system was a major concern in that respect, and he agreed with the Secretary-General's recommendation that the certain non-staff personnel should be able to avail themselves of effective means of dispute resolution, since in many United Nations offices persons with very different contracts were working side by side over long periods of time. Those who enjoyed less favourable contractual terms should not be further punished by being denied access to a proper justice system. Those and other issues, such as the election of judges, the draft statutes and legal assistance required further discussion in the Working Group on the administration of justice at the United Nations.

10. **Mr. Bichet** (Switzerland) said that as a host country Switzerland attached particular importance to implementation of a new system of administration of justice that was independent, transparent, professional, adequately resourced and centralized. In order to achieve the goal of making that system operational by 1 January 2009, the Fifth and Sixth Committees should focus on those aspects of the reform which lay within their respective areas of competence and should hold joint meetings in order to remain informed of the positions taken within the two Committees and to resolve any differences of opinion that might arise.

11. In particular, the Committee should focus on the development of a formal system and on the links between the formal and informal systems and between the formal system, disciplinary procedures and management evaluation. It should pay particular attention to the Secretary-General's proposals regarding the statutes of the Dispute Tribunal and the Appeals Tribunal and should decide on the modalities for appointing and dismissing judges and on the number of judges of first and appellate instance that would be required in order to ensure that cases were examined fairly and objectively.

12. His delegation attached great importance to ensuring that the procedure for the nomination and removal of judges guaranteed their independence. It supported the establishment of an Internal Justice Council responsible for compiling lists of persons eligible for appointment as judges of first and appellate instance and the proposal that judges should be removable only by the General Assembly; consequently, the Assembly should be authorized to appoint all judges, not only those of the Appeals Tribunal as suggested by the Secretary-General.

13. The number of judges appointed should be large enough to ensure the objectivity of decisions; however, if decisions on appeal were reached in a collegial manner, it was not essential that three judges should preside over each case at first instance. One solution would be to provide for a preliminary examination by three judges at first instance, after which they would be authorized to decide, by common accord, to delegate the case to one of them.

14. The introduction of a new system of administration of justice provided an opportunity to ensure that all persons working for the United Nations, regardless of their status, could be heard by an independent body if they considered that their rights or the rules of the Organization had not been respected. In light of the immunity of jurisdiction that the United Nations enjoyed in Member States, it was essential to ensure that if certain categories of staff, such as interns or volunteers, were to be excluded from that system there must be clear, objective reasons for their exclusion, and other effective channels of appeal must be available to them.

15. Comments made during mediation could not be used subsequently in the formal procedure without weakening the informal system; the confidentiality of discussions within the informal system must be guaranteed.

16. Lastly, his delegation did not object to management evaluation of contested decisions prior to their consideration by the formal system. However, in order to prevent such evaluations from excessively limiting recourse to the formal system, they must be conducted within the 45-day limit proposed by the Secretary-General, after which the possibility of recourse to the formal system must be open.

17. **Ms. Negm** (Egypt) said that her delegation was in favour of a mediation process that would preclude

recourse to the costly formal justice system, reduce the number of cases before the Dispute Tribunal and promote the settlement of disputes between staff members and their supervisors before the situation deteriorated, while taking into account the need to protect staff members from retaliation if they sought help from the Office of the Ombudsman.

18. It was also important to reform the formal justice system. The Committee should determine the scope of jurisdiction under the new system; in light of the fact that only 15 per cent of those working for the United Nations held permanent contracts, her delegation was concerned at the proposal to exclude individual non-staff contractors. The Committee should also consider ways of providing staff members with better legal assistance, thereby reducing the frequency of recourse to the costly judicial process, and should establish rules for an impartial administrative review system that would make it possible to rectify improper administrative decisions before proceeding to the tribunals. It should establish a time frame that would ensure completion of the administrative review process within 30 days at Headquarters and 45 days at other duty stations; reasonable time frames should also be established for mediation and for implementation of binding decisions to which both parties had agreed.

19. Affected parties should have the right to request the Dispute Tribunal to issue an injunctive order enforcing the implementation of a mediation agreement in the event of non-compliance by a party thereto. The Committee should also establish a method of selecting judges for the two tiers of litigation and determine their numbers and mandate. Her delegation endorsed the Redesign Panel's approach, which envisaged one registrar for the two tiers who would be considered the administrative supervisor of all registry offices in the tribunals' headquarters worldwide; there should be no conflict of interest in having one registrar assume both responsibilities.

20. There was no need for the old system of administration of justice to continue to function until all cases before it had been cleared; those cases could be transferred to the new system as soon as its tribunals were established and functioning. Lastly, the Committee should study the draft statutes of the tribunals and determine the competence of the chambers and the registrar; the responsibility of establishing and recommending the rules of procedure might be entrusted to the judges, subject to approval by the General Assembly.

21. **Mr. Sandoval** (Colombia) said that, in the Committee's discussion of the agenda item during the previous session of the General Assembly, it had failed to reach a clear decision on the scope of its action and the objectives to be achieved. Despite its administrative and financial implications, the administration of justice was essentially a legal matter, and the Sixth Committee should be responsible for developing an affordable, equitable, transparent and efficient system that would protect the rights of United Nations staff and guarantee due process, a key element of the rule of law.

22. Due protection of the rights of staff members was at the heart of the United Nations justice system reform. His delegation agreed that the system should include formal and informal components on the understanding that, under public and private international law, mediated outcomes were as legally binding as court decisions. The use of the terms "formal" and "informal" to describe the two systems was inappropriate; they should be described as "judicial" and "extrajudicial".

23. His delegation supported the idea of a two-tiered system of formal justice. However, such a system did not necessarily require two independent tribunals. Instead, following international practice, there should be a single tribunal composed of a decentralized trial chamber (first instance), in order to ensure access by all staff members, and an appeals chamber (second instance). That proposal had several advantages: whereas two tribunals would require a separate statute and rules of procedure for each, potentially giving rise to conflicting interpretations, a single tribunal would have one statute and set of rules of procedure that would be applicable to both chambers, thereby avoiding conflicts of interpretation or application. Since the tribunal would be a single administrative entity with a President, a Vice-President and a registry, its legal and administrative functions would be streamlined and costs would be reduced.

24. **Mr. Romero-Martínez** (Honduras) announced that the International Court of Justice had just delivered its judgment in the case concerning the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*. The Presidents of those States were in the process of ratifying their

compulsory acceptance of the judgment, which marked a victory for Central America and for all States that believed in the rule of law and the peaceful settlement of international disputes.

25. His delegation recognized that a transparent, impartial and effective system of administration of justice was a necessary condition for ensuring the fair and just treatment of United Nations staff and that the Organization had a particular obligation to offer its own staff a system of justice that fully complied with international human rights standards and delivered timely, effective and fair justice. He was certain that on the basis of the reports provided and with firm political will and appropriate concern for justice, the Committee would be able to clarify the legal norms required for the development of such a system.

26. **Ms. Rodríguez-Pineda** (Guatemala) said that as the legal body of the General Assembly the Committee should make comments and suggestions regarding legal aspects of the reform of the system of administration of justice at the United Nations. During the present session, it should focus on the draft elements of the statutes of the dispute and appeals tribunals, contained in annex to the report of the Secretary-General (A/62/294), in order to determine whether additional information was needed and to take the work of the Fifth Committee into account. The Secretariat could then prepare a second, more detailed, set of draft elements that could be used as a basis for discussion at the Committee's resumed session in the spring of 2008.

27. Some of the draft elements contained administrative proposals with significant financial implications that the Fifth Committee would need to consider, without prejudice to the Sixth Committee's comments and recommendations thereon. Those proposals concerned the structure of the Dispute Tribunal and its registries; the scope of the tribunal's jurisdiction; the judges' competence to award compensation, in light of the proposal to raise the current limit of two years' salary; and transitional measures.

28. With respect to the informal system, the Committee should consider the mandate of the proposed integrated and decentralized Office of the Ombudsman and the proposed mediation division. As stated in the report of the Secretary-General (A/62/294, para. 52), those proposals were being considered by the Contact Group on the Administration of Justice, after which further proposals from the Secretariat would be forthcoming. He urged the existing offices of Ombudsmen to continue their efforts to harmonize their practice in preparation for the creation of regional offices.

29. Although General Assembly resolution 61/261 (para. 32 (g)) requested the Secretary-General to report on arrangements for the members of the United Nations Administrative Tribunal whose terms of office were affected by the implementation of the new system, the Secretary-General, in his report, simply stated the dates on which the current Tribunal members' terms ended. Moreover, new members were scheduled to be elected for four-year terms, pursuant to the current Statute of the Tribunal, on 2 November 2007, but it was her delegation's understanding that the terms of those new members would be subject to the deadline of January 2009, by which time the new system of administration of justice was to be implemented, and to whatever transitional measures were put in place.

30. Her delegation endorsed the proposed qualifications to be required of judges. However, the methods used to select members of the formal and informal systems, and especially the judges, should be discussed by the Fifth Committee, since the Ombudsman was appointed by the Secretary-General.

31. Lastly, since the question of disciplinary measures was complex, delegations would benefit from a briefing on the differences between the existing and the proposed systems.

32. **Mr. Álvarez** (Uruguay) said that the Committee needed to deal with agenda item 137 expeditiously and effectively, but the virtually simultaneous consideration of the item by the Sixth and Fifth Committees had caused some difficulties. Each Committee should articulate its conclusions on the item within its respective sphere of competence. Based on those conclusions and on the functions and powers assigned to the components of the new system of justice, appropriate administrative and budgetary measures should be implemented to enable the new institutions to fulfil their functions. It was inappropriate, for example, for reports of administrative-budgetary bodies, following a first reading of the reports of the Secretary-General, to put forward timetables within which the informal stage of proceedings was to be

completed, or to offer criteria for constituting the formal system, even while recommending that the Sixth Committee's views on these matters should be sought.

33. The Sixth Committee should be responsible for determining the purely legal features of the new system, including, inter alia, the procedural aspects of the informal system of dispute resolution; the characteristics of the formal system, including the structure of the first and appellate instances and the number and manner of selection of judges; modalities of transition from the old to the new system; and links between the system and other analogous systems of international organizations, especially that of the International Labour Organization. Consultations should aim at achieving points of consensus enabling the Committee to reach decisions, bearing in mind the points of agreement presented to the President of the General Assembly on 23 March 2007 (A/C.5/61/21, annex).

34. His delegation could agree to strengthening informal procedures, especially mediation, with a central role to be played by the Office of the Ombudsman acting as a mediator. That would be all the more desirable in the light of the misgivings his delegation entertained about the apparent concentration of the proposed machinery of justice in New York. The personnel of the regional commissions, peacekeeping missions and field offices should have access to specific decentralized options. His delegation would elaborate on the foregoing, and on the establishment of an effective system of legal counsel for staff, when those issues were addressed by the Fifth Committee.

35. Another key aspect was the selection of judges. It was vital that judges in a position to rule on conflicts arising in the workplace should have the highest legal qualifications and enjoy complete independence. That would probably not be the case if the proposals presented by the Redesign Panel in paragraphs 173 and 174 of its report (A/61/205) were implemented, and his delegation echoed the concern expressed by the Advisory Committee on Administrative and Budgetary Questions in its preliminary report (A/61/815) about the proposal to establish an Internal Justice Council entrusted with monitoring the system and with compiling lists of candidates for appointment as judges. The Secretariat would thus have great influence in the selection of judges for the proposed Dispute Tribunal and a degree of influence upon the lists of judges to be presented to the General Assembly to constitute the Appeals Tribunal. At least for the latter, judges should be selected by the General Assembly directly, without lists that might limit submission of candidates. Candidates should meet the requirements to become judges in their countries of origin. Election by the Assembly provided assurances of legitimacy, transparency, objectivity and absence of conflicts of interest among candidates for appointment as judges.

36. His delegation did not oppose considering the proposal to combine the two forums in a single tribunal and discussing its possible advantages, although it was inclined to favour a two-tier tribunal. Such a discussion would enrich the debate and contribute to seeking a system of administration of justice that addressed the shortcomings of the current one.

37. **Mr. Medrek** (Morocco) said the United Nations, by virtue of its mission, took the lead in establishing a world order based on the rule of law, essential to lasting peace, justice and prosperity. Clearly, the Organization's own internal functioning must therefore be governed by the rule of law. However, its system of justice was in some respects outmoded, dysfunctional and costly, its fundamental shortcomings arising essentially from structural flaws. Reform should be embraced, not imposed, and should emanate from the Administration and staff of the Organization in order to achieve its goals and lead to a change of behaviour and a renewed sense of confidence and accountability among the staff.

38. Morocco therefore welcomed General Assembly resolution A/61/216, by which the Assembly had decided to institute a new, decentralized, independent, transparent and professionalized system of justice endowed with sufficient resources and consistent with relevant rules of international law and recognized principles of the rule of law and due process.

39. Morocco welcomed the Secretary-General's report (A/62/294), which attempted to respond to queries and concerns of Member States and to provide the key features of a new system of justice, notably with regard to nomination and selection of judges, draft elements of tribunal statutes, disciplinary procedures, management evaluation and legal assistance for staff.

40. Morocco generally favoured a unified system and supported the two-tier system proposed by the Redesign Panel and endorsed by the Secretary-General with a view to securing the rights of staff and ensuring

effective accountability. It supported the establishment of an Office of Staff Legal Assistance, an integrated Office of the Ombudsman for the Secretariat and the funds and programmes, together with regional Ombudsman offices at certain duty stations to ensure equitable access geographically, and a Mediation Division within the Office of the Ombudsman. Mediation was an important component of any informal system of administration of justice, and the procedure should include safeguards of confidentiality.

41. The Secretary-General's proposals with regard to the scope of the new system were sound. It was incumbent on the Organization to ensure that persons performing work, regardless of the type of contract, should have recourse to means of settling disputes. The informal system was a key element, and important from an ethical standpoint. An effective system for settling disputes informally and promptly strengthened cohesion in the workplace and avoided needless litigation.

42. The success of the informal system was linked to reform of the formal system. Morocco favoured a two-tier system in which the first instance would make binding decisions subject to appeal to an appellate instance; such a system would be consonant with international standards of justice, ensuring both equal access to justice and a right of appeal.

43. Morocco supported decentralization and professionalization of the system. The effectiveness of the formal procedures would largely depend on the legal and judicial competence, experience, independence and qualifications of judges. The procedures for the selection and removal of judges should be such as to ensure independence. The General Assembly should appoint all of the judges, not only those of the Appeals Tribunal. Morocco supported the proposal that existing mechanisms of the United Nations system of justice should continue to operate until the new system became operational in January 2009.

44. Improving the system of justice, an ambitious but necessary reform, should enjoy the support of all and was a joint endeavour to be pursued by all concerned — Member States, the Administration, and the staff. Real political will would be needed to overcome differences.

45. It was the Sixth Committee's role to make proposals regarding the legal aspects, leaving consideration of the administrative and budgetary issues to the Fifth Committee. Once apprised of the Fifth Committee's changes in its proposals, the Sixth Committee should ensure that those changes did not unduly undermine due process, fairness and justice.

46. **Mr.** Rodger **Young** (United States of America) said that the United States delegation was still analysing the comprehensive report of the Secretary-General (A/62/294). The United States supported efforts to create a more effective and efficient internal justice system for the United Nations, an enormously important and enormously complex undertaking. Progress had been made in the Committee at its spring session, but delegations had not reached consensus on some significant issues, including basic questions about the appropriate scope and powers of the new administration of justice system, whether it should apply to non-staff personnel, and the role of staff associations.

47. Deficiencies in the existing system called for diligent efforts towards improvement but not at the expense of careful and thorough consideration of the issues. It was premature for the Working Group to begin detailed consideration of language for the new statutes of the formal judicial system. A broader discussion was first needed on basic principles before discussion on statutes and rules could be productive. The Advisory Committee on Administrative and Budgetary Questions had considered aspects of the item and the Fifth Committee would be considering administrative and budgetary implications of various proposals. Recommendations from the Sixth Committee not in keeping with budgetary realities would be of limited practical value. Getting the right result was more important than getting a fast result.

48. The recommendation to extend the system of justice beyond staff members to cover consultants, individual contractors, and daily paid workers was a source of deep concern. The United Nations obligations to staff members and non-staff members were different, and dispute resolution mechanisms for each should remain separate, although contractors and others might need a more flexible system. Even if the General Assembly could develop such a system, the Assembly could not itself alter the dispute settlement provisions of service contracts in place between the United Nations and its various categories of non-staff personnel.

49. While staff associations had a valuable role to play in assisting individual employees in understanding their rights and helping them to pursue remedies, expanding the associations' role to permit them to litigate as parties would likely lead to litigation of institution-wide issues that should be resolved politically.

50. The United States did not support proposals for a new office with full-time lawyers offering staff direct legal representation in pursuing their claims. Aside from the pro bono assistance available under the current system, legal assistance provided by the Organization should be limited to providing information about the process and procedures of the United Nations administration of justice system. The system for assisting staff could be strengthened, but the assistance provided by the Organization should not involve advocacy in a particular case. Such advocacy would displace the appropriate advisory role of a staff association and inappropriately encourage litigation, as the office would have an incentive to file claims in order to ensure its relevance. No other international organization of which his delegation was aware provided such assistance before administrative tribunals. The asserted examples of such assistance from national jurisdictions cited in the Secretary-General's report, such as military justice systems, were not to the point since they involved assistance to persons in defending themselves against disciplinary actions brought by their own Government, not assistance in pursuing affirmative claims for relief. Military justice systems were quite different from administrative disciplinary systems even for public-sector civilian workers. Federal agencies in the United States, for example, did not provide counsel for employees facing disciplinary charges, let alone those wishing to sue their employer.

51. The cap on compensatory damage awards, a feature common to many systems, should not be eliminated and should be adjusted only following careful analysis. Moreover, it would be inconsistent with modern principles of justice to allow issues of both fact and law to be heard at both levels of the justice system. Modern principles of justice did not require more than one judge to hear disputes at the trial level, as would be the case with the United Nations Dispute Tribunal. More than one judge at the trial level would reduce efficiency of proceedings, undermining a key goal of the reform. Greater clarity was also needed as to the types of claims staff members could pursue, in particular whether such claims would be limited to allegations of violations of the written terms of the United Nations Staff Regulations and Rules.

52. **Mr. Abdelsalam** (Sudan) said that he welcomed the constructive initiative earlier proposed by the Chairman of the Working Group on administration of justice in his informal briefing following the Committee's 1st meeting. The Working Group was the appropriate forum in which to comment on the comprehensive report of the Secretary-General on the subject (A/62/294).

53. In contrast to past attempts to reform the system of administration of justice at the United Nations, the deliberations during the previous session had already yielded landmark results. Within the context of its own mandate the Committee had established the key features of an independent, transparent, professionalized, adequately resourced and decentralized system comprising both formal and informal mechanisms. The informal resolution of disputes would be a mainstay of the new system by alleviating pressure from the formal system, while also successfully achieving effective justice. He hoped that the task of drawing an integrated legal framework for that system would be completed during the current session with a view to meeting the implementation deadline of January 2009.

54. Also important were efforts to finalize the legal, administrative and financial principles for the establishment of a system based on respect for human rights and satisfying the requirements of the rule of law, justice and fairness. As the Organization that strove to ensure the strict application of international human rights standards and observance of the rule of law in its role as guardian of international peace and security, it was now more vital than ever for the United Nations to put its own house promptly in order as far as the issue of administration of justice was concerned.

55. **Mr. Kuzmin** (Russian Federation) said that strengthening the rule of law and reforming the system for the administration of justice at the United Nations had long been a matter of urgency. Some of the sections of the Secretary-General's report on the administration of justice (A/62/294) gave the impression that the General Assembly had already approved the Redesign Panel's recommendations (A/61/205), whereas it had merely endorsed the idea of establishing a new justice system comprising formal

and informal components; all the various details were still open to discussion.

56. His delegation agreed that the current consultative bodies should indeed be abolished, and a two-tier system consisting of a United Nations Dispute Tribunal and a United Nations Appeals Tribunal should be established. It was, however, puzzling why the new Appeals Tribunal should continue to act as an administrative tribunal for certain organizations, including the International Court of Justice and the International Tribunal for the Law of the Sea, which used the current Administrative Tribunal on the basis of an exchange of letters. There was nothing to prevent those organizations from signing a new agreement and employing the two-tier system.

57. With regard to the elements of the new tribunals' statutes, the key criterion for determining the tribunals' jurisdiction *ratione personae* should be the absence of any other means of legal redress for the persons in question (in national courts, for example) due to the Organization's jurisdictional immunity. While the new system of internal justice should cover Secretariat staff, non-staff personnel and experts on missions, to whom the Organization bore a number of obligations, circumspection was required with regard to the Secretary-General's proposal to provide individual contractors with access to the system, since they could have recourse to arbitration and carried out activities entailing substantial commercial risks. Therein lay the essential difference between their work and that of an international civil servant. Hence their inclusion might overload the internal justice system. One solution might be to grant access to the system only to contractors possessing the status of experts on mission.

58. The new system's jurisdiction *ratione materiae* should encompass disputes arising from a breach of the Organization's obligations to persons coming within the Tribunals' jurisdiction *ratione personae*. To refer only to violations of conditions of employment would unduly narrow their jurisdiction and restrict the rights of those persons, since the existence of the Organization's privileges and immunities meant that no relief could be sought in other forums in the event of such disputes.

59. The impartiality and independence of both Tribunals must be guaranteed by stipulating that only the General Assembly could appoint and dismiss judges. Their appointment by the Secretary-General would not be entirely proper and would lead to a conflict of interests inasmuch as the Tribunals would be called upon to consider the decisions of the Secretary-General or of managers accountable to him. A further matter requiring consideration was whether disputes should be examined by one or three judges. On the one hand, if judges sat in panels of three that would slow down proceedings and make them more expensive; on the other, it would be consistent with the important principles of collegiality and the representation of different legal systems. Possibly the Secretary-General's suggestion that procedural questions could be considered by a judge sitting alone but that substantive issues should be examined by a panel of three judges would be a reasonable compromise.

60. On the whole, his Government supported the proposal to strengthen the system of Ombudsmen, who should be appointed by the General Assembly, and to reinforce mediation mechanisms, and it agreed with the idea of differentiating between the formal and informal systems of internal justice. It was also in favour of establishing a means of providing professional legal assistance to persons entitled to submit claims to the internal justice system, since the absence of such assistance under the current arrangements, coupled with the fact that the Administration's ability to avail itself of lawyers specialized in the Organization's rules and regulations, violated the principle of the equality of arms.

61. Although it was important to retain the possibility for management to review any decision which was likely to be referred for judicial consideration, such a management evaluation would have to be carried out by the Department of Management in a timely manner and must not delay proceedings. The report advocated a number of extremely useful new departures in the field of disciplinary matters, such as sending legal advisors to field missions in order to help heads of office or mission to decide on disciplinary action and delegating authority for disciplinary decisions to heads of offices away from Headquarters or heads of peacekeeping or political missions. Supplementing those moves with centralized management evaluation would heighten the effectiveness of management without impinging on appropriate on-the-spot monitoring of managers' activities or on staff members' rights.

62. Disciplinary processes should include the right of any accused person to state his or her point of view. As far as the sharing of duties for investigations between the Office of Internal Oversight Services (OIOS) and other units was concerned, OIOS should continue to

investigate only category I violations. Moreover OIOS procedures must ensure that persons under investigation had the right of reply. The Office must further send its final report to those persons and their supervisors. He requested the Secretary-General to report to the General Assembly on steps currently being taken by OIOS to work out standard procedures for investigations conducted by managers and to update its Investigation Manual. His delegation was, however, opposed to the Secretary-General's suggestion that the Department of Safety and Security should be given investigative functions.

63. The Sixth Committee must give priority to considering the draft elements of the statutes of the tribunals and it must adopt substantive decisions on them, possibly in the form of resolutions. His comments should not, however, be regarded as support for the establishment of any specific posts or the earmarking of any resources, which were matters falling within the mandate of the Fifth Committee.

64. **Mr. Omar** (Malaysia) said that he commended the effort of the Redesign Panel in formulating a new administration of justice system to enhance the efficiency of the Organization. The existing system was outmoded, dysfunctional and inconsistent. His delegation, recognizing that the Panel of Counsel was extremely under-resourced and not professionalized, supported the proposal for an Office of Staff Legal Assistance staffed by persons with legal qualifications, at minimum those recognized by the courts of Member States, who would serve on a full-time basis and be properly resourced.

65. The decentralized, streamlined, independent and cost-efficient system of justice proposed by the Redesign Panel, if well resourced, would reduce conflicts within the Organization through more effective informal dispute resolution and would ensure expeditious disposition of cases in the formal justice system. Decentralization should ensure that staff serving in field operations, who constituted the majority of staff, were effectively covered. The proposal therefore merited due consideration.

66. While redesigning the system of justice would require additional resources, it would contribute considerable efficiency benefits to the system of justice, the slowness and complexity of which carried significant hidden costs. The cost implications would have to be considered thoroughly, in consultation with Member States, before any final decision was taken and before the new system was implemented in January 2009.

67. **Mr. Moreno** (Venezuela) said that it was vitally important to redesign a system of justice rendered inefficient by a lack of independence and professionalism. Several prior attempts to reform the system had been unproductive, as had been recognized by the report of the Redesign Panel (A/61/205), which had found the United Nations internal justice system to be outmoded, dysfunctional and ineffective. An administrative system of justice was needed that would be staffed by full-time personnel. There should be a single tribunal with two tiers, which would deal with all challenges to administrative decisions and render binding judgements, including those rescinding the contested decision. The tribunal should enjoy full independence, have its own budget and be governed by the principles of due process, procedural promptness, and judicial economy. Its members should be selected with a view to broad geographical representation and should serve full-time. The subject-matter jurisdiction of the tribunal should not be restricted; it should be enabled to rule on any administrative decision that might affect the rights of staff.

68. Also desirable was a mediation mechanism to facilitate mutually advantageous settlements for parties able to resolve their differences directly. The mediator, having heard the parties, could formulate voluntary recommendations with a view to relieving the tribunal of an excessive caseload. Both mediators and judges should be selected from lists based on candidatures submitted by Member States and should have confirmed experience and knowledge of administrative and labour law.

69. An Office of Staff Legal Assistance should also be established, with its own budget and sufficient resources to provide free legal advice to all United Nations personnel.

70. **Mr. Mikanagi** (Japan) said his delegation agreed that close coordination with the relevant United Nations bodies, including the Fifth Committee and the Advisory Committee on Administrative and Budgetary Questions, was essential in strengthening the system of administration of justice. In seeking to introduce fundamental changes to the existing system, it was important to ensure that the new one was legally sound, in particular by paying careful consideration to its scope and to the statutes and rules applicable to the work of the new tribunals.

The meeting rose at 4.50 p.m.