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PERSONNEL QUESTIONS: OTHER PERSONNEL QUESTIONS

Administration of justice in the SecretariatReport of the Secretary-General

INTRODUCTION

1. At its forty-third session, the General Assembly considered the report of the Secretary-General on the administration of justice in the Secretariat (A/C.5/43/25) as well as the related report of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) on this subject. 1/ On 21 December 1988, the Assembly adopted resolution 43/224 B in which, after welcoming the improvement in the internal justice system and the considerable progress achieved in 1988, including the disposal of the backlog of cases of the Headquarters Joint Appeals Board (JAB) and the streamlining of the appeals procedures, it requested the Secretary-General to establish by the end of 1989 a fully revised internal justice system as proposed in his report pursuant to recommendation 60 of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations 2/ and to report thereon to the General Assembly at its forty-fourth session. It further called upon the Secretary-General to finish putting into place improved disciplinary rules and procedures at the earliest stage, as well as revised appellate procedures, and to report thereon to the General Assembly at its forty-fourth session. It should be recalled that in paragraph 7 of its report, ACABQ had also recommended that "the Secretary-General submit at the earliest stage any proposal for possible revision of Staff Regulations and/or Rules" in the disciplinary area. The revised disciplinary rules which the Secretary-General intends to promulgate are contained in document A/C.5/44/2, annex I.

I. IMPROVEMENTS IN THE AREA OF APPEALS

2. Recommendation 60 of the Group of High-level Intergovernmental Experts stressed the necessity to render the internal justice system more efficient and less costly. In his report to the General Assembly at its forty-third session (A/C.5/43/25), the Secretary-General outlined the principles underlying the reform programme as well as the action required to complete that programme. He stressed the fact that delays in the work of the joint appeals boards and related machinery not only caused inefficiency and increased costs but ultimately undermined the effectiveness of the entire system. Following the streamlining of the appellate machinery and of its procedures carried out in 1988, efforts have been concentrated on ensuring that the delays in processing appeals that had led to the accumulation of a backlog would not recur.
3. The success of this effort has come about through the joint efforts of the Office of Human Resources Management, the Office of Programme Planning, Budget and Finance and the Office of Legal Affairs, in collaboration with the Office of the Under-Secretary-General, Department of Administration and Management, which has assumed direct responsibility since 1988 for the administration of justice.
4. The number of requests for review of administrative decisions has more than tripled. During the 1970s, an average of 50 staff members per year contested administrative decisions under the terms of staff rule 111.2 (a), of which some 30 went on to appeal. In the last four years, the average has been 155 per year, of which the majority have been either settled or resolved at the review stage, and less than 40 per cent went on to appeal. The Office of Human Resources Management has devoted considerable efforts to seeking administrative solutions wherever possible at the pre-appeal stage, or, in complicated cases where it is not possible to achieve a settlement within the time-limits for appeal, after a case has been filed with JAB.
5. The steady increase in the number of pending cases before the Headquarters JAB had been a matter of serious concern within the Organization and had placed a critical strain on the management of the administrative justice system. The backlog accumulated since the late 1960s reached an all-time high of 137 cases pending in 1983. Since 1984, however, the number of cases pending has been gradually reduced, despite the higher number of new appeals being filed annually. The number of new appeals filed with JAB in the 1970s doubled in the 1980s, to an average of 30 per year.
6. In 1989, the Headquarters JAB succeeded in reducing the number of pending appeals to 30, and has virtually eliminated its backlog of cases pending for more than one year. During the first eight months of 1989, the Headquarters JAB received 44 new appeals and disposed of 62 cases; 46 by report and 16 by settlement, withdrawal or abandonment. On the whole, the average age of pending cases is now four and one half months, as compared with that of two or more years previously.
7. Procedural improvements have been in good part responsible for the JAB success in reducing the size and the age of its case-load. These revised procedures were codified and adopted in 1989 by the Headquarters JAB as its rules of procedure.

They were subsequently transmitted to JABs at other duty stations for their consideration and possible use. In addition, the speedy resolution of appeals has been further facilitated as a result of the redistribution of responsibilities between the offices responsible for conducting the administrative reviews of staff appeals and providing secretarial services to JAB. This has resulted in a more timely presentation of responses to statements of appeals and, in turn, a more timely consideration of new appeals. This aspect of the reform was completed in 1988 and no further action is therefore envisaged beyond ensuring the smooth operation of the streamlined system and the optimum utilization of the resources provided.

8. Inroads have been made to the handling of cases pending before the Geneva JAB which, as of September 1989, were reduced to 30. Both the Vienna and Nairobi boards each have only two cases pending. These cases, filed in 1989, are expected to be concluded shortly.

9. The Secretary-General's policy of accepting unanimous JAB reports, except where a major question of law or principle is involved, continues to be applied. During 1989, the Secretary-General took decisions on some 50 reports from various JABs. In 32 of these cases, the Secretary-General accepted the JAB recommendations in full; in 4 cases he accepted them in part; and in 5 cases, the JAB recommendations were rejected. In nine cases, the Board decided that it was not competent to address the matters brought before it on the grounds that the appellant had failed to identify any specific injury appealable under the Staff Rules or that the appellant's complaints were premature. In such cases the Secretary-General has taken note of the JAB reports.

II. DISCIPLINARY PROCESS

10. The intensive efforts launched in 1987 have continued with a view to bringing about reform and streamlining in the disciplinary area. It will be recalled that action in this area had been called for by the General Assembly on the basis not of only the recommendations of the Group of High-level Intergovernmental Experts but also of the Board of External Auditors and ACABQ in order to facilitate speedy action in cases of fraud. Given the sensitivity of the issues involved, the initiatives in this area have been taken with deliberate speed. These efforts have included the establishment of joint staff-management working groups to conduct studies of problem areas and to make appropriate recommendations for action by the Secretary-General. They have also included consultations with the representatives of staff at various regular and special sessions of the Staff Management Co-ordination Committee (SMCC) and written exchange of views with staff representative bodies at the major duty stations. The Office of Legal Affairs and the Office of Human Resources Management have been regularly consulted during this process. This exercise led to the finalization by the Secretary-General of a fully revised set of disciplinary rules which are intended to be promulgated, effective 1 January 1990, to replace chapter X of the Staff Rules.

11. Although the staff representatives have stated that they would wish to have further consultations on the revised draft rules at a future session of SMCC, the

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Secretary-General is of the view that adequate consultations have already taken place since 1987 both within and outside the framework of SMCC. To delay the implementation of reform in this area further would constitute failure to comply with the General Assembly's specific directive.

12. The full text of the revised rules is contained in document A/C.5/44/2, annex. The following are the principal changes in the disciplinary process resulting from the revision of the Staff Rules:

(a) A description of unsatisfactory conduct which may lead to the imposition of disciplinary measures is incorporated in the Staff Rules (staff rule 110.1);

(b) Staff charged with misconduct, both in the field and at Headquarters, will be entitled to have their cases considered by a Joint Disciplinary Committee (JDC) (staff rule 110.4 (b) and staff rule 110.5);

(c) Flexibility is introduced, whereby in the interest of due process and fairness a case may be referred to a JDC at a different duty station (staff rule 110.6 (h));

(d) Provision is made for the establishment of ad hoc JDCs to hear cases at duty stations where no standing JDC has been established (staff rule 110.5 (b));

(e) A provision regulating the use of summary dismissal is incorporated in the Staff Rules (staff rule 110.4 (b)-(d));

(f) Greater flexibility is introduced regarding the range of disciplinary measures, thereby permitting closer proportionality between the gravity of the misconduct and the sanction imposed (staff rule 110.3). The new rules also specify the range of actions available to the Secretary-General, including the recovery of monies owed to the Organization for whatever reason which are not considered disciplinary measures (staff rule 110.3 (b) (i)-(iii));

(g) The circumstances in which a staff member charged with misconduct may be suspended are clarified (staff rule 110.2);

(h) Provision is made for appeals against summary dismissal to be heard by a JDC, and for direct submission of appeals to the United Nations Administrative Tribunal in cases where the action taken by the Secretary-General followed a JDC review (staff rule 110 (b)-(d));

(i) The separation into salary groups of the staff-elected members of JDC has been eliminated, thereby removing the restrictions on their assignment to cases (staff rule 110.6 (a));

(j) Access by staff members to counsel in disciplinary proceedings is enlarged to include retired staff members, whereas previously it had been limited to serving staff members (staff rules 110.4 (a) and 110.7 (d));

(k) The concept of the Presiding Officer has been introduced to ensure the integrity of the proceedings and the expeditious disposition of cases. The powers of the Presiding Officer are outlined in the rules (staff rule 110.6).

13. As envisaged in staff rule 110.7 (c), it will be necessary, as in the appellate area, to devise internal rules of procedure for JDCs. Work on this has been initiated and is expected to be also accomplished in consultation with the staff representatives, members of JDCs and the Panel of Counsel. Following the promulgation of the revised disciplinary rules, the standing JDCs, in accordance with the new staff rule 110.7 (c), will each adopt internal rules of procedures.

III. PANEL OF COUNSEL AND GRIEVANCE PANELS

14. The Panel of Counsel has continued to assist staff members in preparing their statements of appeal and in providing appropriate counselling, thus obviating the need for formal appeals. Amicable settlement of grievances has also been achieved through the intervention of the grievance panels both at Headquarters and at other duty stations.

15. In 1989, the number of members of the Panel of Counsel was 86. While some members of the Panel had been reassigned to other duty stations, there had also been an almost equal number of new members, thus indicating continued interest on the part of staff in such voluntary public service work. It should be recalled that, as counsel assist other staff members in addition to their normal official duties, they are limited in terms of the number of cases they can accept and the amount of time they can devote to that purpose. During the first eight months of 1989, the Co-ordinator of the Panel of Counsel received 112 cases. The Co-ordinator of the Panel also had over 300 consultations with staff seeking assistance, with counsel needing guidance in the preparation of their cases or with managers in attempts to settle contentious matters. In addition to settlements made *ex ante*, of 60 cases referred to members of the Panel of Counsel, 13 were settled without formal litigation.

16. In accordance with paragraph 7 of General Assembly resolution 31/26 of 29 November 1976, the Secretary-General established panels to investigate allegations of discriminatory treatment at Headquarters (ST/AI/246) as well as at Geneva (for the United Nations Office at Geneva (UNOG), the Economic Commission for Europe (ECE), the United Nations Conference on Trade and Development (UNCTAD), and the Office of the United Nations Disaster Relief Co-ordinator (UNDRO) and at the headquarters of the United Nations Industrial Development Organization (UNIDO), the Economic and Social Commission for Asia and the Pacific (ESCAP), the Economic Commission for Latin America and the Caribbean (ECLAC), the Economic Commission for Africa (ECA), the Economic and Social Commission for Western Asia (ESCWA), and the United Nations Environment Programme (UNEP) (ST/AI/246/Add.1).

17. This informal procedure was designed to supplement, rather than to replace, the formal ones, i.e. JAB, the Administrative Tribunal and specialized appeal bodies. In many instances staff members may find such an informal device preferable in that it can yield results more unobtrusively than the formal ones, or

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may even lead to a positive disposition that could, for various legal, factual or procedural reasons, not be achieved by a regular challenge. Since their establishment, the grievance panels have handled about 100 cases a year, apart from informal advice given to staff members whose complaints did not, in the opinion of the Panel, constitute a grievance that required investigation and/or further action.

IV. FURTHER ACTION ON THE REFORM PROGRAMME

18. The implementation of reform has been, by necessity, proceeding on a step-by-step basis. Although much of this reform consists of improvements in procedural rules, caution has had to be exercised to ensure that substantive or acquired rights are safeguarded, and to allow for the orderly completion of cases already sub judice. In the disciplinary area, the practice of accepting resignations of staff members who have been charged with misconduct has been applied, provided that full recovery of any monies owed to the Organization has been effected.

19. The first phase of the reform, reported to the General Assembly at its forty-third session, focused upon the appellate area. The current phase of reform deals mainly with the disciplinary area. The third phase will focus on the improvement of informal procedures for the amicable resolution of staff grievances.

20. It should be noted, however, that the promulgation of the revised rules and procedures in a specific area of the administration of justice does not mark the end of the process in that area. On the contrary, it is necessary closely to monitor their implementation to assess their effectiveness in the light of practical experience. To this end, consultations will continue to be held with the members of the joint advisory bodies, the Panel of Counsel and the staff representatives. Accordingly, the subject of the administration of justice has been inscribed on the agenda of the forthcoming Staff Management Co-ordination Committee meeting as a standing item of the agenda.

Notes

1/ Official Records of the General Assembly, Forty-third Session, Supplement No. 7 (A/43/7 and Add.1-13), document A/43/7/Add.4.

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