



Report of the Fifth Committee – October & November 2008

by Emanuel Evans and Lydia Swart
1 December 2008

The Fifth Committee is scheduled to meet from 3 October to 12 December 2008. Considering its heavy workload, the late issuance of certain documents, and the regretfully all too predictable disagreements among Member States, it is likely that the session will take longer than anticipated – an increasingly common occurrence in the Fifth Committee. The following provides an overview of a number of issues on the agenda and also attempts to summarize some of the proceedings so far, highlighting the dynamics among Member States as well as between Member States and the Secretariat.

Scale of Assessments

Secretary-General report

- [A/63/68](#) (24 March 08): “Multi-year payment plans”

Committee on Contributions report

- [A/63/11](#) (9 July 08-27 July 08): “Report of the Committee on Contributions”

Reaching agreement on the scale of assessments has never been easy. Member States pay dues for the regular bi-annual budget of the UN according to the principle of *capacity to pay*, based in particular on their gross national income (GNI) over an agreed base period, adjusted for high debt burdens and low per capita income. However, Member States previously agreed on maximum and minimum assessment rates. The US, for instance, holds more than 30% of the world’s GNI but pays a maximum of 22% of the budget; the minimum rate is 0.001%, and the 50 least developed countries (LDCs) pay a maximum of 0.01%. By the current methodology, EU countries, Japan, and the US together pay roughly 80% of the budget.

In October, the Fifth Committee adopted a resolution dealing with the failure of seven Member States¹ to pay the minimum amount necessary to retain their voting rights in the General Assembly. The Committee on Contributions (COC) proposed that these seven countries be allowed to retain the right to vote since they suffered from circumstances beyond their control, and the resolution followed this recommendation. Such resolutions have been adopted yearly for quite a while now, and some would say that this has been something of a rubberstamping exercise. But France, on behalf of the EU, indicated that it might have more reservations in the future, especially in the cases of the Central African Republic (CAR) and Sao Tome and Principe. In its report (A/63/11), the COC in fact indicated that future requests from the CAR for exemption might not be viewed favorably. Guatemala apparently thought that the COC unjustly pre-judged the CAR, but the COC’s chairman reportedly emphasized that the CAR has been considered a borderline case and that it was almost denied its exemption this year.

Member States are currently considering a resolution containing many requests to the COC to examine the implications of changes in the methodology to assess dues for the 2010-2012

¹ Central African Republic (CAR), Comoros, Guinea-Bissau, Liberia, Sao Tome and Principe, Somalia, and Tajikistan.

period – a final decision on the scale of assessments for this period, according to the draft resolution dated 10 November, would then be discussed at the 64th session.² In these proposals, a few aspects stand out. First is the method for determining conversion rates: the models proposed by CANZ (Canada, Australia, and New Zealand), Mexico, the Group of 77 and China (G77), and the US all include exceptions for excessive GNI distortions and fluctuations, while the proposals from the EU and Japan do not. Second is the ceiling: most proposals include the current 22% ceiling, but the G77 proposal raises it to 25%³ while one proposal from the EU does not mention it at all. Also, one proposal from the EU eliminates the debt burden adjustment, and one US proposal uses Purchasing Power Parity (PPP) instead of GNI, a change that some countries say does not reflect the principle of *capacity to pay* (the COC recommended against the use of PPP at present).

The last time Member States discussed assessments, in 2006, the final meetings on the topic took place just a few days before Christmas. A large number of ambassadors participated, a rare occurrence in the Fifth Committee. At that time, after heated discussions about the base period, Member States agreed to continue with average statistical base periods of three and six years, a compromise that was used for the three previous scale periods.⁴ Longer base periods are advantageous to the EU but not to small developing countries.

Human Resources Management

Secretary-General reports

- [A/61/206](#) (31 July 06): “Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2005 to 30 June 2006”
- [A/61/732](#) (7 Feb 07): “Staffing of field missions, including the use of 300 and 100-series appointments”
- [A/61/822](#) (27 March 07): “Human resources management reform: recruitment and staffing”
- [A/61/823](#) (28 March 07): “Measures to address the imbalance in the geographical distribution of the staff in the Office of the United Nations High Commissioner for Human Rights”
- [A/61/850](#) (11 April 07): “Civilian career peacekeepers”
- [A/61/861](#) (20 April 07): “Harmonization of conditions of service”
- [A/61/957](#) (15 June 07): ” Special measures for protection from sexual exploitation and sexual abuse”
- [A/61/1029](#) (20 Aug 07): “Implementation of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission”

² For a chart listing the various proposals, see <http://www.centerforunreform.org/node/374>.

³ The G77 apparently feels that as the US is not paying its dues on time – which the US promised when the ceiling was reduced to 22% – the ceiling should go back to 25%.

⁴ The COC believes that it would be technically sounder to use a single base period rather than the current compromise of using averaging scales.

- [A/C.5/62/L.9](#) (7 Dec 07): “List of staff of the United Nations Secretariat”
- [A/62/185](#) (3 Aug 07): “Amendments to the Staff Rules”
- [A/62/186](#) (3 Aug 07): ” Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2006 to 30 June 2007”
- [A/62/274](#) (17 Aug 08): “Detailed proposals for streamlining United Nations contractual arrangements”
- [A/62/315](#) (31 Aug 07): “Composition of the Secretariat”
- [A/62/890](#) (25 June 08): “Special measures for protection from sexual exploitation and sexual abuse”
- [A/63/132](#) (15 July 08): “Measures taken to address seven systemic human resources issues raised in the context of the reform of the internal system of administration of justice”
- [A/63/189](#) (30 July 08): “Amendments to the Staff Regulations”
- [A/63/202](#) (31 July 08): “Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2007 to 30 June 2008”
- [A/63/204](#) (31 July 08): “Measures to improve the balance in the geographical distribution of the staff in the Office of the United Nations High Commissioner for Human Rights”
- [A/63/208](#) (1 Aug 08), [A/62/215](#) (8 Aug 07): “Implementation of the mobility policy”
- [A/63/282](#) (14 Aug 08): “Human resources management reform”
- [A/63/285](#) (14 Aug 08): “Recruitment and staffing in the United Nations: strategy going forward”
- [A/63/298](#) (15 Aug 08): “Detailed proposals for streamlining United Nations contractual arrangements: a way forward”
- [A/63/310](#) (29 Sept 08), [Add.1](#) (19 Aug 08), [Add.2](#) (20 Aug 08), [Add.3](#) (21 Aug 08): “Composition of the Secretariat”

ACABQ reports

- [A/62/7/Add.14](#) (16 Nov 07): “Human resources management”
- [A/63/526](#) (7 Nov 08), [Corr.1](#) (18 Nov 08): “Human resources management”

OIOS report

- [A/63/221](#) (22 Sept 08): “In-depth evaluation of the Office of Human Resources Management”

JIU reports

- [A/61/694](#) (10 Jan 07), [Add.1](#) (31 May 07): Measures to address the imbalance in the geographical distribution of the staff in the Office of the United Nations High Commissioner for Human Rights”
- [A/61/806](#) (19 March 07), [Add.1](#) (2 April 08): “Staff mobility in the United Nations”

- [A/62/628](#) (28 Dec 07), [Add.1](#) (14 Jan 08): “Age structure of human resources in the organizations of the United Nations system”
- [A/62/707](#), [Add.1](#) (14 Feb 08): “Report of the Joint Inspection Unit on the review of the national competitive recruitment exam as a recruitment tool”

Staff representatives report

- [A/C.5/63/3](#) (15 Oct 08), [Add.1](#) (15 Oct 08): “Views of the staff representatives of the United Nations Secretariat” and views from staff of other UN offices

Human Resources Management (HRM) reform efforts have been on the agenda for several years now, and a staggering number of reports have been prepared by the Secretariat, the Advisory Committee on Budget and Administrative Matters (ACABQ), and various oversight bodies. Since the Center started following the Fifth Committee in October 2006, the Secretariat has also provided hundreds of pages of written responses to questions posed by Member States in informal meetings. At this session, one report from the ACABQ remained outstanding until 7 November, and as a result, Member States did not begin to discuss the issue until 13 November.

HRM reform proposals primarily focus on:

- Streamlining of contracts
- Harmonization of conditions of service
- Improving recruitment
- Improving the mobility policy

In the last sessions, the establishment of a core cadre of 2,500 career civilian peacekeepers was on the agenda as well, but does not seem to be under discussion this year.

The need for the streamlining of contracts seems obvious. Currently, there are 11 types of contracts, 15 conditions of service, and three sets of staff rules in the UN system. Apart from inequalities that undermine staff morale, the administration of these different contracts is extremely cumbersome. Lack of harmonization of conditions of services has apparently caused persistently high vacancy and turnover rates, leading to large numbers of inexperienced staff, especially in the field.

The HRM reform proposals include simplified contracts with one set of staff rules and three types of appointments (temporary, fixed-term, and continuing⁵); the designation of missions as family or non-family; paid Rest and Recuperation (R&R) travel; and improved outreach to find talent in unrepresented and underrepresented Member States and to improve gender balance. Recruitment for generic vacancies would be roster-based, advertisements for posts for specific vacancies would be reduced from 60 days to 30, and new talent management tools would be developed. Improving the mobility policy is also under discussion.

⁵ Some categories of staff would in fact be permanent, such as language staff and those that enter the system following the national competitive recruitment exam.

The costs for these reforms are estimated at \$24.2 million for the streamlining of contracts, \$80 million for re-designating missions as family or non-family, \$26.6 million for R&R travel, and \$300 million for the introduction of a “special operations approach” for non-family duty stations. The latter expense was deferred by the ACABQ in the 62nd session.

At the March resumed session, the G77 and EU had reached agreement on accepting some of the HRM reforms, with the G77 especially favoring the harmonization of conditions of service and the EU favoring the streamlining of contracts. But the US and Japan were unwilling to approve additional funds in general and thus also for HRM reforms, and their last-minute requests for new reports from the Secretariat in March should be seen in this light – asking for reports can be a way of stalling negotiations.

At the start of the 63rd session, most countries’ positions remained unchanged. The EU and CANZ both support the Secretary-General’s proposals for simplifying contracts and improving conditions of service. The G77 is slightly more cautious, noting some specific concerns in the ACABQ report, but remains in favor of putting Secretariat staff “on an equal footing with that of the Funds and Programmes.” The US, Japan, and Russia, however, have all expressed strong doubts about the Secretary-General’s proposals. Of particular concern are the new “continuing” appointments. Russia thinks that these would be de facto permanent appointments, and suggests instead moving most staff to simplified fixed-term appointments. Japan likewise is concerned that continuing appointments would force Member States to fund posts even when mandates are terminated. The United States expressed the most vocal opposition, saying that although they would support simplified contracts and conditions of service “in an ideal world,” they cannot agree with the Secretary-General’s proposals. The US has proposed an alternative HRM framework that is more similar to the current system, and has reportedly requested the Secretariat to provide a cost estimate.

As was the case in previous sessions, the use of roster-based recruitment, generic vacancy announcements, and reducing specific vacancy listings from 60 to 30 days remain contentious issues – roster-based recruitment has had a lukewarm reception from most Member States, while the reduction of post advertising time has been embraced by Northern countries but is vehemently opposed by the G77. Assistant Secretary-General for Human Resources Management Catherine Pollard recently explained that roster-based recruitment would avoid duplicate screening efforts and would facilitate a new expert panel on candidates’ qualifications. The generic vacancy announcements, she noted, would help to reduce duplicate applications for posts and would help facilitate external roster-based recruitment as well as internal career mobility. She noted that there would still be specific vacancy announcements for specialized posts that could probably not be filled internally. Regarding the time reduction of vacancy listings to 30 days, she clarified that this would apply only to specific vacancy announcements, of which there would be relatively few – generic vacancies would still be listed for 60 days. She also stressed proposals for outreach efforts towards LDCs.

Development

Secretary-General reports

- [A/62/708](#) (26 Feb 06): “Improving the effective and efficient delivery of the mandates of development-related activities and revised estimates relating to the programme budget for the biennium 2008-2009.
- [A/63/335](#) (27 Aug 07): “Development Account”

ACABQ reports

- [A/62/7/Add.40](#) (15 July 08): Recommendations re A/60/708
- [A/63/479](#) (14 Oct 08): Recommendations re A/63/335

Negotiations on Secretariat development-related activities threaten to be a very divisive issue in the Fifth Committee. The G77 is unequivocally in favor of strengthening the UN’s Development Pillar, saying that it should be of equal importance as the Peace and Security and Human Rights activities of the Organization. The Secretary-General has proposed increasing the allotment for development-related activities to 18.2 percent of the total budget, but many G77 delegates have expressed the sentiment that this would be insufficient—India, for example, said that this should be considered a first small step. The EU, Japan, and the US, in contrast, are generally coy about appropriating additional funding for development within the Secretariat, whose activities tend to be analytical rather than operational, and argue that the UN’s real work on development is carried out in other parts of the UN such as the Funds and Programmes. The EU in particular has been focusing on the need to avoid creating additional bureaucracy and has tried to identify potential overlaps between agencies.

Consultations on development have been largely technical in nature. On 4 November, the Fifth Committee held consultations with officials from the UN Conference on Trade and Development (UNCTAD) to discuss the Secretary-General’s reform proposals, particularly the creation of twenty-two new posts related to trade and development. The UNCTAD officials stressed that the requested posts are the absolute minimum necessary to respond to requests for technical assistance from developing countries, but the ACABQ has recommended against approving all of the requested posts. Delegates from the EU, CANZ, the US, and Japan asked questions on the specifics of the requested posts and on the overall role of UNCTAD and its relationship with other international development organizations and agencies – the UNCTAD officials were quick to deny any potential overlap and stressed the organizations’ complementary roles. Cuba, Argentina, and Brazil, on the other hand, expressed broad support for UNCTAD, particularly in comparison to other international organizations. Cuba accused some countries of trying to “limit the scope of work of UNCTAD” – a claim that the EU vehemently denied – but G77 countries remained notably silent once the discussion became more technical.

On 10 November, according to our sources, informal consultations dealt with the Development Account, with officials present from the Department of Economic and Social Affairs representing the Secretariat. The line of questioning focused primarily on budgetary issues, particularly the mandate for the Account to look for “efficiency savings” and to use them to further its projects. The Secretariat officials said that the currently-mandated

scheme involves identifying efficiency savings after the budget is approved, which is practically impossible because of technical and methodological problems in accounting. The Secretariat has proposed alternative methodologies in the past, but these were rejected by the Fifth Committee. Brazil suggested that the committee could consider changing the process so that efficiencies are identified for the budget proposal, rather than after; the Secretariat representatives welcomed the proposal.

Another contentious issue was a 2 percent cut across the Secretariat of all non-post costs, which some G77 countries thought had been applied twice to the Development Account; the Secretariat officials denied this. The EU also sought reassurance that additional resources would not add to bureaucracy without having tangible results on the ground, a call echoed by Cuba, but the Secretariat officials clarified that the Development Account only performs technical work because of limits to its mandate and emphasized the need to avoid overlapping with other agencies.

Contrasting with the technical nature of consultations, the draft resolution on “development related activities,” in its second revision as of 20 November, shows clear, seemingly irreconcilable differences between Member States’ positions and point to major difficulties ahead in the negotiation process. The G77 is, unsurprisingly, in favor of appropriating large amounts of additional resources for the Development Account and proposes establishing at least 152 new posts for development-related mandates. In contrast, the EU, Japan, and CANZ are arguing for between 20 and 30 posts and the US is arguing for none. A common theme among countries from the North is a focus on consolidation and avoiding overlapping functions: the US stresses the role of other international organizations, while the EU emphasizes the risk of diverting resources from operational aid activities to non-operational Secretariat functions.

According to some sources, there is the possibility that lack of agreement between the various blocs could result in the G77 linking this issue with others under consideration or calling for a vote.

Information Technology

Secretary-General reports

- [A/62/477](#) (9 Oct 07): “Information and communications technology security, disaster recovery and business continuity for the United Nations”
- [A/62/502](#) (23 Oct 07): “Investing in information and communications technology: status report”
- [A/62/510/Rev.1](#) (10 April 08): “Enterprise systems for the United Nations Secretariat worldwide”
- [A/62/793](#) (9 April 08), [Add.1](#) (2 April 08): “Investing in information and communications technology”

ACABQ report

- [A/62/7/Add.31](#) (21 Dec 07): “Information and communications technology”

The Secretary-General's proposed Information and Communication Technology (ICT) reforms involve replacing the current integrated management information system (IMIS) and other stand-alone IT systems with a new integrated Enterprise Resource Planning (ERP) system, which would deal with the budget, human resources, procurement, central support, and other areas. The Secretariat says that the new system would facilitate the introduction of international public sector accounting standards and would help with results-based management. The costs for such a system are estimated at \$280 million over five years, bringing total ICT expenditures to approximately \$372 million.

As is so often the case in the Fifth Committee, funding may prove to be a major obstacle for the Secretary-General's proposals. The G77 does not want to use "creative ways" to fund ICT projects and stresses the need for additional resources, noting chronic underfunding. Russia has said that it has not yet been convinced that the ERP project would be an improvement over IMIS and has requested an unbiased cost-benefit analysis, while Canada has sought reassurance that the new project would bring efficiencies, considering the substantial investment from Member States that would be required.

Accountability

Secretariat report

- [A/62/701](#) (19 Feb 08), [Corr.1](#) (14 March 08), [Add.1](#) (26 Feb 08): "Accountability framework, enterprise risk management and internal control framework, and results-based management framework"

ACABQ report

- [A/63/457](#) (29 Sept 08): "Accountability framework, enterprise risk management and internal control framework, and results-based management framework"

OIOS report

- [A/63/268](#) (22 Sept 08): "Results-based management at the United Nations has been an administrative chore of little value to accountability and decision-making"

Joint Inspection Unit reports

- [A/61/805](#) (19 March 07): "Results-based management in the United Nations in the context of the reform process"
- [A/62/704](#) (19 Feb 08): "Report of the Joint Inspection Unit on results-based management in the United Nations in the context of the reform process"

Accountability is a common theme during Fifth Committee deliberations, but there is disagreement among Member States about the specific measures to be taken. The Secretary-General has made a new Secretariat accountability framework a top priority. The proposed accountability architecture includes results-based management (RBM), a management broad management strategy that focuses on results and performance; enterprise risk management (ERM), a comprehensive framework for managing risks; and improved internal controls. On 23 October, Under-Secretary-General for Management Angela Kane presented the Secretary-General's proposals in an informal consultation. She stressed the need for additional resources, saying that a comprehensive report on the subject by the 64th session would be impossible without them.

Kane met with intense questioning from delegates, and underlying concerns about Secretariat performance were apparent. Singapore noted off-the-record remarks that the Secretary-General had made in September in Italy criticizing the Secretariat's managers;⁶ Cuba questioned whether the implementation of previous GA resolutions had been satisfactory; Switzerland asked about the problems that the Secretariat has in dealing with risk; and Sweden, on behalf of the EU, said that the accountability framework should entail a cultural shift in the Secretariat and not "another paper exercise." Kane acknowledged some of these issues, underscoring that the Secretariat is very risk-averse, a fact that is difficult to change.

Member states are currently discussing a resolution on "Accountability framework, enterprise risk management and internal control framework, and results-based management framework," which deals with the Secretary-General's proposals for RBM, ERM, and accountability, as well as the necessary resource and reporting requirements. Egypt (representing the G77 and China), Sweden (representing the EU), New Zealand (representing CANZ), Switzerland, and Mexico are apparently particularly active on this topic.

There seems to be agreement on the need for widespread use of RBM in the Secretariat, but the implementation of a pilot project proposed by the Secretary-General for ERM is more contentious. The delegate from Mexico has proposed postponing the project based on a recommendation of the ACABQ,⁷ saying that Member States do not have all relevant information to go ahead with the project, particularly in light of similar projects already in place. The delegates from New Zealand and Sweden have both proposed giving the project a green light as the first phase in a multiphase process, as recommended by the Independent Audit Advisory Committee (IAAC).

The committee also discussed a draft resolution that deals with the Office of Internal Oversight Services. One contentious paragraph, proposed by the US, recommends that the IAAC be involved in the appointment process for Under-Secretary-General for Internal Oversight Services. New Zealand supports this proposal; Sweden (for the EU) has questioned how this would work in practice and in particular in regard to the terms of reference of the IAAC; and Egypt has expressed skepticism, noting that there were already existing resolutions on choosing posts.

Procurement Task Force

Secretary-General reports

- [A/63/331](#) (25 Aug 08): "Information-sharing practices between the United Nations and national law enforcement authorities, as well as referrals of possible criminal cases related to United Nations staff, United Nations officials and experts on mission"
- [A/63/369](#) (22 Sept 08): "Information requested in paragraph 17 of General Assembly resolution 62/247" (on OIOS and other investigatory entities)

⁶ See <http://undpwatch.blogspot.com/2008/09/exclusive-ban-ki-moons-speech-in.html>.

⁷ A/63/457, paragraph 38.

ACABQ report

- [A/63/490](#) (17 Oct 08): “Report on the activities of the Procurement Task Force”

Board of Auditors reports

- [A/63/167](#) (23 July 08): “Report of the Board of Auditors on the activities of the Procurement Task Force”
- [A/63/167/Add.1](#) (25 Aug 08): “Addendum: Implementation of the recommendations of the Board of Auditors contained in its report on the activities of the Procurement Task Force”

OIOS report

- [A/63/329](#) (25 Aug 08), Add.1 (15 Sept 08): “Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008”

Last year, The Procurement Task Force (PTF), which investigates fraud and corruption in the process of obtaining goods and services, was in danger of being terminated in July 2008; only after lengthy negotiations in the Fifth Committee was it allowed to continue until the end of this year. Opposition to the PTF mostly came from the G77, which felt that the PTF did not have a mandate approved by the membership;⁸ that it managed its workload poorly; and that it did not allow those under investigation to obtain counsel early in the process, among other concerns. Some delegates felt that the PTF singled out staff members from the South. As a compromise, the committee decided that the Board of Auditors (BOA) would audit the PTF’s work from 1 January 2006 to 30 June 2007.

If the PTF had been discontinued earlier this year, the Office of Internal Oversight Services (OIOS) – to whose Under-Secretary-General the PTF reports – would most likely have taken over its tasks and incorporated its expertise. However, if it had been suddenly discontinued, those voices in the media that assume that the UN is highly corrupt would have cried foul. Now there seems to be general agreement that the OIOS will incorporate the expertise and capacity of the PTF in January 2009, and the report of the Board of Auditors in fact encourages this.

Among the findings in the Board of Auditors’ report (A/63/167) are:

- Until 30 June 2007, the PTF completed 63 investigations and issued 22 reports.
- At the end of March 2008, the PTF had completed 142 of its 432 cases.
- At the end of March 2008, the overall value of suspicious contracts amounted to \$630 million. Clear losses incurred amounted to \$25 million, of which \$20 million related to the same case.
- The PTF recommended legal action in 13 cases.
- The PTF did not expose widespread corruption at the UN.
- The work of the PTF may have served as a deterrent.

⁸ The PTF was created by former USG for Management Christopher Burnham from the US. Many of its investigators came from Volcker’s Oil-for-Food investigation. See the Center’s analysis from last year at <http://www.centerforunreform.org/node/27>.

- The PTF helped to eliminate undesirable suppliers from the UN list of vendors.⁹
- The PTF found more examples of mismanagement – some of which did not violate UN Regulations – than instances of criminal conduct. In light of this and the large number of cases (432), the UN should more clearly and strictly define the conditions under which an investigation should be launched.
- Investigations must not be used routinely to improve accountability and management efficiency.

Under-Secretary-General of the OIOS, Inga-Britt Ahlenius, in a statement to the Fifth Committee on 24 October, seemed to take issue with the Board of Auditor's finding that the PTF did not expose widespread corruption at the UN. Ahlenius stated that a "number of extensive corruption schemes were exposed in headquarters, as well as in peacekeeping missions. The Task Force's work over the past 33 months has highlighted significant findings of corruption, fraud, waste, abuse, negligence and mismanagement in a number of high value contracts." She added that the UN's control systems are still failing, that it has been slow and even resistant to hold culprits accountable, and that it is not proactive in seeking to recover damages.

Ahlenius refuted the perception among some G77 delegates that staff members from the South were singled out. In her statement of 24 October, she said: "I believe it is worthy of mention that the Board of Auditors has also confirmed, what I have known all along, that there were no discriminatory practices in the focus of the PTF's work." The Board of Auditors noted that of the 29 staff members under investigation by the PTF, 24% were from the US, 10% from Great Britain, and 10% from New Zealand. As to vendors under investigation, the Board noted, the most represented countries were the US (26%), the DRC (13%), Italy, Canada, the Russian Federation, and India (each 9%).

At the request of the Russian Federation, the OIOS provided information on the CV's of PTF investigators. Many delegates assumed that most of the investigators had joined the PTF after having worked on the oil-for-food scandal and that most of them came from the US or other countries from the North. Apparently, six investigators had participated in the oil-for-food investigation. The 18 CV's provided by the OIOS suggest that only four of them originate from the South. The Board of Auditors noted in its report A/63/167 that the geographical distribution of the PTF "had diminished over time (more than one third of the members are now from North America) in particular due to the temporary nature of the team."

The PTF investigation of Mr. Andrew Toh from Singapore has received much press attention in the last few years, fueling the G77's ire about the PTF.¹⁰ Singapore believes he was denied due process rights by not being allowed counsel early in the investigation, among other issues. The Joint Disciplinary Committee (JDC) found that this had indeed been the case. The OIOS manual, however – reportedly with the acquiescence of the Office of Legal Affairs – does not provide for the right to counsel in fact-finding investigations (i.e. before

⁹ In its report A/63/329, the OIOS noted that 22 vendors were sanctioned.

¹⁰ Also see the Center's analysis: [The Future of the Procurement Task Force \(29 November 2007, revised 13 December 2007\)](#) and [The UN will Continue to Fight Corruption in 2008 \(2 January 2008\)](#).

formal charges of misconduct are made). The OIOS seems to refer to Mr. Toh's case in their report when they write that "the staff member had never requested counsel, that no right to counsel in fact-finding investigations exists, and that the conclusion [of the JDC] was factually incorrect..."

Interestingly, according to the Board of Auditors, the PTF "gradually added rules that were more favourable to the people being questioned," which included being accompanied by counsel of their choice when questioned.

The OIOS manual is currently under revision. It is unclear to the Center whether the new manual will adopt the PTF's above-mentioned non-formalized rules or will stick to the traditional distinction within the UN that prior to the commencement of a disciplinary procedure, a staff member must cooperate unconditionally and that the right to counsel only starts once disciplinary procedure has commenced. Apparently, the Office of Legal Affairs (OLA) advised the OIOS that this traditional distinction remains valid, but the OLA also allowed the PTF to grant counsel early on in the investigation because "the validation by the UN Administrative Tribunal of this distinction and its consequences for due process had not been considered a certainty." (See Board of Auditors report, A/61/167, paragraphs 59-60.) The Board of Auditors recommended that the investigative function in the UN as a whole be reviewed.

When the Fifth Committee discussed the PTF, the G77 agreed to most of the findings and recommendations of the BOA but expressed some concerns about the PTF, especially on the blurring of boundaries between investigation, audit, and disciplinary procedures, and stressed that investigators should proceed very cautiously. The G77 agreed that the rules and procedures of investigations should be standardized and consolidated, and that the caseload, skills, and competencies of the PTF should be transferred into the Investigations Division of the OIOS. Following the advice of the ACABQ, however, the G77 has requested further information to be discussed at the second resumed session in May 2009.

The EU underlined the importance of clear rules of procedure, including due process, for investigations carried out by the OIOS (Category I) and investigations by others parts of the Secretariat (Category II), and that these rules are made available to all staff.

The US, which has been a strong supporter of the PTF, said that companies and individuals need to be held accountable for financial losses resulting from misconduct and mentioned the possibility that the PTF had acted as a deterrent to undesirable suppliers. While the US emphasized the importance of retaining the PTF's functions and capacities within the OIOS, Russia expressed serious doubts about the manner of integrating PTF into the OIOS, saying that the OIOS investigation unit does not need integration from the outside.

Under-Secretary-General Ahlenius explained to the Fifth Committee that the transfer of "skills and competencies" of the PTF to the OIOS does not involve automatically transferring personnel and that posts in the OIOS are subject to the standard recruitment rules. Currently, eight posts within the OIOS have been frozen and are in the process of being filled by replacements, but in order to adequately pursue the caseload of the PTF (which has 16 investigators), Ahlenius requested that Member States approve the transfer of eight additional posts from field stations to regional hubs.

Administration of Justice

Secretary-General reports

- [A/63/314](#) (20 Aug 08): “Administration of justice at the United Nations”
- [A/63/283](#) (13 Aug 08): “Activities of the Ombudsman”
- [A/63/211](#) (4 Aug 08): “Administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board during 2006 and 2007 and statistics on the disposition of cases and work of the Panel of Counsel”
- [A/62/782](#) (3 April 08): “Administration of justice”
- [A/62/748](#) (14 March 08), [Corr.1](#) (8 April 08): Administration of justice: further information requested by the General Assembly”

Administrative Tribunal President

- [A/63/253](#): “Letter dated 18 July 2008 from the President of the Administrative Tribunal addressed to the President of the General Assembly”

President of the General Assembly

- [A/C.5/63/9](#): “Letter dated 27 October 2008 from the President of the General Assembly to the Chairman of the Fifth Committee”
- [A/C.5/62/27](#): “Letter dated 29 April 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee”

ACABQ report

- [A/62/7/Add.39](#) (25 June 08): “Administration of justice”

Other

- [A/62/545](#): “Identical letters dated 13 November 2007 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council”

In resolution 61/261 of 4 April 2007, reaffirmed in resolution 62/228, Member States agreed to have a new internal justice system starting at 1 January 2009. The existing Joint Appeals Board and Joint Disciplinary Committee would be replaced with the UN Dispute Tribunal – which would only take on cases after mediation proved unsuccessful – and a UN Appeals Tribunal would replace the current Administrative Tribunal.

To facilitate the transition, Member States agreed in December last year to hire an Executive Director for the new Office of Administration of Justice and 30 other posts. Member States are very upset that nobody has been appointed for this post thus far.

But apart from filling necessary posts for the transition period, there are also delays in the adoption of conditions of service for judges, development of procedures, a code of conduct for legal practitioners, the terms of reference for the registries of the tribunals, and plans for informing and training staff about the new system, among many other issues. Apart from the Fifth Committee, which has to approve all financial and administrative aspects, the Sixth (Legal) Committee is providing its expertise and approval as well.

The Sixth Committee did approve to a large degree the draft statutes of the two new tribunals. According to a DPI report, the following issues will, however, require the Fifth Committee's attention: "the question of whether the Dispute Tribunal shall be competent to pass judgement [sic] on applications by staff associations; arrangements concerning the transition of cases filed before 1 January 2009; whether former judges should be eligible for subsequent appointments within the UN; and the extent to which the Dispute Tribunal should have the power to order compensation; interest and costs, among other issues."

The President of the Secretariat's Staff Union also expressed the union's dismay about delays and boldly suggested that in lieu of a new internal justice system starting in January 2009, the Secretary-General should allow UN staff to avail themselves of the jurisdiction of the US which the Headquarters Agreement would allow. If the current system would co-exist next to the emerging new system, compensation for the judges of the current tribunals will have to be approved, the ACABQ noted.

During meetings, the US indicated that there should be a cap on the award of damages. The US also expressed caution as to the scope of the new system, so that it would not be overloaded. The EU noted that it supports the Sixth Committee's proposal of a two-step approach: staff that currently has access to the existing system would be covered before other categories of personnel would be considered. The latter might be offered other types of recourse to internal justice. Japan noted that because of backlogs in the current system, it might be unfair that some of the existing cases would be dealt with in the old system while others would be transferred to the new system. The G77 strongly feels that Member States should adhere to the above-mentioned resolutions to have the new system start in January 2009. CANZ too feels that exceeding the deadline would jeopardize other reform efforts such as strengthening accountability, oversight, and human resources management.

The ACABQ noted that the number of disciplinary cases increased from 72 in 2006 to 173 in 2007 and 277 in 2008. The Committee believes that this trend needs to be monitored and analyzed to determine the underlying causes. The former chair of the ACABQ suggested in an interview with the Center¹¹ that if the Staff Rules and Regulations would be revised properly, there would be significantly fewer cases. The ACABQ presently, however, recommends deferring consideration of the proposed revisions to staff regulations.

Many Member States and the ACABQ concur that the formal provision of legal assistance by the UN should include staff contribution to ensure "that staff has a stake in the process and to discourage frivolous litigation." The US has the viewpoint that the Office of Staff Legal Assistance should provide advice on legal issues but not assume the role of direct legal representatives.

While Member States and the ACABQ are quick to blame the Secretariat for not filling necessary posts to get the new system working or being behind in various preparatory work, the fact is that the Fifth and Sixth Committees did not consider and adopt all necessary transitional measures or the statutes of the new tribunals in the 62nd session. Under-

¹¹ See <http://www.centerforunreform.org/node/299>.

Secretary-General Angela Kane, therefore, suggested that a January 2009 starting date was not realistic.

Strengthening the Department of Political Affairs

Secretary-General report

- [A/62/521](#) (2 Nov 07), [Corr.1](#) (17 Dec 08): “Revised estimates ... related to the strengthening of the Department of Political Affairs”

ACABQ report

- [A/62/7/Add.32](#) (15 Jan 08): “Revised estimates ... related to the strengthening of the Department of Political Affairs”

In November 2007, the Secretary-General presented a proposal to strengthen the preventive diplomacy capacity of the Department of Political Affairs (DPA). The Secretary-General feels that while the responsibilities of DPA have increased over the years, it lacks the necessary resources required to achieve successful and proactive preventive diplomacy. His proposals can be summarized as follows:

- Build the capability of the Department’s regional division to allow for improved monitoring and analysis, effective policy formation, rapid dispatch of assets to support early resolution of conflicts, and support for the Secretary-General’s “good offices” efforts.
- Strengthen the Department’s policy-planning capacity and mediation support function through the establishment of a Policy, Partnerships and Mediation Support Division. This division would be involved in a number of cross-cutting issues such as organized crime, corruption, democracy, and terrorism.
- Increasing the resources of the Electoral Assistance Division.
- Additional posts for the sanctions committees, under the Security Council Affairs Division, as proposed by OIOS.
- Rationalize DPA’s presence in the field by establishing a small network of regional offices.
- Improve the management, executive, and oversight functions of relevant officials in DPA.

The additional resource requirements would amount to 101 posts and roughly \$50 million.

The report from the Secretary-General came out during the fall of 2007, when the 2008-2009 budget needed to be approved. The US and Japan seemed adamant that no expenditures be approved in addition to the proposed budget, and within the G77, there apparently was disagreement about the DPA proposals. The additional requests for information from Japan and US – submitted on one of the last days of negotiations – killed the proposals.

A draft resolution is reportedly currently under discussion.

Other issues

Streamlining efforts by the Secretary-General to reduce costs

According to our sources, a lively discussion took place in the Fifth Committee on 3 November regarding a letter by the Secretary-General urging his senior management to find ways to reduce expenditures by two percent. Representing the Secretariat were Deputy Chef de Cabinet Kim Won-soo, Controller Jun Yamazaki, and Under-Secretary-General for Management Angela Kane. The discussion was supposed to last 30 minutes, but ended up occupying an entire three-hour session. The meeting highlighted many suspicions that delegates from the G77 harbor about the Secretariat being too influenced by the biggest donors and not being equally transparent towards all Member States. It also clearly showed how the Secretariat is pulled in opposing directions by Member States from the North and the South and is micro-managed on relatively unimportant issues, such as the installation of fire doors or the level of air conditioning in the summer.

The session began with an explanation by Kim, who said that the Secretary-General was taking action for three reasons: the calls for budget discipline; the recent budget growth, which is seen as undesirable by certain Member States; and the global financial crisis, which could eventually have serious effects on the UN budget. Kim stressed that the action was an entirely internal exercise seeking to identify savings of two percent in order to meet new demands with the same resources – or “getting 102% of work done with 100% of the budget,” as he phrased it – and should not be seen as an attempt to make operational cuts. Kim emphasized that the exercise would have absolutely no effect on the 2008/2009 biennium budget, and was simply an effort to identify efficiencies that could be included in the proposal for the 2010/2011 budget – any realignments and efficiencies would have to be approved by Member States. Yamazaki reiterated that it was an internal process to identify ways to shift resources to priority areas, and not a cut.

This explanation met with outrage from many delegates, especially delegates from the G77. They questioned what was meant by “savings,” with some saying that they had heard “through the grapevine” that it was actually a cut. Many reiterated that the Secretary-General does not have the authority to make cuts without Member State approval and that the Development Account was of particular concern to them. The manner of communication and a perceived lack of accountability towards all Member States were other major issues: delegates decried the “murky atmosphere” of “rumors”; G77 countries were angry that bilateral discussions had illuminated some States while keeping others “on the moon,” as Cuba put it; and Egypt was “astonished” that the press knew about the letter before Member States were briefed. Singapore noted the contradiction of the Secretariat always asking for more money while at the same time looking for areas to cut without notifying Member States. Russia also expressed concern over the manner of communication and asked pointed questions about the specifics of the two percent realignment.

In contrast, many delegates from the North expressed support for the Secretary-General’s cost-saving efforts. Canada said that the Secretariat is doing “exactly what we would expect.” The US, while stating concern over the atmosphere of speculation and rumor, said that the Secretary-General has the “responsibility” to look for efficiencies and that the timing makes sense given concerns over the growth of the budget. France, speaking on behalf of the EU, said that it “seems like a sound action” and thanked the Secretariat for

being responsible. Japan agreed that the Secretary-General's actions were normal, reasonable procedure.

The discussion eventually became more wide-ranging. Syria and Egypt expressed concern over a recent agreement between the Secretariats of the UN and NATO, saying that it put the neutrality of the UN Secretariat into question. Kim responded by clarifying that the agreement only affirmed cooperation in mandates that had already been approved by the Security Council. Some delegates said that the two percent realignment represented a commitment to zero budget growth, a principle that has not been affirmed by any UN body and represents the will of specific Member States, again indicating a lack of Secretariat neutrality. Kim denied any commitment to zero budget growth.

Finally, delegates questioned actions of the Secretariat undertaken without Member State approval, such as the installation of fire doors in the UN building and the raising of the air conditioning temperature in the summer to reduce electricity costs. Venezuela was particularly adamant about the fire doors, while Russia expressed its clear distaste for the air conditioning “experiment.” Kane responded to the fire door issue by saying that it was a safety measure recommended by the City of New York and that attempts were being made to make them more user-friendly. As for the air conditioning, she said this was part of the effort of the UN to become a leader in the fight against global climate change, that the change was only supposed to affect the Secretariat building, and that the renovations of the UN headquarters would make the building much more energy efficient, rendering the air conditioning a moot point.

Report of the Board of Auditors

Delegates are discussing a draft resolution on the report of the Board of Auditors (BOA) which, among other things, discusses instances where the BOA overstepped its authority in its report (A/63/5(Vol.1)). Regarding outstanding assessed contributions, Japan offered a paragraph reiterating that this issue is a matter of the General Assembly and, through implication, not of the BOA, and Russian proposed a similar paragraph dealing with regulation of conditions of service. Neither paragraph met with much opposition from delegates.

Paragraphs dealing with BOA recommendations on the Secretariat's working languages were more contentious. The BOA had stated that despite the official equality of English and French as the working languages of the Secretariat, English had a favored position in recruiting practice, a fact that it said should be rectified. The G77 proposed a paragraph that reiterated previous resolutions on Secretariat working languages. The US, saying that the BOA report and recommendations violated UN rules and regulations, proposed an alternative paragraph that went further in negating the BOA report on this issue. The chair suggested merging the two paragraphs and the US indicated it was flexible on language, but China (which together with Haiti coordinates the G77 position on BOA) seemed adamant that the G77 paragraph be included in its entirety.

The US also proposed a paragraph calling on the BOA to include statements on the financial implications of its recommendation, but this met widespread questioning, since financial estimates are usually dealt with by the Secretariat and are outside the purview of the BOA.

The secretary of the meeting reminded the delegates that the General Assembly cannot “call upon” the BOA to do anything because of the Board’s independent status, and can only recall previous relevant resolutions.

A final point of contention was a paragraph, proposed by the G77, that specifically welcomes the BOA discussion of statement of income. Denmark, on behalf of the EU, and the US expressed concern about singling out one area of the report over others, with Denmark saying that it might also have sections it might wish to highlight. China, on behalf of the G77, remained adamant that the paragraph be included, though it indicated flexibility on the exact wording.

Conclusion

It seems obvious that the reporting burden put on the Secretariat, as well as advisory and oversight bodies in the UN, does not seem commensurate with the results, i.e. decisions made by Member States. Too often, decisions in the Fifth Committee are being postponed by asking for additional reports, masking fundamental disagreements between Member States that cannot be resolved by consensus.

On 20 November, Angela Kane, the Under-Secretary-General for Management, noted that the Secretariat had already provided 1,357 pages of responses to questions from Member States during this session. According to one insider, when Kane raised this issue with the ACABQ, she was told something along the lines of “Who do you think you are?” One delegate told us that the treatment of the Secretariat by some of his fellow delegates feels like “an ongoing punishment expedition towards the Secretariat.” Mistrust towards the Secretariat seems prevalent among delegates from the North as well as the South.

In the next two or three weeks, the Fifth Committee will have to consider a number of important draft resolutions, but negotiations thus far suggest that agreement may not be easy. Our sources have indicated that the atmosphere in the Fifth Committee is quite tense. Postponing some decisions may be preferable to the possibility of votes, which are generally seen as evidence of polarizing attitudes between Member States and regional blocs that dangerously undermine the functioning of the UN. Not being able to reach agreement on a number of key issues would, however, confirm the premise of a persisting governance crisis in the Fifth Committee.¹²

Unless attributed to a specific source, all expressions of opinion in this analysis are those of the author. The Center for UN Reform Education does not endorse any particular reform proposals.

¹² See the Center’s analysis on the governance crisis at <http://www.centerforunreform.org/node/338>.